

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

RUSSELL SEAN McDONOUGH

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT

1. On January 28, 2024, the Chair of the Discipline Committee approved a proposal submitted by Russell Sean McDonough (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 professional misconduct and that it amounts to professional misconduct, pursuant to s. 38(4) of the *Legal Profession Act* (the “Act”):
 - i. Between January 6, 2021 and October 3, 2022, in 34 instances related to 30 client matters, he misappropriated a total of \$8,075,152.80, by withdrawing the funds from trust when he was not entitled to them.
 - ii. Between January 11, 2021 and October 3, 2022, on 29 occasions, he breached undertakings given to opposing parties in real estate transactions, contrary to rules 5-1.6 and 7.2-11 of the *Code of Professional Conduct for British Columbia* (the “Code”).
 - iii. In approximately January 2021, in relation to one client matter, he made the following representations that he knew were false and misleading, contrary to rule 2.2-1 of the *Code*:
 - (a) he prepared an Order to Pay with a false statutory holdback of \$50,000, which he had his client sign;

- (b) he told his client that a statutory holdback was required when this was not true, in order to misappropriate the \$50,000; and
 - (c) he altered the signed Order to Pay to make the \$50,000 payable to a bank, so that his staff would generate a trust cheque, which he could then deposit to his business account.
- 3. As part of the consent agreement, the Lawyer has provided an undertaking that he will not:
 - i. engage in the practise of law for a period of seven (7) years, from February 1, 2024 to January 31, 2031, with or without the expectation of a fee, gain or reward, whether directly or indirectly;
 - ii. submit an application for admission to another law society in Canada for a period of six-and-a-half years, which date is August 1, 2030;
 - iii. apply for membership in any other law society (or like governing body regulating the practice of law) without first advising in writing the Law Society of British Columbia (the “Law Society”); and
 - iv. permit his name to appear on the letter head of, or work in any capacity whatsoever, for any lawyer or law firm in British Columbia, without obtaining the prior written consent of the Discipline Committee of the Law Society.
- 4. On January 1, 2024, the Lawyer became a former member of the Law Society. The Lawyer will be permitted to submit an application to the Law Society for reinstatement after a period of six-and-a-half years, which date is August 1, 2030.
- 5. The Chair of the Discipline Committee considered an Agreed Statement of Facts and a letter containing the Lawyer’s consent agreement proposal. The Chair of the Discipline Committee also considered that the Lawyer’s professional conduct record includes two prior conduct reviews, including a conduct review for a breach of an undertaking in a real estate file, and a conduct review related to the improper withdrawal of residual trust balances. This consent agreement will now form part of the Lawyer’s professional conduct record.

6. The Lawyer has acknowledged that he is a person who has ceased to be a member of the Law Society as a result of disciplinary proceedings and that s. 15(3) of the *Act* applies to him.
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 anonymized and summarized below.

Summary of Facts

9. The Lawyer was called to the bar and became a member of the Law Society on May 11, 2004. He did not practise law until April 2005.
10. From April 2005 to October 21, 2022, the Lawyer worked at a small firm with offices in Surrey, Langley, and Vancouver, British Columbia (the “Firm”).
11. In 2020, the Lawyer incorporated a personal law corporation.
12. In July 2020, the Lawyer opened a business bank account for his personal law corporation at a bank (the “Law Corp Account”). The Law Corp Account was not a designated trust account or reported by the Lawyer to the Law Society as a general account.
13. In 2022, two lawyers worked at the Firm: the Lawyer and the Firm’s principal (the “Principal”).
14. The Lawyer practised primarily in the area of real estate law.
15. Since October 21, 2022, the Lawyer has been a non-practising lawyer. Due to the events described below, he is no longer employed by the Firm.

16. On or about October 16, 2022, the Trust Assurance Department of the Law Society commenced a compliance audit of the Firm's books and records. The compliance audit and the Lawyer's admissions revealed that during the audit period:
 - (a) the Lawyer improperly withdrew a total of \$8,075,152.80 in 34 instances related to 30 client matters ("Affected Client Matters") from the Firm's trust accounts, and deposited the funds primarily to his Law Corp Account and in once instance, his personal line of credit account. These withdrawals created trust shortages in the Firm's trust accounts;
 - (b) the Lawyer eliminated \$6,036,692.89 of the trust shortages over time by typically paying the required amounts out of trust funds held for other clients and in some instances (totaling \$308,000), using money he had gained through gambling; and
 - (c) as of October 19, 2022, trust shortages totaling \$2,038,459.91 had not been eliminated (the "Remaining Trust Shortages").
17. The improper withdrawals related to the Affected Client Matters amounted to misappropriations, as the Lawyer withdrew and used client funds when he had no authorization to do so.
18. During the compliance audit, the Lawyer explained to a Trust Assurance auditor that he had a severe gambling addiction and that he had used the trust funds for gambling; that he did not have any financial difficulties other than those that arose from gambling; and that he started taking Firm trust funds in December 2020 or January 2021.
19. In October 2022, the Lawyer and the Principal both advised the Lawyers Indemnity Fund ("LIF") and the Law Society of the misappropriations.
20. In October 2022, the Principal deposited \$2,038,459.91 into the Firm's trust account to eliminate the Remaining Trust Shortages. Subsequently, LIF reimbursed the Principal for those funds. All clients with Affected Client Matters and all entities entitled to funds received the funds that were theirs.

21. In November 2022, the Lawyer provided a letter to the Law Society in which he addressed his misconduct, and provided further information about his actions, not as an excuse but rather for context. He admitted his misappropriations and explained that his actions were related to a gambling addiction, for which he was in the early stages of treatment. The Lawyer explained that by 2020, he had amassed a substantial amount of personal debt due to his gambling habits. When all of his credit facilities were at or nearing their maximum limits, he began to misappropriate client funds. From early 2021 to October 2022, the Lawyer compulsively misappropriated client funds, typically by issuing trust cheques to his corporation and then gambling the proceeds. His intent was to earn sufficient funds through gambling to return the funds from the “breakthrough” he believed he would eventually have.
22. The Lawyer explained that a number of his client files involved misappropriating holdbacks involving non-resident vendors. His pattern was that when he needed funds to gamble with, to make payments to the government on behalf of clients, or to return funds to a client, he would identify a non-resident holdback file and issue a trust cheque to his personal law corporation for the entire holdback amount. When a request for funds was received, if the Lawyer did not have funds to pay it, he identified another non-resident holdback file and issued a trust cheque to his corporation for the entire holdback amount for that file. The Lawyer admitted that in every instance involving a non-resident vendor, he was in breach of undertakings imposed upon him by a solicitor or notary public.
23. The Lawyer explained that funds were eventually returned in the majority of cases. However, at the time his misconduct was discovered, there were significant trust shortages in the Firm’s trust accounts resulting from his misappropriations.
24. As noted above, all clients and entities affected by the trust shortages ultimately received the funds that were theirs.
25. The Lawyer expressed his feelings of shame and remorse. He recognized that his conduct caused immense harm to his clients, the Firm, his profession, those with whom he worked in transactions with, and his family.

26. In a letter to the Law Society dated April 14, 2023, the Lawyer stated the following:

As I indicated in my Self Report to the Law Society on November 3, 2022, the conduct I engaged in is inexcusable and contrary to the fundamental values that our legal system is based upon and those that I firmly believe in. I take full responsibility for my actions and intend to remain accountable to those affected directly or indirectly. I am full of remorse and shame over what I have done. In examining my behaviour to prepare these responses, I was appalled. I understand now that when I engaged in this egregious conduct, I was in the grips of a very severe gambling addiction and suffering from anxiety and depression. I appreciate that my thought processes that resulted in the actions and the conduct itself do not seem rational. However, at the time I was making these decisions, I felt as if I had no other choice. It was true compulsion. Every withdrawal I made from the firm's trust account and every dishonest act was a result of my gambling activity. The money was used to either gamble with or pay down credit facilities that had outstanding balances due to gambling. My life, and consequentially my finances, were completely consumed by gambling.

27. In addition, in his response letter dated April 14, 2023, the Lawyer admitted that:

- (a) for all of the withdrawals related to the Affected Client Matters, the Lawyer either withdrew funds himself or instructed staff to cause a withdrawal;
- (b) he personally signed 17 of the trust cheques issued in relation to the Affected Client Matters;
- (c) he had no entitlement to any of the trust funds related to the Affected Client Matters, and all funds were taken without his clients' knowledge or consent; and
- (d) he used the vast majority of the misappropriated funds for gambling or for paying down debt arising from gambling, in order to gamble more with the freed-up credit. During the period of misappropriations, the Lawyer also paid for some significant personal expenditures.

28. In his letter dated April 14, 2023, the Lawyer also explained:

- (a) the taking of trust funds on 29 of the Affected Client Matters was in breach of his undertakings on those real estate transactions;

- (b) in relation to one client matter, the Lawyer created false documents to support his misappropriation of \$50,000 from the proceeds of the sale of that client's property. The Lawyer created an Order to Pay for the client's signature that included a \$50,000 deduction for a statutory holdback. However, there was no holdback required for the transaction. The Lawyer then modified the Order to Pay after it was signed by the client, without the client's knowledge or consent, to state that the \$50,000 was to be paid to his financial institution, and staff prepared a cheque accordingly. The Lawyer then deposited the cheque into his Law Corp Account. The Lawyer made false representations to the client that there was a requirement for the statutory holdback because it was a corporate entity selling the property and there was a need to ensure the corporation did not owe any monies to government agencies, and that the funds could be released after 30 days. The Lawyer did return the \$50,000 to the client; and
- (c) of the \$8,075,152.80 in misappropriated funds, the Lawyer repaid \$6,036,692.89. When it came time to pay funds on an Affected Client Matter to the government, or return funds to the client or others, the Lawyer would typically obtain a bank draft, cheque, or transfer funds from the Law Corp Account. All but \$308,000 of the funds used to pay back misappropriated funds came from trust funds misappropriated from other Affected Client Matters, if the Lawyer did not have sufficient funds in the Law Corp Account to cover the amounts owing.

Mitigating Factors

Medical Evidence of an Addictions Disorder

29. In October 2022, the Lawyer underwent an Independent Medical Evaluation ("IME"). The evaluating physician opined that the Lawyer met the diagnostic criteria for Gambling Disorder/Pathological Gambling, which is consistent with an addiction to gambling. The evaluating physician also identified a secondary historic mental health disorder that she said was a significant contributing mental health condition.

30. The evaluating physician explained that a gambling addiction can “cause an otherwise honest person to misappropriate client funds”. She also explained that a gambling addiction can be managed in a way that the risk to the public can be minimized. However, while it can be placed into sustained remission, similar to other chronic diseases, it requires ongoing treatment/contingency management, and is never cured.
31. The evaluating physician laid out a comprehensive treatment plan, including that the Lawyer enter into residential treatment.
32. From November to December 2022, the Lawyer attended a recommended residential treatment program.
33. At the residential treatment center, the Lawyer was diagnosed with further mental health disorders. A discharge report confirmed that the Lawyer underwent treatment and learned healthy techniques to manage triggers to gamble and achieve long-term recovery. It also indicated that if the Lawyer participates in his recommended after-care program, his prognosis is good from long-term abstinence from gambling and other disorders.
34. Following his discharge from the residential treatment center, the Lawyer was seen by a psychiatrist in Vancouver. In a February 2023 letter to the Law Society, the psychiatrist explained the following about gambling disorders:

Gambling disorder is the only behavioural addiction recognized in the current Diagnostic and Statistical Manual of Mental Disorders. In the main text the reasons for its inclusion are clear. It states, “gambling behaviors activate reward systems similar to those activated by drugs of abuse and produce some behavioral symptoms that appear comparable to those produced by the substance use disorders” [citation omitted]...Supporting this statement, several studies suggest that gambling can lead to processes of tolerance and withdrawal, much akin to those seen in substance use disorders [citation omitted]...Empirical evidence suggests that gambling can activate ventral striatal structures in the brain [citation omitted]...that mediate a type of hijacking phenomenon that reduces the individual’s capacity for appropriate response inhibition, turning gambling into the central focus of their life. This same phenomenon is a key feature of substance use disorders and contributes to the central argument that addictions are brain-based diseases that can impair an individual’s capacity for reason, judgement, and self-preservation due to their pronounced effect on neurobiological functioning.

...

Gambling disorder is perhaps one of the more stigmatized psychiatric conditions where misattribution of mentally disordered behaviours to personal choice or irremediable personality characteristics is a common position before the development of sensibility into the nature of addiction [citation omitted]... This position does not do justice to the clinical reality that individuals can grow and rehabilitate in the face of very complex personal struggles.

35. The psychiatrist explained that the Lawyer's gambling behaviours were powerfully influenced by such an addictive process, and that the Lawyer's general intelligence level, education as a lawyer, and understanding of the risks of his behaviour both to himself and his family were completely effaced during the course of his illness. As such, the psychiatrist submitted that the Lawyer's conduct should be understood as having been greatly influenced by a medical disorder. The psychiatrist opined that the Lawyer required treatment for the foreseeable future, including a combination of support groups, counselling and medical support.
36. Beginning in October 2022 and prior to his entry into residential treatment, the Lawyer received regular and frequent counselling from the Lawyers Assistance Program.
37. Since his discharge from residential treatment, the Lawyer has been actively engaged in his recommended after-care program.
38. The Lawyer is remorseful and is committed to his recovery. He does not intend to ever gamble again. The Lawyer accepted responsibility for his actions at an early stage of the investigation, and candidly admitted all of his misconduct. He has continued to engage in various treatment programs and monitoring, and has successfully abstained from gambling since October 2022.