

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

CHILWIN CHIENHAN CHENG

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

I. Consent Proposal Summary

1. On November 28, 2022, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Chilwin C. Cheng (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 between approximately July 2018 and December 31, 2018, in the course of acting in relation to the Lawyer’s clients X (the “**Clients**”), he permitted the use of his Firm’s trust account to receive or disburse, or both, some or all of approximately \$504,094.60 (the “**Transactions**”) and failed to do the following in relation to the Transactions:
 - a. provide any or substantial legal services;
 - b. make reasonable inquiries regarding the source and nature of the funds that he deposited to and disbursed from trust; and,
 - c. record the result of any inquiries made in respect of the circumstances.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of two (2) months, commencing on December 12, 2022.

4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated November 25, 2022, and a letter from the Lawyer to the Chair of the Discipline Committee. The Chair also considered that the Lawyer did not have a prior professional conduct record (“**PCR**”).
5. This consent agreement will now form part of the Lawyer’s PCR.
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 summarized below.

II. Summary of Facts

Member Background

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia on May 22, 1998. Since 2002, he has practised in the area of securities law.
9. Since being called to the bar, the Lawyer has practised in a number of areas, including as Crown Counsel and with the British Columbia Securities Commission (the “**Commission**”).
10. The Lawyer has no PCR.

Background Facts

Commission Proceedings and First Retainer

11. Beginning in or about February 2017, the Lawyer was retained (the “**First Retainer**”) to represent the Clients in respect of a matter before the Commission, other regulatory matters, and to defend civil lawsuits.
12. The Clients paid a retainer fee, which was deposited to trust and described in the client ledger as a retainer.

13. At that time, the Clients were the subject of a Temporary Order and Notice of Hearing issued by the Commission in February 2017. Certain of the Clients were also the subject of a freeze order issued by the Commission in February 2016 (the “**Freeze Order**”) requiring a major financial institution (the “**Bank**”) to hold all funds and other property on deposit in specific accounts for certain of the Clients.
14. The Commission had previously made other freeze orders against these same individuals and other related persons.
15. In or about February 2017, another regulatory body issued decisions and orders suspending the licenses of certain Clients until the Commission investigation was complete.
16. Early on in the First Retainer, the Lawyer conducted an assessment of the case facing his Clients and concluded that although fraud allegations might be made against them, that such allegations were unfounded.
17. During the First Retainer, the Lawyer carried out due diligence regarding the Client’s financial information, source of funds, expenses, and revenues. This included reviewing evidence, engaging third parties, and conducting interviews of Client representatives. The Lawyer satisfied himself that funds held by the Clients were substantially generated from the insurance sales business, although they may have come from outside investors. The Lawyer believed that this due diligence supported his view that any fraud allegations would ultimately be unfounded.
18. The Lawyer carried out work on the file in June of 2017, but the Clients terminated his engagement in or about August 2017. At the time of termination, the Lawyer had issued five invoices which remained outstanding and unpaid (the “**Unpaid Accounts**”). There were no remaining retainer funds at the time of termination and the Unpaid Accounts were written off as bad debt.

Second Retainer and Lawyer's Decision to Accept the Bank Drafts

19. In or about June 2018, one of the Clients contacted the Lawyer about taking the Clients back. The Lawyer agreed and a new retainer commenced at that time (the “**Second Retainer**”).
20. The Lawyer was then advised by the Clients that the Bank had contacted them and advised it no longer wished to hold funds for the Clients and that it would be closing the Clients' accounts and delivering the funds to the Clients.
21. The funds consisted of two bank drafts totaling \$504,094.60 as follows:
 - a. a \$158,236.98 bank draft issued by the Bank on May 4, 2018 to one of the Clients (the “**First Bank Draft**”); and
 - b. a \$345,857.62 bank draft issued by the Bank on May 4, 2018 to another of the Clients (the “**Second Bank Draft**”).
22. The Clients to whom the two Bank Drafts were issued had previously been named in the Freeze Order.
23. The Lawyer drew an inference, based on his Clients' advice but without further inquiry, that the Bank did not want to be associated with a business it believed was problematic. The Clients further advised that other financial institutions had declined to open accounts for them and that many financial institutions were subject to the Commission's freeze orders and so would not hold their funds.
24. The Lawyer could not discern whether the funds came from any account that was subject to a freeze order as the Commission's freeze orders named specific accounts at all financial institutions, and the First and Second Bank Drafts did not identify whether the funds came from a specific account.
25. The Lawyer concluded that the First and Second Bank Drafts were not from a frozen account. In reaching that assessment he took into account the advice of his clients as set

out in the preceding paragraphs and considered that the Bank would not release frozen funds to individuals it had flagged to be under investigation by the Commission.

26. The Lawyer did not contact compliance officers or anyone at the Bank to make further inquiries about the First and Second Bank Drafts, the reason the accounts were closed, or the scope of the Freeze Order.
27. The Lawyer made no additional inquiries at that time regarding the source and nature of the First and Second Bank Drafts, including any inquiries to ensure the funds were not tainted by fraud or illegality.
28. The Lawyer reviewed the Rules governing trust accounts, but believed that the First and Second Bank Drafts fit the definition of “trust funds” in Rule 1 of the Rules. At the time the Lawyer accepted the First and Second Bank Drafts from his Clients for deposit, the definition of “trust funds” included “funds received in trust by a lawyer or law firm acting in that capacity, including funds (a) received from a client for services to be performed or for disbursements to be made on behalf of the client, ...”.
29. The Lawyer made no record of his investigations regarding the First and Second Bank Drafts, and the circumstances in which those were received.
30. The Lawyer agreed to accept the First and Second Bank Drafts from the Clients, to deposit them into the Firm’s trust account, and to disburse them on instructions from the Clients. When he did so, he understood that no bank would accept his Clients’ funds until the Commission proceedings were resolved.

Trust Transactions during Second Retainer

31. On or about July 11, 2018, the Firm deposited the First Bank Draft to its trust account, recording it as “[Client] deposit/holding” in the Firm’s trust ledger.
32. On or about July 18, 2018, the Firm paid \$12,497.25 from trust to the Firm, which was described as a payment for the Unpaid Accounts.

33. Between July 24, 2018 and August 23, 2018, the Firm issued 34 trust cheques, signed by the Lawyer, from its trust account totaling \$131,522.68, in payment of third-party expenses on behalf of the Clients or individuals associated with them. None of these payments were related to legal advice or services provided by the Lawyer.
34. On August 27, 2018, the Firm deposited the Second Bank Draft to its trust account, recording it as “[Client] – deposit” in the trust ledger for the Clients.
35. From September 13, 2018 to December 19, 2018, the Firm issued 53 trust cheques, all signed by the Lawyer, totaling \$314,796.93, in payment of third-party expenses on behalf of the Clients or to individuals associated with the Clients. None of these payments were related to legal advice or services provided by the Lawyer.
36. In or about late October 2018, the Commission issued an Amended Notice of Hearing including particularized allegations of fraud, illegal distributions, unregistered trading and breach of undertaking, and adding another of the Clients as a respondent to the Amended Notice of Hearing.
37. Until December 2018, the Lawyer continued to authorize disbursements from the Firm’s trust account to third parties and individuals affiliated with the Clients and to certain of the Clients.
38. In total, between July 2018 and December 2018, the Lawyer authorized payments out of trust totaling \$446,319.61 in respect of disbursements or payments to third parties or to certain of the Clients, without providing any substantial legal advice or services to the Clients in connection with those payments (the “**Trust Payments**”).
39. Between the outset of the Second Retainer and December 31, 2018, the Lawyer issued invoices totaling \$8,159.48 in respect of legal fees and disbursements (including taxes). These legal services were unconnected to the Trust Payments.

Resolution of Commission Proceedings

40. In 2019 and after the Trust Payments were made, the Lawyer continued to represent the Clients in their dealings with the Commission. In or about late August 2019, the

Commission further amended the Notice of Hearing and *inter alia*, withdrew the fraud allegations against the Clients.

41. Between August 2019 and February 2020, certain of the Clients entered into an Agreed Statement of Facts with the Commission, settlements were reached between the Commission and some, but not all, of the Clients who were respondents to the Commission proceedings.
42. In late April 2020, the Panel issued reasons containing its Findings and Decision against the remaining Client respondents (“**Commission Decision**”). These Clients were found to have engaged in unregistered trading, illegal distribution, misrepresentations (between November 2012 and January 2017) and breach of undertaking (in 2014), and were subject to bans, fines and a disgorgement order.
43. The Trust Payments were not the subject of the Commission Decision, and there is no evidence of a connection between the Clients’ wrongdoing as captured in the Commission Decision findings and the Lawyer’s misuse of the Firm’s trust account.
44. The Lawyer’s misuse of his trust account did not cause loss to third parties, nor is there evidence that his authorizing the Trust Payments in these circumstances assisted in any fraud by the Clients. By late August 2019, the Commission had withdrawn its fraud allegations against the respondents.
45. The Lawyer did not charge processing, transaction or other fees with respect to the Trust Payments.

III. Mitigating Factors

46. The Lawyer has a long record of service to the profession. This includes teaching and mentoring members of the Law Society in seminars, courses and conferences, and volunteering in leadership capacities in various legal organizations, advisory capacities in government-convened advisory bodies, and on the boards of various regulatory agencies.
47. The Lawyer is extraordinarily remorseful. He now understands the conduct described above was wrong and not in compliance with the Rules. He understands the seriousness

and gravity of the misuse of a lawyer's trust account generally and of his misconduct as outlined above.

48. As noted above, the Lawyer does not have a prior PCR.
49. Since 2020 the Lawyer and Firm have undertaken the following improvements to trust monitoring operations to ensure compliance with the Rules:
 - a. creating a detailed workflow for trust deposits, which includes mapping the steps for each type of deposit instrument against the steps in the *Trust Accounting Handbook*;
 - b. establishing a process for each trust deposit that includes a compliance checklist requiring confirmation of the source of funds and the reason for the deposit including how it relates to the legal services being provided; and,
 - c. building in other administrative checks to ensure compliance, including those that ensure Know Your Client requirements are complete.
50. In approving the consent agreement proposal, the Chair of the Discipline Committee also considered that the proposed suspension was consistent with the outcome in prior, similar matters.