

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

DUSTIN GERALD ELLIS

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On December 9, 2022, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Dustin Gerald Ellis (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“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 December 21, 2021 and January 16, 2022, the Lawyer engaged in an inappropriate personal and sexual relationship with X that placed him in a conflict of interest, contrary to Rule 3.4-1 of the *Code of Professional Conduct for British Columbia* (the “Code”) and its commentary, and his fiduciary duties.
 - ii. Between December 21, 2021 and January 16, 2022, the Lawyer failed to act honourably and with integrity when he engaged in an inappropriate personal and sexual relationship with X during the course of their professional relationship, contrary to Rule 2.2-1 of the *Code*.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for 4-weeks, commencing on December 12, 2022. He also agreed to a practice condition that he not practice in the area of family law or criminal law, with or without the expectation of a fee, gain, or reward, whether direct or indirect, until relieved of this condition by the Executive Director or by the Discipline Committee.
4. In making his decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated November 21, 2022, and a letter to the Chair of the Discipline

Committee. The Chair also considered that the Lawyer did not have a prior professional conduct record.

5. The Chair further considered the fact that the Complainant was invited to respond to information provided by the Lawyer during the Law Society investigation, and was advised that the Law Society was proceeding by consent agreement and had an opportunity to respond.
6. This consent agreement will now form part of the Lawyer's professional conduct record.
7. 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.
8. The admitted facts set out in the Agreed Statement of Facts have been summarized below.

Summary of Facts

Member Background

9. The Lawyer was called and admitted as a member of the Law Society of British Columbia on December 7, 2018.
10. On February 1, 2019, the Lawyer commenced employment with a pro-bono organization ("Organization A").
11. Sometime after January 16, 2022, the Lawyer was terminated from this organization.
12. The Lawyer currently practices at Downtown Abby Lawyers LLP. His practice consists of civil litigation, administrative law and creditors remedies.

Background Facts

13. In early December 2021, the complainant, hereinafter referred to as "X", called Organization A seeking pro-bono legal services in relation to a judicial review of a Workers Compensation Appeal Tribunal ("WCAT") decision.
14. The Lawyer was a program manager at Organization A and was responsible for triaging legal inquiries. He obtained information, provided basic legal information, and made referrals to other suitable departments of Organization A as needed. For matters requiring chambers, the Lawyer could either refer the matter to a volunteer pro-bono lawyer or represent the client himself as duty counsel.

15. When the lawyer spoke with X about the matter on December 21, 2021, he determined that two applications were required. The applications were scheduled for January 12, 2022.
16. The Lawyer agreed to act for X on the applications only, and advised her that he would not be able to represent her on the judicial review as he did not have the required expertise. He informed her that he would try to locate a suitable pro bono lawyer to assist her with the judicial review. He also advised her he would prepare a draft Amended Petition.
17. After learning that the two applications were unopposed and could be adjourned without prejudice to X's case, Mr. Ellis formed the view that the applications should be adjourned to give more time to assess the merits of the underlying judicial review application, and to work on the Amended Petition to the Court. He gave this legal advice to the Complainant.

The Misconduct

18. On December 22, 2021, after receiving a request for a face-time call from X, the Lawyer texted that he couldn't answer her call because he wasn't alone in the office and he didn't want to share their vibe.
19. X replied, "Ok, so we do have vibe".
20. The relationship between the Lawyer and X progressed with personal text messages being exchanged and interspersed amongst communications regarding X's legal matter.
21. During these exchanges, X advised the Lawyer that she felt some of the messages the Lawyer was sending contained sexual innuendo, and asked him whether the relationship really was developing as she thought. She noted that she felt embarrassed and advised the Lawyer that he did not have to represent her if that was the case.
22. The Lawyer replied, "You don't have to be embarrassed. I think you're fun to talk to, and so long as I am not worried about getting in trouble professionally, it is exciting. I do want to assist you. Let's talk on Tuesday and get a clear sense of things. I really want to meet you in person and figure out how I can help you and what you are about".
23. The Lawyer alleges that on the evening of December 24, X sent him a lengthy text message detailing her desire for a sexual relationship with him. That text message has not been provided to the Law Society.
24. A further text message from the Lawyer that evening stated "I need more time to read your other text, but if it is going where I think it is, you are not insane. By this I mean I recall feeling excited by our communication."

25. The two continued to exchange personal text messages and text messages regarding X's legal matters over the next few weeks.
26. On the morning of January 11, 2022, the Lawyer attended at X's residence and the parties engaged in multiple sexual activities including sexual intercourse.
27. Later that day, the Lawyer filed a Requisition adjourning the hearing of the applications to January 28, 2022. He signed the Requisition as duty counsel for X.
28. In the late hours of January 12 and the early morning hours of January 13, 2022, the Lawyer and X engaged in sexually explicit text messages and exchanged sexually explicit photographs of themselves. They also made plans to meet up to have sex on January 14, 2022.
29. On the morning of January 14, 2022, the Lawyer texted X to cancel their planned meeting due to a family illness.
30. On January 16, 2022, X advised the Lawyer by text that she was no longer interested in pursuing the relationship, personally or professionally. She advised that she would be representing herself moving forward. She told the Lawyer she felt their relationship had been inappropriate and that he had been sexually harassing her from their first phone call. She noted that he worked in an environment where he dealt with vulnerable people, and that he exerted power over them, and so should be more mindful of his actions. She ended the messages by advising that she would report him.
31. By reply text, the Lawyer denied sexually harassing X and agreed to cease contacting her.
32. Following the exchange, the Lawyer reported the relationship to his employer, and Organization A terminated his employment.
33. The Lawyer did not take concrete steps to have another lawyer represent X on the applications once the relationship had developed into a personal and sexual relationship.

Mitigating Factors

34. The Lawyer has no professional conduct record.

Aggravating Factors

35. It is aggravating that the Lawyer engaged in a personal and sexual relationship with a vulnerable client while working for a pro-bono legal aid organization.

Outcome in Prior Similar Matters

36. In approving the consent agreement proposal, the Chair of the Discipline Committee considered that the proposed suspension and practice condition was consistent with the outcome in prior, similar matters.