

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

M. SHANE DUGAS

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT

1. On May 10, 2024, the Chair of the Discipline Committee accepted a proposal submitted by M. Shane Dugas (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 amounted to professional misconduct:
 1. Between April 1, 2019, and September 20, 2020, he misappropriated or improperly handled funds by doing the following:
 - (a) depositing retainer funds directly into his personal bank account instead of a trust account and not recording the receipt of the funds in his accounting records;
 - (b) depositing funds received in payment of invoices directly into his personal bank account instead of a business account and not recording the receipt of the funds in his accounting records;
 - (c) withdrawing funds from his trust account in relation to a client matter when there were insufficient funds on deposit to the credit of the client; and
 - (d) returning an insufficient amount of trust funds to a client.

2. Between November 3, 2021, and February 13, 2023, he discovered trust shortages but did not immediately pay enough funds into his trust account to eliminate the trust shortages, contrary to Rules 3-74(1) and 3-63 of the Rules.
3. Between April 1, 2019, to September 20, 2020, he failed to report trust shortages greater than \$2,500 to the Executive Director of the Law Society of British Columbia (the “Law Society”), contrary to Rule 3-74 of the Rules.
4. Between May 2016, and February 2023, he failed to maintain accounting records in compliance with the provisions of Part 3 Division 7 of the Rules, and in particular he:
 - (a) failed to maintain adequate accounting documents including supporting documents, contrary to Rule 3-67;
 - (b) failed to record general transactions promptly or at all, contrary to Rule 3-72;
 - (c) failed to record trust transactions promptly or at all, contrary to Rules 3-68(b) and 3-72;
 - (d) made withdrawals from trust when his accounting records were not current, contrary to Rule 3-64(3)(a);
 - (e) failed to account in writing to clients for all funds received on behalf of the clients, contrary to Rule 3-54(1);
 - (f) failed to immediately deliver a bill or issue a receipt for all funds received on account of fees earned and billed, or disbursements made, containing sufficient particulars to identify the services performed and disbursements incurred, contrary to Rule 3-72;
 - (g) failed to keep file copies of all bills delivered to clients or persons charged, contrary to Rule 3-71(1); and
 - (h) failed to prepare accurate monthly trust reconciliations within 30 days of the effective date of the reconciliation, contrary to Rule 3-73.

5. In his Trust Reports for the years 2015, 2016, 2017, 2018, and 2020, he made representations to the Law Society of British Columbia that his practice had filed and/or remitted GST, PST, employee payroll source deductions, and Trust Administration Fees in full and on time, when he knew this was not true, contrary to Rule 3-79 of the Rules, and rules 2.2-1 and 7.1-1 of the *Code of Professional Conduct for British Columbia* (the “Code”).
6. In his 2020 Trust Report, he certified that all information provided in the report was correct when he knew that this was not true, contrary to rules 2.2-1 and 7.1-1 of the *Code*.
7. Between April 30, 2020, and December 23, 2020, in relation to government loan payments and wage subsidy payments, he permitted \$76,215.30 to be deposited to and withdrawn from his trust account in circumstances where the funds were not directly related to legal services provided by him, contrary to Rule 3-58.1 of the Rules.
8. Between January 1, 2014, and December 31, 2021, he failed to file and remit GST funds and any interest due to the Canada Revenue Agency in a timely manner or at all, contrary to rule 7.1-2 of the *Code*.
9. Between October 1, 2014, and October 17, 2022, he failed to file and remit PST funds and any interest due to the British Columbia Ministry of Finance in a timely way or at all, contrary to rule 7.1-2 of the *Code*.
10. Between January 2018, and October 2022, he failed to remit payroll source deductions and any interest due to the Canada Revenue Agency in a timely way, contrary to rule 7.1-2 of the *Code*.
11. Between January 1, 2015, and March 31, 2023, he failed to report and pay Trust Administration Fees and any interest due to the Law Society of British Columbia in a timely way or at all, contrary to Rules 2-110 and 3-49 of the Rules, and rule 7.1-1 of the *Code*.

12. Between March 14, 2019 and May 25, 2020, in relation to CM, he used his trust account to receive and disburse \$230,000 in funds that were not directly related to legal services, in circumstances where he was aware that CM had unpaid creditors pursuing him, contrary to Rule 3-58.1 of the Rules and rule 2.2-1 of the *Code*.
13. Between September 4, 2019 and June 7, 2020, in the course of representing CM and SM in the sale of property, he failed to honour trust conditions imposed on him by another lawyer, contrary to rules 5.1-6 and 7.2-11 of the *Code*.
14. Between May 12, 2017 and July 21, 2020, he used his trust account to receive and disburse \$1,347,139.75 in funds that were not directly related to legal services he was providing to his client SY and/or Company X, in circumstances where he was aware that the bank accounts of SY and/or Company X were inaccessible due to foreclosure proceedings, contrary to Rule 3-58.1 of the Rules and rule 2.2-1 of the *Code*.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of five months, from June 1, 2024 to October 31, 2024. He also consented to a referral to the Practice Standards Committee and a condition that upon his return to practice after October 31, 2024, he will only operate a trust account with a second signatory who is a practising lawyer approved by the Executive Director of the Law Society.
4. In making the decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated April 25, 2024, and a letter to the Chair of the Discipline Committee. The Chair also considered the Lawyer's prior professional conduct record, which includes a 2013 conduct review for taking funds from trust for legal fees prior to issuing bills, and recommendations made by the Practice Standards Committee in 2016 in relation to the Lawyer's office systems.
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 anonymized and summarized below.

Member Background

8. In June 1994, Mr. M. Shane Dugas (the “Lawyer”) was called to the bar of New Brunswick. He does not currently practise in New Brunswick.
9. The Lawyer became a member of the Law Society of British Columbia on August 8, 2008. Since then, he has worked at two small firms in Vernon, British Columbia, including his own firm, Dugas Law (the “Firm”), which he opened in April 2011. The Lawyer practises law under a law corporation (the “Law Corporation”), primarily in the areas of administrative law and civil litigation.
10. The Lawyer has an undergraduate degree in business administration. He has taken several courses in accounting and completes the Firm’s accounting himself.

Background Facts

a. Misappropriation or Improper Handling

11. From April 2019 to at least September 2020, the Lawyer used a personal bank account for business purposes (the “Personal Account”), and conducted most Firm-related transactions through the Personal Account. The Respondent held the Personal Account jointly with his wife.
12. The Firm also had a general bank account (the “General Account”), which the Lawyer did not use from at least June 2016 to September 2020, as well as a trust account (the “Trust Account”). The Lawyer acknowledges that all Firm-related banking transactions, including the receipt of client payments, should have been processed through either the General Account or the Trust Account.
13. The Lawyer failed to record in his Firm’s accounting records, approximately \$13,000 in e-transfer payments that he received to his Personal Account that were related to client files.

14. The Lawyer also improperly deposited approximately \$10,000 in retainer funds to his Personal Account. He acknowledges that retainer funds are trust funds, and that such funds should have been deposited to the Trust Account and recorded on the appropriate client trust ledger.

b. Trust Shortages and Improper Handling of Other Trust Funds

15. Between approximately 2014 and at least December 31, 2022, the Lawyer failed to deposit trust funds to the Trust Account, or improperly withdrew funds from the Trust Account when there were insufficient funds held for a client matter. His actions in doing so caused trust shortages, which he failed to correct and report to the Executive Director of the Law Society.

16. The Lawyer improperly listed trust shortages as outstanding receipts on his monthly trust reconciliations. In some instances, trust funds were recorded as having been deposited into the Trust Account in relation to a client matter when no deposit had been made as the funds had been deposited elsewhere or there was a bookkeeping error. In other instances, disbursements or fees were paid twice, with the first payment not being properly recorded.

17. In November 2021, an accounting firm raised the issue of problematic ongoing trust shortages with the Lawyer, but the Lawyer failed to amend his practices. Instead of immediately correcting the trust shortages as required, the Lawyer carried them forward for years.

c. Miscellaneous Contraventions of the Trust Accounting Rules

18. The Lawyer did not maintain current and accurate accounting books and records, including supporting documents; did not maintain records of general and trust account transactions accurately or at all; withdrew funds from the Trust Account when the Firm's books and records were not current; did not account in writing to all clients for funds received on their behalf; did not immediately deliver a bill or issue a receipt for all funds received for fees earned or disbursements incurred that contained sufficient particulars to identify the services performed and disbursements incurred; failed to keep file copies of all bills delivered to clients or persons charged; and failed to promptly correct trust reconciliations that contained

numerous errors. The Lawyer prepared 15 monthly trust reconciliations outside the 30-day requirement set out in the Rules.

d. Misrepresentations made in Trust Reports

19. For the years 2015, 2016, 2017, 2018, and 2020, the Lawyer submitted annual Trust Reports that contained inaccurate information regarding payments of GST, PST, employee payroll remittances, and Law Society Trust Administration Fees (“TAF”). Specifically, he reported that he had filed and/or remitted these payments in full and on time, when this was not true.
20. In addition, in his 2020 Trust Report, the Lawyer certified as correct statements that were in fact, incorrect.
21. The Lawyer attributed his misrepresentations to extreme stress and anxiety in his law practice and in general life.

e. Improper Use of Trust Account

22. The Lawyer permitted funds to be deposited to and withdrawn from the Trust Account in circumstances where the funds were not directly related to legal services provided by him. Specifically, the Lawyer allowed over \$76,000 in government loan payments and emergency wage subsidy payments to flow through his Trust Account.
23. The Lawyer now understands that, subject to certain enumerated exceptions, the Rules prohibit a lawyer from allowing funds to be deposited to or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

f. Failure to File and/or Remit GST

24. On September 18, 2019, the Canada Revenue Agency (“CRA”) provided the Lawyer with a registration confirmation notice for a GST account number, effective September 12, 2019 (the “2019 GST Account”). As of October 13, 2022, the Lawyer owed \$39,186.31 in GST arrears under the 2019 GST Account.

25. For the periods January 1, 2014 to December 31, 2016, the Lawyer filed and remitted GST under another account held in the Lawyer's name and the name of his sole proprietorship (the "2014 GST Account"). Under the 2014 GST Account, the Lawyer remitted GST late for each of the periods ending December 31, 2014 to December 31, 2016, and as of October 14, 2022, he owed \$511.06 for the period ending December 31, 2016. There was no activity in the 2014 GST Account for any filing periods after December 31, 2016.

26. The Lawyer did not file or remit GST for the period January 1, 2017 to September 11, 2019.

g. Failure to File and/or Remit PST

27. From April 1, 2019, to June 30, 2021, the Lawyer filed PST returns on time, but did not remit the amounts owing by the due dates. Since October 1, 2014, the Lawyer has failed to remit PST amounts owing by the due dates. From July 1, 2021, to August 31, 2022, the Lawyer did not file and remit PST amounts owing by the due dates.

28. The total amount of PST remitted late between April 1, 2019, and October 17, 2022 was \$86,700.03, plus penalties and interest.

29. The PST arrears owed by the Firm, for periods between September 29, 2020 and October 17, 2022, totaled over \$57,000.

h. Failure to Remit Payroll Source Deductions

30. As of August 15, 2019, the Lawyer owed \$23,013.41 in payroll source deduction arrears for the years 2018 and 2019. By September 2020, this amount was reduced to \$5,690.11.

31. As the Lawyer did not make further payments toward the arrears on April 22, 2022 and May 05, 2022, the CRA garnished \$5,067.95 from the Lawyer. As of October 13, 2022, the Lawyer owed \$1,469.47 in payroll source deductions.

i. Failure to Report and Remit Trust Administration Fees

32. In 2021, the Lawyer had not remitted TAF payments to the Law Society since 2015. The Lawyer was asked to review his records, self-assess what TAF payments were due, and remit the amount owing.
33. On February 9, 2021, the Lawyer made TAF remittances of \$527.63 for the last two quarters of 2020. On October 29, 2021, the Lawyer made TAF remittances of \$927.55 for the periods January 1, 2015 to June 30, 2015, October 1, 2015 to September 30, 2016, and July 1, 2017 to June 30, 2020.
34. The Lawyer reported but did not make TAF remittances of \$322.08 for the periods October 1, 2016 to June 30, 2017, and January 1, 2021 to June 30, 2021.
35. As of June 1, 2023, the Lawyer had not filed and reported TAF for the last two quarters of 2021, all quarters of 2022 and the first quarter of 2023.

j. CM: Improper Use of Trust Account

36. The Lawyer allowed \$230,000 to be improperly deposited to and withdrawn from his Trust Account in circumstances where the funds were not directly related to legal services provided by him.
37. Although CM was the Lawyer's client in relation to other matters, the Lawyer did not act for CM in relation to the distribution of CM's mother's estate (the "Estate") or for the Estate itself. CM was one of several beneficiaries of the Estate, and was represented by a lawyer in another province in relation to the settlement of the Estate (the "Other Lawyer").
38. In March 2019, the Lawyer received \$230,000 in "full and final settlement of the Estate" from the Other Lawyer (the "Settlement Funds"). The Lawyer deposited the Settlement Funds into the Firm's Trust Account.

39. At the time the Lawyer deposited the Settlement Funds into his Trust Account, the Lawyer represented CM on other legal matters and knew that there were unpaid creditors pursuing CM, including through foreclosure proceedings and judgments filed by a bank.
40. The Lawyer then disbursed \$200,905.60 of the Settlement Funds as instructed by CM, and paid the balance of \$29,094.40 to his Firm for legal fees related to CM's other files.
41. The Lawyer knew or ought to have known that by accepting the Settlement Funds into his Trust Account, he was effectively concealing the funds from CM's unpaid creditors. The Lawyer knew that CM did not have a bank account and that the Settlement Funds could have been seized if they were deposited with a bank. He also knew that CM was using the Settlement Funds to complete a property development project. The Lawyer acknowledges that the Settlement Funds ought to have been paid to CM directly and should not have been deposited to his Trust Account.

k. Failure to Honour a Trust Condition

42. The Lawyer acted for CM and CM's spouse, SM, in the sale of their real property.
43. In August 2019, counsel for the buyer advised that the proceeds of the sale would be provided to the Lawyer in trust, on his undertaking to "pay out and/or discharge from title" ten charges and "provide [them] with discharge particulars in due course". On September 4, 2019, the Lawyer accepted the trust condition in writing. The property sale completed that day, and the Lawyer accepted net sale proceeds from the buyer.
44. When buyer's counsel sent the funds to the Lawyer, she also sent an accompanying letter reminding the Lawyer of the trust condition.
45. In October and November 2019, and January 2020, the Lawyer paid out and/or discharged several charges on title.
46. In May 2020, the Lawyer received a letter from buyer's counsel, noting that to date, they had not received discharge particulars of five judgments and six priority agreements.

47. In June 2020, the Lawyer discharged all remaining charges on title, over nine months after the property sale completed.

l. SY and Company X

48. The Lawyer took instructions from SY in relation to his client, Company X, a corporation registered in Alberta. SY was one of the directors and shareholders of Company X.

49. Between May 2017 and July 2020, the Lawyer received and disbursed \$1,347,139.75 through the Trust Account in relation to Company X and/or SY. \$1,037,018.34 of the funds were rent payments made by Company X's tenants (the "Rent Funds"). The Lawyer did not provide any legal services in relation to the Rent Funds.

50. The Lawyer also represented Company X and SY with respect to a number of other legal matters, including foreclosure proceedings initiated by a bank. At the time the Lawyer received the Rent Funds, he knew that Company X and SY's bank accounts were frozen because of foreclosure proceedings. Company X and SY were in default of a \$3,237,757.07 loan from the bank.

Mitigating Factor

51. The Lawyer has accepted responsibility for his misconduct.