

**THE LAW SOCIETY OF BRITISH COLUMBIA**

IN THE MATTER OF THE *LEGAL PROFESSION ACT*, SBC 1998, C. 9

AND

**RANDLE W. HOWARTH**

(a member of the Law Society of British Columbia)

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**RULE 3-7.1 CONSENT AGREEMENT SUMMARY**

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1. On February 15, 2023, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Randle W. Howarth (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (the “Rules”).
2. Under the proposal, the Lawyer admitted that he committed the following misconduct, and that it constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*:
  - i. Between September 2014 and August 2017, the Lawyer improperly used his firm’s trust account to receive funds totaling \$776,305.97, and disburse those funds, in circumstances where there were no substantial legal services provided in relation to the funds [contrary to his professional obligations, now Rule 3-58.1 of the Rules];
  - ii. Between December 18, 2014 and August 16, 2017, the Lawyer improperly received into trust and disbursed cash totaling \$96,907 in relation to a sawmill venture, contrary to Rule 3-59 of the Rules [formerly Rule 3-51.1], and in circumstances where the cash deposits were objectively suspicious, with no record of any inquiries having been made by the Lawyer, including of the source that generated the cash, contrary to rule 3.2-7 of the *Code of Professional Conduct for British Columbia* (the “Code”);
  - iii. Between April 2, 2015 and March 7, 2016, the Lawyer deposited his personal funds totaling \$11,929.25, into his trust account, contrary to Rule 3-60(5) of the Rules [formerly Rule 3-52(4)];
  - iv. Between December 2014 and September 2017, the Lawyer acted in a conflict of interest in relation to the sawmill investment, in which he had a personal interest and engaged in a venture with his clients, contrary to one or more of rules 3.4-1, 3.4-26.1, 3.4-28, and 3.4-29 of the *Code*; and

- v. The Lawyer submitted responses to the Law Society that he ought to have known were inaccurate or misleading, contrary to rules 2.2-1 and 7.1-1 of the *Code*, including:
  - a) responses that were certified as true in the Trust Reports from 2014 to 2017;
  - b) responses that were declared by the Lawyer to be “true, accurate and complete to the best of my knowledge” in the Annual Practice Declarations from 2014 to 2017; and
  - c) a response to the Law Society dated March 12, 2020 on a separate complaint file, in respect to not having received cash from AB, one of the investors in the sawmill venture, on other matters.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of 10 weeks, commencing on March 15, 2023.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated January 26, 2023, and a letter to the Chair of the Discipline Committee. The Chair also considered the Lawyer’s prior professional conduct record.
5. This consent agreement will now form part of the Lawyer’s professional conduct record.
6. Pursuant to Rule 3-7.1(5) of the Rules, and subject to Rule 3-7.2 of the Rules, the Law Society is bound by an effective consent agreement, and no further action may be taken on the complaint that gave rise to the agreement.
7. The admitted facts set out in the Agreed Statement of Facts have been summarized below.

## **Summary of Facts**

### *Member Background*

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia on January 10, 1978. He practises in the areas of plaintiff motor vehicle cases, civil litigation and creditors’ remedies. Since 1996, the Lawyer has practised law as a sole practitioner.
9. The Lawyer has a brief prior disciplinary history in British Columbia that occurred after the conduct at issue in this matter.
10. On June 8, 2021, the Lawyer attended a Conduct Review to discuss his conduct with respect to accepting \$12,000 and \$8,000 in cash on two separate files contrary to Rule 3-59(3) and failing to properly issue cash receipts contrary to Rule 3-70. At this meeting the Lawyer acknowledged this misconduct and no further disciplinary action was taken. This misconduct took place in late 2017 and early 2018 and was identified during a Law Society compliance audit in May and June 2018.

### *The Sawmill Venture*

11. In summer of 2014, the Lawyer's client, GS, approached him about an opportunity to purchase a sawmill in Surrey, BC.
12. In the summer and fall of 2014, the Lawyer discussed the sawmill business with several individuals in order to canvass potential investors. Between December 2014 and the spring of 2015, 13 investors advanced \$25,000 to the Lawyer for the sawmill venture (the "Investors"). These funds were deposited to the lawyer's trust account. Each Investor was allocated 10 shares in a holding company (the "HoldCo").
13. The Lawyer advised the Law Society that he recommended that the Investors obtain independent legal advice, however he did not obtain confirmation that any of the Investors received such advice prior to providing funds or at any time.
14. The operations of the sawmill were to be carried out by an operating company ("Company A"). HoldCo owned 100% of the shares in Company A and was to purchase any equipment required for the operation of the sawmill and then lease it to Company A.
15. Both HoldCo and Company A were shelf companies the Lawyer had incorporated years prior. In November 2014, GS became the sole director of Company A and was to manage the day-to-day operations of the sawmill.
16. The Lawyer was the sole director of HoldCo and performed legal work for it which was unrelated to the operation of the sawmill. The Lawyer did not bill HoldCo for this legal work and completed the work under another existing client file, which he had opened for the purposes of incorporating HoldCo in 2005.
17. The sawmill began production in March 2016 and at this time, the Lawyer opened a different client file to pay the sawmill's expenses. These expenses were paid through the Lawyer's trust account.

### *Financial Details*

18. Between September 2014 and August 2017, the Lawyer used his firm's trust account to receive and disburse a total of \$776,305.97 (the "Funds"), in circumstances where no substantial legal services were provided.
19. In addition to using the trust account to directly pay for the sawmill's expenses, the Lawyer also paid approximately \$200,000 to Company A, from the Funds. In addition, the Lawyer used some of the Funds to reimburse himself for payments for sawmill expenses which he had previously paid for using his personal credit card.
20. Included in the total Funds deposited into trust, was \$96,907 in cash received from the Investors.
21. The Lawyer acknowledged to the Law Society that the cash should not have been accepted and deposited to the trust account, as it was not received for professional fees or legal disbursements.
22. Of the \$96,907 cash received, \$45,540 was in \$20 denominations. The Lawyer made no record of inquiries as to what legitimate economic activities would generate the volume of \$20 bills received from the Investors.

23. From June 23, 2015 to February 29, 2016, the Lawyer failed to maintain or produce receipts for the cash accepted and deposited to trust. Furthermore, the Lawyer did not maintain a cash receipt book that contained the payer's signature, the lawyer's/staff signature, and the file number on all receipts provided.
24. During the investigation, the Lawyer pointed out that at the time of the misconduct at issue, he knew of no involvement in criminality by any of the Investors. Although he subsequently became aware of an allegation that one of the Investors was a "drug dealer", the Lawyer did not regard this allegation as credible and was not aware of any legitimate basis for it having been made.
25. Between April 2, 2015 and March 7, 2016, the Lawyer also deposited personal funds into trust, totalling \$11,929.25 of the Funds. In total, the Lawyer personally invested over \$124,000 of his own funds in the sawmill venture (including amounts directly paid by the Lawyer from his credit card and general account cheques to cover operating expenses).
26. Between March 2, 2016 and May 10, 2018, the Lawyer reimbursed himself for payments he personally made in three installments via cheques from the Funds.

*Misleading or Inaccurate Responses to the Law Society*

27. In Trust Reports filed between 2014 and 2017, the Lawyer made assertions that he ought to have known were misleading or inaccurate, namely, he stated that he:
  - did not receive more than \$7,500 in cash into trust, when he had received \$96,907 in cash;
  - maintained a cash receipt book and cash receipt book with duplicate receipts for all cash payments into trust, when he had not done so;
  - did not maintain more than \$300 of his own funds in any pooled trust account, when he deposited \$11,929.25 of his own funds into the trust account in 2015; and
  - did not have any money in trust that was not trust funds, when he received \$776,305.97 into trust that did not meet the definition of "trust funds".
28. As discussed in paragraph 10, the Lawyer attended a Conduct Review in 2021. During the investigation in that matter, the Lawyer gave a response that he ought to have known was inaccurate: on March 12, 2020, the Lawyer stated that he had not received cash from AB, one of the Investors in the sawmill venture, on any other files. However, the Lawyer had accepted \$10,000 in cash from AB in 2015.

*Aggravating Factors*

29. The Lawyer has a professional conduct record consisting of one Conduct Review from June 2021 for similar misconduct. However, the Conduct Review post-dates the admitted misconduct in this matter.
30. The admitted misconduct is serious and engages several professional conduct issues.
31. While the conduct arises out of a single matter (the purchase and operation of a sawmill business), the specific instances of the admitted misconduct are repetitive and lengthy in nature.

32. The amount of funds accepted and moved through the Lawyer's trust account was significant.

*Mitigating Factors*

33. The Lawyer invested \$124,000 of his own funds into the sawmill business in an attempt to keep it afloat when the Investors would no longer fund it. The sawmill business ultimately failed, and the Lawyer lost the entirety of his investment.

34. The Lawyer and the Law Society agree that while the Lawyer's misconduct is serious, this case is distinguishable from prior cases where more aggravated sanctions have been imposed. Significantly, there is no evidence that the Lawyer committed or facilitated any crime or fraud by use of trust account in this matter.

35. Furthermore, the Lawyer and the Law Society agree that the Lawyer's conduct is not at the most serious end of the spectrum. The conduct can be characterized as rooted in inattention as opposed to intention. For example:

- (a) he recommended that the investors obtain independent legal advice, though he did not obtain confirmation that they did;
- (b) he was not, but should have been, aware that large amounts of \$20 bills were understood by some to be commonly generated in illegal activities;
- (c) he did not know of any actual involvement in criminality by any of the investors at the time that the conduct at issue took place, nor is the Law Society aware of any such criminality; and
- (d) in relation to the statements in the Trust Reports, the Lawyer was unaware that staff had accepted the cash payments at issue, though he ought to have properly supervised his staff.

36. The Lawyer fully cooperated in efforts to resolve the matter, admitted his misconduct, and has consented to a ten-week suspension.

37. As a result of the Lawyer's cooperation and resolution of this matter, the decision of the Chair of the Discipline Committee is published on the Law Society's website and the Lawyer is named in the publication.

38. The resolution by consent agreement will also be recorded on the Lawyer's professional conduct record.

39. The actions taken will serve as a personal deterrent to the Lawyer, and as a general deterrent to the profession.