

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

AND

**DOLDEN WALLACE FOLICK, LLP**

(a law firm in British Columbia)

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**RULE 3-7.1 CONSENT AGREEMENT SUMMARY**

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1. On September 15, 2021, the Chair of the Discipline Committee accepted a proposal submitted by Dolden Wallace Folick, LLP (the “Law Firm”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. Under the proposal, the Law Firm admitted that it committed professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act*, as follows:
  - (a) Between October 1, 2018, and March 8, 2021, in 332 instances totaling \$103,851.70, it failed to deposit trust funds into a pooled trust account as soon as practicable, contrary to Rule 3-58 of the Law Society Rules.
3. Under the proposal, the Law Firm agreed to pay a fine of \$30,000.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated September 1, 2021, and a letter to the Chair of the Discipline Committee. The Chair also considered the fact that the Law Firm does not have a prior Professional Conduct Record.
5. This consent agreement will now form part of the Law Firm’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 were set out in an Agreed Statement of Facts dated September 1, 2021. The facts have been summarized below.

## **I. Summary of Facts**

8. The Law Firm is located in Vancouver, British Columbia, with additional offices in Kelowna, Calgary, and Toronto. It practises as a limited liability partnership.
9. Virtually all of the Law Firm's clients are institutional insurance companies and the practice of the Law Firm is insurance-related. Given its clients, the Law Firm does not typically require retainers to be provided by clients and held in trust pending delivery of later accounts. The Law Firm's general practice is to simply render invoices to its clients, which are then paid.
10. In January 2020, the Law Society conducted a compliance audit of the Law Firm. During the compliance audit, a Law Society auditor noted that when institutional clients of the Law Firm overpaid their accounts, the additional funds were being retained by the Law Firm in its two general accounts (together, the "General Accounts") and were not being transferred to one of its six pooled trust accounts (together, the "Trust Accounts").
11. Subsequently, a forensic auditor determined that between October 1, 2018 and March 8, 2021, in 332 instances totaling \$103,851.70, the Law Firm was overpaid by its clients and the overpayments were held in the Law Firm's General Accounts.
12. These monies were earmarked and designated in the Law Firm's accounting system as being to the benefit and credit of each client which had overpaid. When overpayments were identified by accounting staff, the overpayments were recorded in a separate module as a "general retainer" and were noted as being held for the specific clients that had overpaid. The overpayments made to the General Accounts were then applied as credits to subsequent

client invoices or returned to the client. This had been the practice of the Law Firm since the Law Firm was founded in 1994.

13. Typically, a lawyer at the Law Firm would render an account on a particular client matter and when the client made payments by way of cheque or electronic funds transfer, these payments would be processed by the Law Firm's accounting group. The payments were not seen by the lawyer at the Law Firm who rendered the account.
14. The accounting staff would deposit the payment, ensure that the accounts had been paid in full, and would then record any overages into the "general retainer" module of its accounting software. In the result, the overpayments would also be deposited to the Law Firm's General Accounts.
15. The Law Firm accounting department would not notify the responsible lawyer on the file of any overpayments by the clients, but the information would be available in the accounting software in order to allow the overpayments to be processed and applied to future invoices rendered to any clients which had previously overpaid.
16. At all times, the overpayments were tracked by the Law Firm through the "general retainer" module in the Law Firm's accounting software. No clients of the Law Firm were short or missing any funds as a result of the firm's practices. All client money was properly accounted for by the Law Firm throughout the material period.
17. Even though the overpayments were recorded in the "general retainer" module in the accounting software, the Law Firm now recognizes that overpayments on accounts must be deposited into trust to the credit of the appropriate client.
18. The Law Firm now understands that it should not have retained the overpayments in its General Accounts. The Law Firm understands that it was not enough to segregate those funds in the accounting software system and that the overpayment amounts should have been transferred to trust, or steps should have been taken by the Law Firm to identify that it had been overpaid by a client; deposit the entire payment into trust; and then transfer the exact amount to the General Accounts to pay for the invoice(s) that had been rendered to the client.

19. When a client remits more funds than what a law firm has billed, the excess funds should be treated as trust funds in accordance with Rule 3-58 of the Law Society Rules. Trust funds are defined by the Law Society Rules as funds directly related to legal services provided by a lawyer or law firm received in trust by the lawyer or law firm acting in that capacity, including funds (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, or (b) belonging partly to a client and partly to the lawyer or law firm if it is not practicable to split the funds.
20. During the Law Society investigation, the Law Firm explained:
- (a) that the failure to transfer funds from the General Accounts to the Law Firm's trust account was not done in an attempt to benefit the Law Firm – it was simply an administrative practice that had been followed by the Law Firm since it opened in 1994 until the recent compliance audit identified the problem;
  - (b) that the Law Firm had not been aware that it was required to transfer the funds recorded in the accounting software as “general retainers” (held in the General Accounts) into its Trust Accounts until the recent compliance audit brought the matter to the Law Firm's attention;
  - (c) the Law Firm had been through two prior Law Society compliance audits during which the Law Firm's practice of using the accounting software's “general retainer” module had not been identified as being non-compliant with Law Society Rules;
  - (d) that the Law Firm had used the “general retainer” module of its accounting software to record clients' overpayments of funds since the Law Firm was opened in 1994; and
  - (e) as soon as the issues were identified during the recent compliance audit, the Law Firm made a series of changes to its internal accounting and administrative procedures in order to ensure complete compliance with the Law Society Rules going forward.

21. Following the compliance audit, the Law Firm transferred all remaining funds recorded as “general retainers” from its General Accounts into trust, and then took steps to ensure that these monies were applied to other outstanding accounts or were returned to clients.
22. The Law Firm has now corrected its standard accounting procedures. The Law Firm now deposits cheques from its clients into its trust accounts and then, once the cheques clear, the Law Firm issues cheques from trust to the General Accounts to pay for invoices and immediately returns any overpayments to clients.
23. The Law Firm’s accounting staff have now all taken the Law Society course relating to the proper accounting of trust funds or attended an internal seminar at the Law Firm that canvassed the same information.
24. All of the lawyers at the Law Firm have been advised of the issue with overpayments in the General Accounts, and are aware that any overpayments must be immediately returned to clients from the Law Firm’s trust accounts.