

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

PAUL C. DOROSHENKO, QC

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT

1. On April 28, 2021, the Chair of the Discipline Committee accepted a proposal submitted by Paul C. Doroshenko, QC (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:
 - i. Between February 11, 2014, and August 8, 2018, in 82 instances, he misappropriated or improperly withdrew \$44,353.19 in client trust funds by withdrawing funds from trust when there were insufficient funds on deposit to the credit of the clients, contrary to Rules 3-63 and 3-64 of the Law Society Rules [prior to July 1, 2015, Rules 3-55 and 3-56].
 - ii. Between February 11, 2014 and August 8, 2018, in 82 instances, he failed to do one or more of the following, contrary to Rule 3-74 of the Law Society Rules [prior to July 1, 2015, Rule 3-66]:
 - (a) identify a trust shortage;
 - (b) pay funds into the account to immediately eliminate the trust shortage; and,
 - (c) report trust shortages over \$2,500 to the Executive Director of the Law Society.

- iii. Between June 23, 2015 and January 21, 2019, in 65 instances, he failed to maintain sufficient funds on deposit to meet his obligations with respect to funds held in trust for clients, contrary to Rule 3-63 [prior to July 1, 2015, Rule 3-55].
- iv. Between January 30, 2014 and April 3, 2018, in 20 instances, he failed to deposit trust funds totaling \$25,095.93 to trust as soon as practicable, contrary to Rule 3-58(1) of the Law Society Rules [prior to July 1, 2015, Rule 3-51].
- v. Between May 29, 2013 and November 14, 2018, he maintained more than \$300 of his own funds in trust, contrary to Rule 3-60(5) of the Law Society Rules [prior to July 1, 2015, Rule 3-52].
- vi. Between May 2013 and July 2019, he failed to maintain accounting records in compliance with the provisions of Part 3 Division 7 of the Law Society Rules, and in particular:
 - (a) between December 2016 and December 2018, in 53 instances, he failed to prepare monthly trust reconciliations for his pooled trust account within 30 days of the effective date of the reconciliation, contrary to Rule 3-73 of the Law Society Rules [prior to July 1, 2015, Rule 3-65]; and,
 - (b) between May 11, 2013, and July 2, 2019, in 327 instances, he improperly withdrew \$65,021.76 from trust by failing to withdraw funds for fees with a cheque or electronic transfer made payable to his general account, contrary to Rule 3-65 [prior to July 1, 2015, Rule 3-57].
- vii. Between May 1, 2013 and December 31, 2018, he failed to adequately supervise his staff, contrary to rule 6.1-1 of the *Code of Professional Conduct for British Columbia*.
- viii. Between 2013 and 2017, he made representations to the Law Society in his annual Trust Report that the Firm did not have more than \$300 of his own funds in his pooled trust account when this was not true.

3. The Lawyer further admitted that the conduct set out in paragraph 2 above amounted to professional misconduct.
4. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of two (2) months, commencing June 21, 2021. He also provided an undertaking that he will complete five hours of CPD credits related to trust accounting by December 31, 2021 (in addition to the 12.5 hours normally required of all lawyers in BC).
5. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated April 26, 2021, 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.
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 were set out in an Agreed Statement of Facts dated April 26, 2021. The facts have been anonymized and summarized below.

I. Summary of Facts

9. The Lawyer was called to the bar and admitted as a member of the Law Society of British Columbia on May 19, 2000. He practises in the areas of administrative and criminal law.
10. Since his call to the bar, the Lawyer has practised law at two small law firms in Vancouver, British Columbia, and since October 24, 2008, he has practised law through his law firm, Acumen Law Corporation (the "Firm").
11. The Firm currently has offices in Vancouver and Richmond, British Columbia.
12. At all materials times, the Lawyer was the responsible lawyer for the Firm's pooled trust account.

13. When the Lawyer first opened the Firm in 2008, he performed the bookkeeping duties, including trust accounting, himself.
14. In approximately 2010, the Lawyer hired an accounting firm to prepare the Firm's trust accounting records.
15. Between approximately 2011 and 2017, AB, a Certified Professional Accountant ("CPA"), prepared the Firm's trust accounting records. During that time, the Lawyer relied on AB's advice about the Firm's trust accounting practices and records.
16. In 2013, an audit of the Firm was conducted. The audit did not identify any major areas of concern in the Firm's accounting procedures.
17. In 2015, a legal assistant, CD, was trained to perform the Firm's bookkeeping. AB continued to complete the Firm's trust reconciliations.
18. The Lawyer understood that when there were problems with the accounting, AB contacted the legal assistant who then corrected it.
19. The Lawyer did not have a formal schedule in place to meet with AB to discuss the trust reconciliations.
20. In April 2016, the Lawyer suffered a serious concussion while doing construction work at his home. The concussion caused the Lawyer's functioning to diminish. He experienced memory loss, difficulty concentrating, and an inability to hold more than one thought. At the same time, the Lawyer experienced incidents of sadness, chronic pain in his legs, and permanent impairment of vision in his right eye.
21. Sometime in 2017, the Lawyer became concerned about his Firm's trust accounting.
22. In July 2017, the Lawyer hired EF, a CPA who had done some work for the Lawyer in the past, to begin an audit of the Firm's accounting practices.
23. The Lawyer recovered from his concussion, diminished mood, and chronic pain by August 2017.

24. In September 2017, EF informed the Lawyer that she had found some irregularities in the trust accounting records, and indicated that she would begin to make the necessary corrections to the Firm's trust accounting records.
25. In late 2017 and early 2018, the Lawyer dealt with personnel issues at the Firm's Victoria location.
26. In November 2017, CD resigned unexpectedly. After CD's departure, EF trained another assistant in bookkeeping, and together they identified a number of errors that CD had made in the Firm's accounting records. They also discovered incidents of missing cash.
27. Since CD's departure, there have been no more instances of missing cash.
28. EF also advised the Lawyer that in her opinion, AB had not been reconciling the Firm's trust account properly. She then began to redo the reconciliations and make corrections in the Firm's trust accounting records.
29. The Lawyer instructed EF to complete the Firm's trust reconciliations using the Firm's accounting software.
30. When the Lawyer asked AB for an explanation, AB advised that he had performed the reconciliations on his own system and had not used the Firm's accounting software.
31. AB also advised that he was suffering from significant personal problems, including depression, for which he was subsequently treated by his physician.
32. The Lawyer no longer retains AB.
33. On January 1, 2018, the Lawyer suffered a slip and fall accident and suffered injury to his elbows, tailbone, and back. The Lawyer's injuries from his slip and fall accident, and his prescribed medications, affected his sleep and his ability to keep up with his work.
34. As noted above, around this time, the Lawyer was also pre-occupied with a number of personnel issues.

35. In order to work through the personnel issues, the Lawyer began to regularly use the Firm's accounting software again. This led to a clearer understanding of the extent of the problems that had arisen from CD's bookkeeping, as well as AB's failure to address concerns about CD's work.
36. Although the Respondent had generally been aware that there were issues with the Firm's trust accounting records that the accountant and the bookkeeper were addressing, he did not become fully aware of the extent of the issues until July 2018, after he had recovered from his medical issues and the workplace issues in his office had been resolved.
37. The Lawyer's oversight of his bookkeepers and accountants was insufficient, in part because of the effects of his concussion, his slip and fall accident, and the various workplace issues between other lawyers at the Firm.
38. In July 2018, the Lawyer hired an accountant to conduct an in-house refresher course for his staff about trust accounting principles and the Firm's trust accounting obligations.
39. In July 2018, EF stopped working at the Firm for medical reasons.

Compliance Audit

40. On November 18, 2018, the Law Society conducted a compliance audit of the Firm, for the period April 1, 2017, to November 16, 2018.
41. In the days before the compliance audit in November 2018, the Lawyer was informed about AB having used a large deposit to cover trust shortages in the Firm's accounting records without the Lawyer's knowledge. The source of this deposit was initially unknown, but it was subsequently determined that due to a bank error, funds that should have been deposited to the Firm's general account were deposited to the Firm's trust account without the Lawyer's knowledge.
42. During the compliance audit, the Lawyer learned that staff had written false receipts for cash payments for friends, and that deposits had not been posted to client files. AB had then used the large deposit referred to above to cover these shortages.

43. During the compliance audit, the Lawyer learned that EF had mistakenly made retroactive corrections to address errors.
44. The compliance auditor noted a number of concerns, including a large number of trust shortages that had not be corrected in a timely manner.
45. The compliance auditor referred the matter to the Professional Conduct Department for further investigation.
46. A Law Society forensic accountant subsequently reviewed the Firm's financial records for the period May 1, 2013, to December 31, 2018.
47. On July 24, 2020, the forensic accountant released an investigative memo (the "Investigative Memo").

Investigative Memo

48. In the Investigative Memo, the forensic accountant identified the following concerns:
 - i. 82 trust shortages, totalling \$44,353.19, where the Lawyer had authorized the withdrawal of funds from trust when there were insufficient funds held to the client's credit;
 - ii. comingling of the Lawyer's funds with trust funds;
 - iii. trust reconciliations were likely not prepared on time;
 - iv. trust funds not deposited into the trust account in a timely manner;
 - v. trust cheques made payable to other lawyers and employees of the Firm to pay for reimbursements of disbursements on client matters; and,
 - vi. a general failure to maintain adequate trust accounting records.
49. Regarding paragraph 48(ii) above, it was funds in the Firm's general account that were comingled with trust funds. The Firm's general account is a general operating account that is used to pay business expenses, and, if there are sufficient funds at the end of the year, the Lawyer also declare a dividend payable to himself.
50. Each trust shortage occurred for one of the following reasons:

- i. data entry errors made by staff (incorrect amounts recorded, or trust funds recorded to incorrect matters/clients or to one of the Firm's "float" accounts);
- ii. credit card, direct deposit, or electronic transfer retainers were not properly processed by staff;
- iii. trust funds deposited were for amounts less than recorded on cash receipts;
- iv. trust funds were not deposited to the Firm's trust account; and
- v. client retainer cheques were returned NSF after trust funds had already been withdrawn.

51. The Firm had two non-client matters that operated as "float" accounts:

- i. Matter 200: "Doroshenko, Paul Acumen Office Deposit" ("Matter 200"); and
- ii. Matter 7366: "Deposits, Unidentified" ("Matter 7366").

52. Matter 200 functioned as a general trust float, and Matter 7366 functioned as an account where all unidentified deposits were recorded.

53. As noted above, in 82 instances (totalling \$44,353.19), the Lawyer authorized the withdrawal of funds from trust when there were insufficient funds held to a client's credit.

54. In 67 of these instances, to eliminate the shortages in the Firm's accounting records, funds were transferred from Matter 200 or were deposited directly to the credit of a client's trust ledger.

55. These 67 trust shortages were eliminated between four and 883 days.

56. In 15 of the 82 instances, a correcting entry was made to the Matter 200 ledger without a transfer or a correction to an individual client's trust ledger.

Trust Shortages in Matter 200

57. In 65 instances, the account balance for Matter 200 was negative, indicating that a shortage had occurred.

58. With respect to each of these 65 instances, a statement of account was subsequently rendered to the client.

59. With respect to these 65 instances, where the trust shortage had exceeded \$2,500, the Lawyer had reported them to the Executive Director of the Law Society, pursuant to Rule 3-74(2)(a) of the Law Society Rules.
60. Each of the 65 trust shortages in Matter 200 occurred for one of the following reasons:
- i. funds were transferred to individual client trust ledgers to correct trust shortages;
 - ii. funds were used to pay general operating expenses;
 - iii. data entry errors and banking errors were corrected; and,
 - iv. trust withdrawals were made when there were insufficient funds in trust.
61. The 65 trust shortages in Matter 200 account were eliminated between one and 343 days after they occurred.
62. The 65 trust shortages were off-set against other clients' trust balances, contrary to Rule 3-63 of the Law Society Rules.

Missing Deposits

63. In 20 instances, trust receipts totalling \$25,095.93, for cash and cheques, could not be traced to the trust account or to deposit slips. These deposit transactions were noted as outstanding receipts on the trust reconciliations as the cash or cheques had not been deposited to trust.
64. In some instances, the transactions were outstanding for several months and in the meantime, trust funds were withdrawn from the client trust ledgers which created trust shortages. Each of these trust deposit entries were reversed or corrected at a later date.
65. The forensic auditor traced the trust transactions to manual and cash receipts, and noted that the majority of the cash receipts had been signed by staff and by the individual who had provided the cash to the Firm.
66. Trust funds totaling \$25,095.93, on behalf of 20 clients, were not deposited into trust as soon as practicable, contrary to Rule 3-58(1) of the Law Society Rules.

Electronic Trust Transfers

67. In 10 instances, electronic transfers and credit card payments were not deposited to the Firm's trust account.

68. In each of these 10 instances, trust deposit entries were reversed at a later date, but resulted in trust shortages as the funds had not been deposited prior to a trust withdrawal.

Trust Reconciliations

69. Between May 2013 and December 2018, 53 trust reconciliations and 66 client trust listings were prepared more than 30 days after the effective date of the reconciliations, contrary to Rule 3-73(5) of the Law Society Rules. Some of these trust reconciliations were later back-dated by the Lawyer's bookkeeper and accountant. This is discussed further, below.

Disbursement Payments made Directly from Trust

70. Between May 2013 and December 2018, 327 trust cheques (totalling \$65,021.76) were made payable primarily to employees of the Firm. The descriptions in the accounting records for these cheques indicated that they were to reimburse employees for various reasonable disbursements they had incurred, including filing fees, courier charges, and office and travel expenses.

71. These trust withdrawals were not properly required for payment in compliance with Rules 3-64(1) and 3-65(1) of the Law Society Rules.

72. The Lawyer acknowledges that the funds ought to have been withdrawn from trust with a cheque made payable to his general account, and that the reimbursements for disbursements incurred ought to have then been drawn from the general account and not the trust account.

Trust Reports

73. Some of the findings made in the Investigative Memo were inconsistent with statements made by the Lawyer in his Trust Reports to the Law Society.

74. In Trust Reports from 2013 to 2017, the Lawyer responded “No” to the question: Does the practice have more than \$300 of the lawyer’s own funds in any pooled trust account?
75. The Lawyer relied on the advice of his accountant to answer that question, and believed the answers to be true at the time. However, with respect to Matter 200, the balances ranged from \$2,119.17 on May 1, 2013, to \$54,194.67 on June 30, 2017.
76. Between 2013 and 2017, the Lawyer maintained more than \$300 of his own funds in a pooled trust account, contrary to Rule 3-60(5) of the Law Society Rules.
77. The Lawyer admits that his representations to the Law Society in his Trust Reports from 2013 to 2017, that he did not have more than \$300 of his own funds in any pooled trust account, were not true.

The Lawyer’s Explanation

78. The Lawyer was asked to provide a response to the concerns identified in the Investigative Memo.
79. The Lawyer provided a letter to the Law Society, dated January 28, 2019, which sets out the Lawyer’s explanation, and refers to the facts referred to above.
80. In summary, the Lawyer acknowledges that he is personally responsible to ensure that the Firm’s accounting records are up to date and properly kept. The Lawyer explained that during the material period, the Lawyer trusted and relied on his CPA and his staff to ensure that this was the case.
81. The concussion that the Lawyer suffered and the other stressful events in his life contributed to his failure to adequately supervise and verify that the Firm’s accounting records were up to date and properly kept during the material period. At all times the Firm was solvent and in a responsible financial position. At no time did the Lawyer intend to misuse trust funds for his or the Firm’s benefit, nor did he derive personal gain or benefit from any trust funds.

82. The Lawyer acknowledges that the definition of “misappropriation” in Black’s Law Dictionary, 6th Edition, is as follows:

The unauthorized, improper, or unlawful use of funds or other property for purposes other than that for which intended. Misappropriation of a client’s funds is any unauthorized use of clients funds entrusted to an attorney, including not only stealing but also unauthorized temporary use for lawyer’s own purpose, whether or not he derives any personal gain or benefit therefrom....

83. The Lawyer had assumed, incorrectly, that because the Firm’s accounting software allowed for the changes to be made, that it was not improper for EF to have made retroactive corrections. The Lawyer now understands that the changes were not appropriate as they made it more difficult to track the sequence of entries.

84. The Lawyer explained that the reimbursements for disbursements directly from trust was done because this was the procedure he had learned at a prior place of employment, and he believed it was done this way to maintain as much transparency as possible.

85. EF subsequently explained to the Lawyer that she and other accounting staff had held back or down-played problems with the Firm’s trust accounting because they were worried about upsetting him, given everything else that had been going on in his life.

86. The Lawyer received the results of his compliance audit on December 19, 2018. In response, the Lawyer and his staff took specific actions to address each exception identified, including:

- i. entering corrections with the date that the change was made;
- ii. cross-referencing deposits with physical receipts;
- iii. opening a new file for each new matter for every client;
- iv. mandating lawyer approval before a matter-to-matter transfer is made through the Firm’s accounting software;
- v. completing trust reconciliations within 30 days and ensuring that the final date of preparation is included on the saved/physical copies of the reconciliations;
- vi. identifying unknown deposits promptly, and where they cannot be identified, taking steps to reverse the payment;
- vii. returning unclaimed trust funds to clients or remitting them to the Law Society. Going forward, balances older than two years will be reviewed twice a year;
- viii. ensuring that the “float” account does not exceed \$300;

- ix. reporting all trust shortages greater than \$2,500 promptly;
- x. in order to ensure that cheques to be deposited to the Firm's general account are properly deposited, installing a bank deposit cheque terminal that can only make deposits to the Firm's general account; and,
- xi. halting the practice of transferring funds from Matter 200 to cover trust shortages.

Other Mitigating Factors

87. The Lawyer has taken full responsibility for his misconduct, has apologized, and is remorseful. The Lawyer has provided a letter of apology. He also participated fully and promptly with the audit and the investigation.
88. The Lawyer has implemented improved accounting procedures at his Firm to ensure that it operates in full compliance with Part 3, Division 7 of the Law Society Rules.
89. The Lawyer will complete Law Society trust accounting courses in order to better understand his trust accounting obligations.
90. In a letter to the Law Society dated February 5, 2021, EF explained that when she began doing trust reconciliations in March 2017, she soon realized that AB had posted unidentified deposits to Matter 200, and when they were identified, he would transfer them over to a client file ledger.
91. EF realized that this practice was inappropriate, so instead, she created a second float matter - Matter 7366 – for all unidentified deposits. While she recognized this was not ideal, she thought it was better than the existing practice.
92. EF also discovered that AB had failed to reconcile the trust accounting records properly.
93. In May 2017, EF suspected that a staff person was responsible for missing cash. She brought this to the Lawyer's attention. The Lawyer instituted new cash procedures at the Firm, and moved the Firm's accounting to the Richmond office.
94. EF explained that the majority of concerns raised by the compliance audit were due to AB falling behind and an employee misappropriating funds. The employee's efforts in hiding her

conduct created difficulties in reconciling the records. The co-mingling of funds was due to an improper procedure implemented by AB.

95. The Lawyer reimbursed the missing trust funds and no clients were harmed by his misconduct.