

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

AND

**GREGORY S. YANKE**

(a member of the Law Society of British Columbia)

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**RULE 3-7.1 CONSENT AGREEMENT**

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1. On June 9, 2023, the Chair of the Discipline Committee approved a proposal submitted by Gregory S. Yanke (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (“Rules”).
2. The Lawyer admitted that he committed the following professional misconduct:
  1. Between March 2016 and December 2020, he used his trust account to receive and disburse the following trust funds, without making reasonable inquiries in the face of suspicious circumstances, without recording adequate inquiries, and/or without providing substantial legal services in relation to the trust funds, contrary to Rule 3-58.1 of the Rules and rules 3.2-7 and 3.2-8 of the *Code of Professional Conduct for British Columbia*:
    - (a) \$199,930 USD in relation to Company A;
    - (b) \$294,960 USD in relation to Company B;
    - (c) \$548,498 USD in relation to Company C;
    - (d) \$21,311 USD in relation to Company D;
    - (e) \$46,000 USD in relation to XY; and
    - (f) \$100,000 USD in relation to YZ.
  2. Between February 2012 and December 2020, in relation his clients Company A, Company B, Company C, Company D, and XY, he failed to obtain, record, and verify client identification information, contrary to Rules 3-100 and 3-102 to 3-107 of the Rules.
3. The Lawyer consented to a suspension of nine (9) months, from June 16, 2023 to March 16, 2024. He has undertaken to not receive or otherwise handle any trust funds, and not open or operate a trust account (whether in the name of a law corporation or not), including by not

making or authorizing trust withdrawals, until relieved of this condition by the Executive Director of the Law Society of British Columbia (“Law Society”).

4. The Chair of the Discipline Committee considered an Agreed Statement of Facts and a letter containing the Lawyer’s consent agreement proposal. The Chair of the Discipline Committee also considered that the Lawyer does not have a prior professional conduct record. This consent agreement will now form part of the Lawyer’s professional conduct record.
5. 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.
6. The admitted facts, set out in the Agreed Statement of Facts, have been anonymized and summarized below.

#### **I. Summary of Facts**

7. The Lawyer was called to the bar and became a member of the Law Society on May 17, 1996. Following his call to the bar, he worked at a small firm in Vancouver, British Columbia. Since February 2000, he has worked as a sole practitioner at his own firm in Vancouver and Nanaimo, British Columbia. He practises part-time, primarily in the areas of securities and corporate law. Currently, he is also completing graduate studies in the United States.
8. AA is a close family member of the Lawyer.

#### **Background Facts**

##### **A. Company A**

9. On February 15, 2012, the Lawyer opened a file for a US company, Company A. As the Company A file involved financial transactions, the Lawyer was obligated under the Rules to verify the identity of his client, including the company and its instructing individuals. The

Lawyer received instructions in relation to Company A from its principal, BB, who lived in Lebanon. The Lawyer never met BB in person.

10. The Lawyer recorded the required client identification information in his file, but did not verify BB's identity. The Lawyer also did not verify information about Company A. He did not fully understand his client identification and verification obligations until approximately December 2020.

*i. Legal Work Performed for Company A*

11. Between 2012 and 2015, the Lawyer provided a variety of legal services to Company A. During this work, the Lawyer became aware of certain difficulties, which delayed the listing of Company A's securities. The Lawyer performed a search of the relevant names on the internet and did not see any issues, but did not record any of his searches.

12. In 2017, Company A required further assistance in listing its securities, but the Lawyer was not involved with this work. The Lawyer's legal work for Company A ended in 2015.

*ii. AA's Investment in Company A*

13. On May 19, 2017, AA purchased 500,000 shares of Company A for \$10,000 USD. At the time of AA's purchase, the Lawyer was not acting for Company A.

14. In October 2017, the Lawyer was told by BB and BB's aunt that they were abandoning the product Company A was marketing, and that BB's aunt wished to buy back shares from existing shareholders to proceed with a new project. BB's aunt offered to purchase AA's shares for \$171,500 USD. The Lawyer did not understand the business reason for the shares to be bought back from AA, but explained the price being offered made the transaction attractive to her.

15. Although the terms of AA's share buyback arrangement were reduced to writing in October 2017, the timing of the payout and any conditions were not included. After having held her shares for approximately 11-15 months, AA profited \$161,550 USD.

*iii. Use of the Lawyer's Trust Account*

16. Between October 2017 and August 2018, in relation to Company A, the Lawyer permitted his trust account to be used without providing legal services.
17. On October 23, 2017, the Lawyer received a total of \$199,930 USD from a Belizean company (the "Company A Funds"). The funds were wired directly to his trust account. The Lawyer's understanding was that the Belizean company belonged to BB's aunt.
18. The amount of funds received exceeded the purchase price for AA's shares. The Lawyer understood the amount as being US\$200,000 (less bank fees) to cover the amount for the purchase of AA's shares and several other share blocks that BB's aunt was attempting to purchase from two other individuals, CC and DD, plus company expenses.
19. In November 2017, the Lawyer paid out \$5,000 USD of the Company A Funds to CC.
20. In April 2018, the Lawyer paid out \$50,000 USD of the Company A Funds to AA.
21. In May 2018, the Lawyer paid out \$10,270 USD of the Company A Funds for a corporate expense, and \$13,000 USD to DD. The Lawyer was not acting for anyone in respect of the sale/purchase of CC's or DD's shares.
22. On July 23, 2018, Company A changed its name. Two days later, it authorized a forward stock split. At the time, the Lawyer knew that a forward split could be done in preparation for a "pump and dump" (a form of securities fraud), by creating more stock for potential market manipulation.
23. In August 2018, the Lawyer made an inter-trust transfer of \$121,550 USD of the Company A Funds to Company C on behalf of AA, being the funds required for her loan to Company C, as described further below.
24. As the Lawyer's legal work for Company A ended in 2015, it was entirely unconnected with the payments of the Company A Funds. The Lawyer was never paid for any of his work on the Company A file.

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25. The following suspicious circumstances should have alerted the Lawyer to the need to make further inquiries with respect to Company A:

1. There was no face-to-face meeting between the Lawyer and Company A's principal.
2. The principal's connection to the jurisdiction was unclear.
3. Company A had minimal business operations and assets and no significant revenue.
4. There was an absence of documentation to support Company A's business activities.
5. Between 2017-2018, the Lawyer was asked to hold large deposits of money in his trust account without providing legal services.
6. The Lawyer was not paid for his work for Company A.
7. Funds were received from a foreign country where there was no apparent connection between the country and the client.
8. Funds were received by wire transfer from a jurisdiction with a reputation for banking secrecy and/or weak anti-money laundering regulations.
9. Funds were received from a third party whose relationship to the client was not entirely clear.
10. The Lawyer did not understand the business reason for the shares to be bought back from AA.
11. The price offered for the share buy back greatly exceeded the price for which the stock was purchased.
12. The Lawyer was not asked to pay out the majority of the Company A Funds until six months after the funds were received.

26. The Lawyer acknowledges that as the gatekeeper of his trust account, he ought to have taken steps, including making further inquiries, to guard against becoming the tool or dupe of an unscrupulous client or other persons.

***B. Company B***

27. Company B was a public company, trading on the US OTC Markets Pink Sheets (a market for penny stocks). It was a shell company, with no operating business, but with a business plan to operate a relocation service for people moving to India.

28. In March 2016, the Lawyer received a call from EE and FF regarding the sale of a controlling interest in Company B shares to a buyer. As the Company B file involved financial transactions, the Lawyer was obligated under the Rules to verify the identity of his client, including the company and its instructing individuals. He largely complied with the verification requirements for Company B, with the exception that he failed to record or make reasonable efforts to obtain the occupation of Company B's directors and significant shareholders, but did not verify EE or FF's identities.

29. As set out below, the use of the Lawyer's trust account was for the benefit of the shareholders of Company B rather than the company itself. These shareholders were not separately represented and the Lawyer did not recommend that they receive independent legal advice. The Lawyer took no steps to identify or verify Company B's shareholders.

*i. AA's Investment in Company B*

30. In September 2014, AA purchased 300,000 Company B shares for \$6,000 USD. In 2016, AA ultimately sold the shares for \$105,225 USD, thereby profiting \$99,225 USD.

*ii. Legal Work Performed and Use of the Lawyer's Trust Account*

31. The Lawyer understood that in March 2016, EE and FF were introduced to a potential buyer, GG, by an intermediary, HH. GG, represented by US counsel, wanted to buy shares to obtain control of a public company, and Company B had been identified as a possible target.

32. Between March and June 2016, the Lawyer performed some legal work in relation to Company B, involving communications with US counsel. The Lawyer estimated that in total he performed two to three hours of work on the Company B file. While the work was completed in 2016, the Lawyer did not issue an account for his work on Company B until November 2019, in the amount of \$4,000.

33. Ultimately, GG purchased over five million shares of Company B from AA, CC, EE, and FF. In April and June 2016, the Lawyer received \$294,960 USD, in two deposits, from US

counsel (the “Company B Funds”). These funds were wired directly to his trust account. The funds represented the proceeds of the sales of Company B shares to GG.

34. The Lawyer’s file contained notes of instructions, but did not contain any formal agreements that covered the terms on which he would receive or disburse the Company B Funds.
35. The Company B Funds were paid out over the following four years to EE, HH, AA, and for various disbursements. \$105,225 USD was paid to AA in May 2016 and May 2017.
36. The Lawyer did not prepare or see any of the share sale/purchase agreements that supported these transfers, except for the agreement with AA, which he “saw at the time”. The Lawyer explained that he was involved and that his trust account was used because it was a “condition of closing the deal” that the buyer wanted Company B to do certain things before the Company B Funds could be released to shareholders, in particular getting Company B listed. However, the Lawyer did not have any formal agreements that documented these terms, nor did he have any written confirmation from the purchaser that the conditions had been fulfilled before the Company B Funds could be distributed.
37. The following suspicious circumstances should have alerted the Lawyer to the need to make further inquiries with respect to Company B:
  1. There was no face-to-face meeting between the Lawyer and Company B’s principal.
  2. There was an absence of documentation to support Company B’s business activities.
  3. Company B had no business operations with minimal assets and no significant revenue.
  4. The Lawyer was asked to hold large deposits of money in his trust account without providing substantial legal services.
  5. The Lawyer held the Company B Funds in his trust account for over four years.
  6. The price paid to AA greatly exceeded the price for which the shares were purchased.
  7. The use of the Lawyer’s trust account was for the benefit of the shareholders of Company B, rather than the company itself.
  8. The Lawyer was not provided with documentation related to the disbursement of the Company B Funds.

### *C. Company C*

38. On August 22, 2018, the Lawyer had a telephone call with II and JJ, two individuals interested in retaining him to do the legal work involved in a reorganization of a US company, Company C. II had been a former client of the Lawyer. All directors of Company C, including JJ, KK, and LL were foreign residents.

39. The Lawyer completed a file opening sheet in August 2018. As the matter involved financial transactions, the Lawyer was obligated under the Rules to verify the identity of his client, including the company and its instructing individuals. However, he did not verify the identity of any of the individuals who instructed him on the Company C file, including II, JJ, KK, LL.

#### *i. AA's Investments in Company C*

40. During the time the Lawyer was retained by Company C, AA made two investments in the company: a promissory note loan in August 2018, and a share purchase through a private placement in the summer of 2019.

41. On August 27, 2018, AA advanced a \$121,550 loan to Company C, receiving a promissory note in exchange. It is the Lawyer's position that in respect of the promissory note, he acted for AA. As of September 2022, AA had been repaid about \$70,000 of these funds.

42. In the summer of 2019, AA purchased \$6,000 USD worth of shares as part of a private placement. The Lawyer's position is that in respect of this private placement, he acted for Company C and AA represented herself.

43. In July 2021, AA sold her Company C shares to II for \$21,801.81 USD. After having held her shares for approximately two years, AA profited approximately \$15,800 USD.

#### *ii. Legal Work Performed for Company C and Use of the Lawyer's Trust Account*

44. The Lawyer was retained by Company C to draft an asset purchase agreement and the necessary securities filings relating to the acquisition. For this work, the Lawyer quoted fees

of \$30,000. He did not provide any fee estimates for any other legal work. However, the Lawyer also reviewed and commented upon work done by other lawyers.

45. The Lawyer's file for Company C includes documents related to securities filings, email correspondence regarding various rounds of financing, documents related to debt financing, and a copy of the asset purchase agreement.
46. The Lawyer has advised that he will bill Company C when it is in a position to pay, and that he has asked Company C to prioritize making principal and interest payments to AA over his accounts. He does not have any records of accrued work in progress for Company C.
47. In August 2022, the Lawyer received \$2,500 USD from Company C for his work. However, the description of the work for this payment was entirely unrelated to the work the Lawyer described having performed, as set out above.
48. Between March 2016 and the time of a Law Society compliance audit in December 2020, the Lawyer received a total of \$548,487 USD for Company C (the "Company C Funds"), pursuant to a series of third-party private placement subscriptions and loans.
49. Payments of these funds were made mostly to Company E, and ranged from \$3,000 USD to \$51,863.50 USD. The Lawyer received written instructions for some of these payments but recorded most instructions for the payments on a single sheet of notes. The only information recorded was the name of the director giving the instruction, the date of the instruction, and the amount to be paid.
50. The Lawyer did not record any information about any general inquiries made about the purpose of the payments to Company E, and did not make specific inquiries about the purpose of the payments to Company E. The Lawyer performed a corporate search of Company E to confirm the company existed, but did not research any further.
51. The Lawyer's explanation for the use of his trust account was that Company C did not have a US bank account as its directors did not reside in the US, and that it needed a proper record of transactions for its auditor. However, the Lawyer's trust account is in Canada.

52. The following suspicious circumstances should have alerted the Lawyer to the need to make further inquiries with respect to Company C:

1. There was no face-to-face meeting between the Lawyer and Company C's principals.
2. A large amount of funds flowed through the Lawyer's trust account without the Lawyer having adequate details of the purpose of the payments.

***D. Company D***

53. In December 2018, the Lawyer was retained to prepare materials for a private placement and debt settlement for a prior corporate client, Company D. The private placement was designed to inject sufficient capital into Company D to pay out director fees that were claimed by a former director, MM.

54. As the Company D matter involved financial transactions, the Lawyer was obligated under the Rules to verify the identity of his client, including its instructing individuals.

55. As Company D was a reporting issuer, it was exempt from the client verification rules applicable at the time. However, the Lawyer was still required to make reasonable efforts to obtain, and if obtained, record the name, position and contact information for individuals entitled to give him instructions. The Lawyer did not make reasonable efforts to obtain this information.

*i. Legal Work Performed for Company D and Use of the Lawyer's Trust Account*

56. The Lawyer explained that he prepared a private placement subscription agreement and a release. However, the Lawyer's file for Company D contained fewer than 20 pages and did not contain any emails, letters of instruction, or retainer agreement. The file did contain a signed version of a release, but it is a very blurry, low-resolution photograph, which the Lawyer says he received by text. The Lawyer advises he delivered the release in person to a director of Company D, but there is no documentation on file showing that this occurred.

57. The Lawyer received a total of \$21,311 USD in trust and paid the funds out to MM, after MM executed the release.

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58. The Lawyer explained that at the material time, Company D had a different lawyer, but that he was asked to do this transaction because MM knew and trusted him. He also explained that because the work required seemed minimal, he did not charge legal fees to Company D for the work.
59. The following suspicious circumstances should have alerted the Lawyer to the need to make further inquiries with respect to Company D:
1. At the material time, Company D was represented by a different lawyer.
  2. The Lawyer was asked to hold a deposit of money in his trust account without providing substantial legal services.
  3. The Lawyer did not have adequate information about the source of the funds.
  4. The Lawyer did not retain documentation on file related to the delivery of MM's release prior to disbursing the funds from his trust account.

***E. XY***

60. The Lawyer first met XY in approximately 2005 in connection with another matter, when XY attended at the Lawyer's office to execute some documents. The Lawyer understood XY to be a portfolio manager for an investment company.
61. In October 2017, the Lawyer received a call from XY, who wished to retain him to prepare a purchase agreement for software that a British Columbia company had developed. XY planned to acquire the software and then sell it to a US company, Company F, which would then pursue an OTC listing.
62. The Lawyer's file opening sheet documented XY's business address and occupation but failed to include XY's home address. The Lawyer did not appreciate that the Law Society's client identification rule required him to collect both a business and a home address. To verify XY's identity, the Lawyer viewed XY's passport but did not retain a copy of it.
63. The Lawyer prepared a draft purchase agreement, which took approximately one hour to draft. The purchase agreement contained in the Lawyer's files is incomplete and contains

contradictory terms. Sometime after October 30, 2017, the Lawyer provided this incomplete draft to XY.

64. On November 2, 2017, the Lawyer received a wire for a total of \$46,000 USD. The next day, the Lawyer reviewed the draft purchase agreement with XY over the phone.
65. The Lawyer was advised that XY retained US counsel to finalize the software purchase but never spoke with US counsel and did not know who was retained. Retaining US counsel to finalize the purchase was odd, given the governing law in the draft purchase agreement was British Columbia.
66. On November 10, 2017, on XY's instructions, the Lawyer wired almost the entire balance he had in trust, less wire fees, to Company F. At the time he sent this wire, he did not have a signed copy of the purchase agreement on file, and had never seen a signed version of it. That same day, the Lawyer issued an account for \$1,500 to XY, but the account was never paid. The Lawyer estimated that at the time he issued the account he had spent a total of two hours on the file.
67. In 2018, XY was the subject of an unrelated complaint from the SEC for securities fraud and market manipulation. The principal of Company F was also the subject of a separate and unrelated SEC complaint for market manipulation in 2021.
68. The Lawyer admitted in retrospect he was not sure that his retainer with XY was legitimate, but the circumstances did not arouse his suspicion given the amount of money involved.
69. The following suspicious circumstances should have alerted the Lawyer to the need to make further inquiries with respect to XY and the file:
  1. The purchase agreement was completed by US counsel, despite the agreement having an exclusive British Columbia court jurisdiction clause.
  2. At the time the Lawyer disbursed the funds, he did not have a copy of a signed purchase agreement.

## **F. YZ**

70. On September 18, 2020, the Lawyer opened a file for YZ, who wished to retain the Lawyer to help acquire and/or transfer shares of a public company, Company G, in order to acquire a controlling interest in the company and prepare for the acquisition of a potential project. At the time, YZ wished to personally retain the Lawyer, in anticipation that Company G would retain the Lawyer in the future.
71. The Lawyer's file contains sufficient information to have complied with the identification and verification of the identity of his client under the Rules.
72. The Lawyer's file contained a share purchase agreement, under which he was appointed as trustee for YZ's sale of Company G's shares to OO. The agreement specified that the Lawyer was not counsel for YZ or OO, and that he had not provided legal advice to either of them. It is unclear how selling shares to OO was consistent with the plan to obtain control over Company G.
73. In October 2020, the Lawyer received a wire transfer for \$100,000 USD from OO. The Lawyer recorded that the funds were for the purchase of shares from YZ by OO. The Lawyer did some research about OO and the economic activity that generated the funds he received, but did not record the results of any inquiries. The Lawyer did not provide substantial legal services in relation to the \$100,000. In December 2020, he returned the funds to OO by wire.

## **Mitigating Factors**

74. The Lawyer has accepted responsibility for his misconduct. In 2021, he completed the Law Society's Trust Accounting Basics, Trust Accounting Regulatory Requirements, and Anti-Money Laundering Measures webinars.