

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

RODERICK COSTON McLEOD

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On September 11, 2024, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Roderick Coston McLeod (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (the “Rules”).
2. Under the proposal, the Lawyer admitted that he committed the following misconduct, and that it amounts to professional misconduct:
 - (a) between November 21, 2020 and January 21, 2021, in relation to 23 client files, the Lawyer misappropriated some or all of \$8,985.99 in client funds by withdrawing the funds from his trust account and depositing them to his general account when he was not entitled to the funds, contrary to Rule 3-64 of the Rules and his fiduciary duties;
 - (b) between November 21, 2020 and January 21, 2021, in relation to 23 client files, the Lawyer failed to prepare and/or immediately deliver a bill to his clients before withdrawing trust funds for the payment of purported legal fees, contrary to Rule 3-65 of the Rules, section 69(1) of the *Legal Profession Act*, or both;

- (c) between November 21, 2020 and January 21, 2021, in relation to one or more of 23 client files, the Lawyer failed to maintain proper accounting records, contrary to one or more of Rules 3-67, 3-69, 3-71, and 3-72 of the Rules;
 - (d) between June 2019 and November 2020, the Lawyer collected Goods and Services Tax (“GST”) from his clients but failed to promptly remit some or all of \$28,360.59 in GST, interest, and penalties due to the Canada Revenue Agency (the “CRA”), contrary to rule 7.1-2 of the *Code of Professional Conduct for British Columbia* (the “Code”);
 - (e) between 2020 and 2022, the Lawyer filed trust reports for the years 2020, 2021, and 2022 that included information that he ought to have known was false or misleading, contrary to Rule 3-79 of the Rules and rule 7.1-1 of the *Code*; and
 - (f) between April 2017 and March 2018, in the course of representing his client in relation to the sale of a property, the Lawyer failed to honour the trust conditions accepted by him, by failing to attend to the timely payment of the outstanding property taxes, including any penalties and accrued interest, and utilities, contrary to rule 7.2-11 of the *Code*.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of ten weeks, commencing on October 1, 2024 or 14 days after the consent agreement is approved, whichever date is later.
 4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated September 6, 2024, and a letter to the Chair of the Discipline Committee. The Chair also considered the Lawyer’s 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 have been anonymized and summarized below.

Summary of Facts

Member Background

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia (the “Law Society”) on September 19, 1979.
9. From 1981 to 2003, the Lawyer practised at firms in Kimberley, BC and Nelson, BC. In 2003, the Lawyer began practising in Kamloops, BC and in 2017, the Lawyer also began practising at a firm in Delta, BC. In September 2020, the Lawyer sold his Kamloops practice and practised exclusively in Delta. In January 2024, his firm moved to Surrey, BC, where he currently practises.
10. The Lawyer practises primarily in real estate conveyancing, and also does some litigation and wills and estates law.

Background Facts

11. The Law Society’s Trust Assurance Department conducted a compliance audit of the Lawyer’s Kamloops firm for the period September 1, 2020 to April 14, 2022. The auditor identified concerns about the Lawyer’s withdrawal of residual trust balances on client matters.
12. The issues identified in the compliance audit were referred to the Professional Conduct department of the Law Society for investigation.

Withdrawal of Residual Trust Funds

13. The Lawyer sold his Kamloops firm in September 2020. As part of the sale, the Lawyer sought to close out the trust accounts that he used while at that firm (the “Trust Accounts”). The Lawyer provided instructions to his staff to close all of his files at the Kamloops firm and issue bills where appropriate.
14. The Trust Accounts held residual funds for numerous conveyancing matters for which clients paid flat fees to the Lawyer (the “Residual Trust Funds”). Many of these client matters had completed and remained dormant for long periods of time.
15. The majority of the Residual Trust Funds were the result of the Lawyer holding funds in trust for purposes such as payment of title insurance, utilities or property taxes. The Lawyer either did not pay out the required amounts from trust, or did pay out the required amounts, but they were less than expected. Other Residual Trust Funds were the result of the Lawyer receiving more funds from the client than was required.
16. Between November 21, 2020 and January 21, 2021, in relation to 23 client matters, the Lawyer issued and signed trust cheques totaling \$8,985.99, purportedly in payment of legal fees and disbursements, and deposited the trust cheques into his general account.
17. For each of the 23 client matters, the Lawyer purportedly charged legal fees and disbursements in amounts that matched the funds remaining in trust for each client. Following withdrawal of the Residual Trust Funds from the Trust Accounts, each of the related client ledgers was reduced to a zero balance.
18. The Lawyer was not entitled to any of the Residual Trust Funds.

Failure to Prepare and/or Deliver Invoices

19. In relation to the 23 client matters, the Lawyer authorized the trust withdrawals to pay his purported legal fees without preparing and/or delivering invoices to the clients prior to the trust withdrawals, or at all.

20. The Lawyer was not entitled to withdraw funds from trust for his fees until after a proper account was prepared, signed and delivered to the client.

Trust Accounting Records

21. During the material times, the Lawyer did not maintain a General Book of Original Entry recording details of general receipts and disbursements, including the dates of receipt or disbursement, sources of funds, payees, cheque numbers, and amounts.
22. The Lawyer failed to properly maintain additional accounting records for some or all of the 23 client matters, by having incomplete trust ledgers, and failing to retain copies of all cancelled trust cheques, issued invoices, and general bank statements.

Failure to Remit GST

23. Between June 2019 and November 2020, the Lawyer collected GST from his clients, but failed to promptly remit a total of \$28,360.59 due in GST, including interest and penalties, to the CRA.
24. The Lawyer used the GST funds that were collected from clients to pay himself and other financial obligations of his firm. After prompting by the Law Society, the Lawyer paid the outstanding GST to the CRA over time, with the last outstanding amount paid in May 2023.

Misrepresentations in Trust Reports

25. From 2020 to 2022, the Lawyer filed three Law Society trust reports that included responses with false or misleading information.
26. The Lawyer filed two trust reports indicating that his practice had paid GST in full and on time, although he owed outstanding GST during the relevant periods.
27. The Lawyer also filed a trust report indicating that his practice did have outstanding stale-dated trust cheques, but his explanation did not provide a full answer to the question. He filed another trust report indicating that there were no outstanding stale-

dated trust cheques, although he had numerous stale-dated cheques during the relevant period.

Breach of Trust Conditions/Undertakings

28. The Lawyer was retained by the seller in a real estate transaction. A notary (the “Notary”) represented the purchasers.
29. On April 25, 2017, the Lawyer received a letter from the Notary enclosing the conveyance documents for the seller’s execution, and setting out trust conditions upon which the proceeds of sale would be delivered (the “Trust Conditions”). The Trust Conditions included that the Lawyer pay outstanding property taxes, including any penalties and accrued interest, and utilities, and provide the Notary with proof of payment in a timely manner.
30. On May 1, 2017, the Lawyer prepared a letter to the Notary accepting the Trust Conditions. The same day, the Lawyer received the purchase funds from the Notary.

Payment of Property Taxes

31. On April 25, 2017, the Lawyer received notification that \$192.28 was owed in property taxes.
32. On July 13, 2017, the Lawyer received a letter from the Notary stating “it appears that you have not complied with your undertakings” and requesting that the Lawyer provide confirmation of payment of the outstanding property taxes, including penalties and interest, and utilities. The Lawyer’s office did not respond to the Notary’s letter.
33. In March 2018, the Lawyer discovered that outstanding property taxes of \$192.58 had been paid by the purchasers. On March 21, 2018, the Lawyer issued a trust cheque to the purchasers for \$192.58 in compensation for the property taxes they had paid, and issued a general cheque for \$10.98 in payment of interest due on the property taxes.
34. On October 5, 2018, the Lawyer reversed the trust cheque in compensation to the purchasers, resulting in a surplus of \$192.58 in trust. On November 21, 2020, the

Lawyer withdrew the \$192.58 surplus from trust and deposited it to his general account.

35. The Lawyer did not pay the \$192.58 in outstanding property taxes at all, and the Lawyer did not reimburse the purchasers for their payment of the \$192.58 in outstanding property taxes.
36. The Lawyer paid only the property tax interest of \$10.98, almost 11 months after the purchaser had advanced the purchase funds.

Payment of Metered Utilities

37. On May 9, 2017, the Lawyer received notification that \$363.25 was owing for water and sewer services (the “Metered Utilities”).
38. On June 19, 2017, the Lawyer issued a trust cheque for \$363.25 to the utility company, in payment of the Metered Utilities.
39. On December 19, 2017, the Lawyer’s office discovered that the trust cheque had not been processed, as the cheque was to be addressed to the municipality. The Lawyer reversed the trust cheque.
40. On approximately March 21, 2018, the Lawyer issued a trust cheque for \$363.25 to the municipality, in payment of the Metered Utilities.
41. The Lawyer did not pay the Metered Utilities until almost 11 months after the purchaser had advanced the purchase funds.

Aggravating Factor

42. The Lawyer has a professional conduct record dating back to 2009. It includes two conduct reviews, one of which involved similar conduct and discussion of the Lawyer’s trust accounting practices.

Mitigating Factors

43. The Lawyer's conduct was not intentional, but the result of overlooking his responsibilities during a confluence of stressful circumstances.
44. The Lawyer experienced significant pressure due to a combination of an extremely stressful trial and appeal and traveling between practice locations (Kamloops and Delta), which occurred in the context of challenges posed by the COVID-19 pandemic and the effects of a flood in his Kamloops office in March 2020.
45. At the material times, the Lawyer's stress exacerbated the Lawyer's medical condition, which indirectly contributed to his inattention to his practice.
46. The Lawyer has taken educational steps to ensure he is in full compliance with the Law Society's trust accounting rules. He has reviewed the Law Society's Trust Accounting Handbook and Law Society webinars, including Trust Accounting Basics and Trust Accounting Regulatory Requirements.
47. The Lawyer is remorseful and acknowledges his misconduct.