

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

JAMES WAYNE ROWE

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On August 17, 2024, the Chair of the Discipline Committee approved a consent agreement proposal submitted by James Wayne Rowe (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*, when:

in August 2022, he breached the terms of a court order (the “Order”), by disbursing funds subject to the Order from trust to certain individuals, when he knew or ought to have known that doing so was contrary to one or more of the Order, rules 2.1-1(a) and 2.2-1 of the *Code of Professional Conduct for British Columbia*.
3. Under the proposal, the Lawyer will pay a fine of \$10,000.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated August 9, 2024, 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. 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 are summarized below.

Summary of Facts

Member Background

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia in May 1980. He practises mostly in wills and estates, but also in the areas of family, real estate, creditor's remedies, and corporate law.
9. The Lawyer has practised law as a sole practitioner for most of his career until 2021, when he became an associate at Shoreline Law Corporation in Gibsons, British Columbia.
10. The Lawyer has no prior disciplinary history in British Columbia or any other jurisdiction.

Facts

11. The Lawyer's law corporation underwent a compliance audit in 2023. The Trust Assurance Department of the Law Society made a referral to the Professional Conduct Department of the Law Society about the Lawyer's handling of trust funds subject to a court order.
12. In April 2020, AA and BB (the "Lenders") registered a mortgage interest on a property (the "Property"), owned by CC (the "Borrower").
13. In approximately May 2021, the Lawyer was retained by the Lenders to commence foreclosure proceedings on the Property.
14. The Lawyer understood as follows:
 - a) in approximately January 2021, the Borrower died intestate;
 - b) the Property was the sole asset in the Borrower's estate (the "Estate"); and
 - c) the Borrower did not have a spouse or children. The Borrower's next of kin included his mother, father and two siblings, S1 and S2.
15. The Lawyer understood that none of the Borrower's mother, father and siblings were willing and or able to apply for administration of the Estate.
16. S1 agreed to be the litigation representative in order to accept service on behalf of the Estate so that the foreclosure could proceed. In 2022, the Lawyer applied to have S1 added as the Estate's litigation representative to the foreclosure proceedings. After the court ordered the addition of S1, the petition for foreclosure was updated to include S1 as litigation representative.

17. The Lenders were granted an Order for Conduct of Sale and an Order Nisi of Foreclosure. The next month, the court made an order approving the sale of the Property, including payout stipulations as follows:

The net purchase price after the usual adjustments between vendor and purchaser shall be paid to [the Lawyer's] Law Corporation in trust, and shall be paid out in accordance with the following priorities without further order:

(a) first, any arrears of taxes, water and sewer rates, interest, and penalties thereon;

(b) second, the real estate commission;

(c) third,

(i) to the petitioner, [the Lenders], the amount required to pay the outstanding balance of its mortgage plus interest plus assessed costs at scale A or such costs as shall be agreed between the parties;

(ii) the balance then remaining of the proceeds of the sale, if any, to be paid to the Estate of the Respondent [the Borrower] or into court to the credit of this action and to be held pending further order of this court; ...

(the "Order")

18. In August 2022, the Lawyer deposited the net sale proceeds of \$253,016.02 from the Property sale into his trust account. After paying the outstanding mortgage balance and other related sale expenses, the balance remaining in the Lawyer's trust account was \$84,080.97 (the "Proceeds").

19. According to the Order, the Proceeds were to be disbursed to the Estate or into court to the credit of the foreclosure action.

20. The Lawyer determined that, under the laws of intestacy, the only two Estate beneficiaries would be the Borrower's mother and father, and that they would receive equal shares of the Proceeds when the Estate was distributed.

21. From his dealings with S1 during the foreclosure action, the Lawyer understood that the Borrower's mother and father were divorced, and that the father was 98 years old with diminished capacity. The Lawyer also understood that the father's property was uninhabitable, his property taxes were in arrears and his services with Telus, BC Hydro and Fortis were terminated due to outstanding accounts.

22. The Lawyer knew that, because of the father's situation, the Borrower's siblings intended to apply for appointment as committees over their father in order to arrange the sale of his property and deal with his outstanding expenses.

23. On the basis of the foregoing, but contrary to the Order, the Lawyer distributed the Proceeds by issuing trust cheques to the following recipients:

- a) \$42,040.44 to the Borrower's mother; and
- b) \$42,040.43 to the Borrower's siblings (i.e. S1 and S2).

24. In a cover letter to the Borrower's siblings, the Lawyer wrote:

I confirm that the two of you are applying for appointment as committees of your father's estate due to his current incapacity. [...] find enclosed my trust cheque in the sum of \$42,040.43 for your father's portion of these remaining funds to be administered by you on his behalf.

25. The Lawyer distributed the Proceeds in this manner to save S1 and S2 the time and expense of an administrative application for probate, and to enable the siblings to proceed with the application for appointment as their father's committees. At no time did the Lawyer have the authority to distribute the Estate. At no time had the Lawyer applied for a grant of administration or been appointed administrator of the Estate.

26. Contrary to the Order, the Lawyer failed to pay the Proceeds to the Estate or into court.

Mitigating Factors

27. The Lawyer's distribution of the Estate has not been challenged by any beneficiaries or potential beneficiaries.

28. The Lawyer understands that, subsequent to his distribution of the Proceeds, the Borrower's father was determined to have sufficient capacity to execute a power of attorney and, in or around the same time, gifted the Borrower's siblings the same \$42,040.43 the Lawyer had already distributed to them.

29. The Lawyer says his actions, while motivated by a desire to assist the siblings in managing their father's affairs, represent an error in judgment for which he assumes responsibility.

30. The Lawyer expressed his desire to resolve this matter at an early stage of the Law Society's proceeding and has cooperated with the Law Society by making early and fulsome admissions.

31. In approving the consent agreement proposal, the Chair of the Discipline Committee also considered that the proposed fine was consistent with the outcome in prior, similar matters.