

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

ANTHONY L. SHIAU

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT

1. On May 29, 2023, the Chair of the Discipline Committee approved a proposal submitted by Anthony L. Shiau (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 professional misconduct:
 1. Between May 2021 and March 2022, he improperly handled trust funds by:
 - (a) depositing retainer funds totaling \$3,575 directly into his general account when he was not yet entitled to the funds and when he had not delivered a bill to his clients, contrary to Rule 3-58 of the Law Society Rules and section 69(1) of the *Legal Profession Act*;
 - (b) withdrawing funds totaling \$656.32 from trust by transferring the funds from his trust account to his general account when he had not delivered a bill to his clients, contrary to Rules 3-64 and 3-65 of the Law Society Rules, and section 69(1) of the *Legal Profession Act*; and
 - (c) withdrawing \$300 in funds from trust for disbursements not incurred or not yet incurred, and when he had not delivered a bill to his clients, contrary to Rules 3-64 and 3-65 of the Law Society Rules, and section 69(1) of the *Legal Profession Act*.

2. On December 14, 2021, he failed to verify client identification information, contrary to Rules 3-102 and 3-104 of the Law Society Rules.
3. The Lawyer has consented to a suspension of four weeks, from July 1, 2023 to July 29, 2023.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated May 23, 2023, and a letter to the Chair of the Discipline Committee. The Chair of the Discipline Committee also considered that the Lawyer does not have a prior professional conduct record.
5. This consent agreement will now also 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 of British Columbia (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.

I. Summary of Facts

8. The Lawyer was called to the bar on December 7, 2006. Following his call to the bar, he worked at several small firms in Vancouver, British Columbia. Since July 2015, he has worked at his own firm as a sole practitioner in Vancouver and Burnaby, British Columbia (the "Firm"). He currently practises primarily in the areas of real estate, corporate, commercial, and wills and estates law.

Failure to Deposit Trust Funds into a Pooled Trust Account

9. On May 25, 2021, and January 4, 2022, the Lawyer made two separate deposits of retainer funds totaling \$3,575 (the "Funds") directly to his general account when he was not yet entitled to the funds. The funds were deposited to the general account before the Lawyer completed all legal services and before he delivered a bill to his clients. In addition, on

December 6, 2021, the Lawyer failed to place an overpayment of account of \$40.56 in his trust account and instead deposited the funds to the general account.

10. In October 2022, the Lawyer transferred the \$40.56 overpayment of account back to the Firm's trust account.
11. The Lawyer did not make any subsequent use of the Funds until after work was completed and a bill was delivered to his clients. He did not obtain a personal financial benefit through his actions.
12. The Lawyer explained that he deposited the Funds directly to his general account because of glitches he was experiencing when using his trust accounting software. He thought that regardless of where funds were held, they were impressed with a trust, and that he could hold funds "in trust" in his general account for administrative convenience.
13. The Lawyer now understands that this understanding was incorrect, and that retainer funds must be deposited directly into a trust account and cannot be transferred out of trust unless one of the situations listed in Rule 3-64 of the Law Society Rules applies, and unless he has fulfilled all of his trust accounting obligations set out in Division 7 of the Law Society Rules.

Withdrawal of Trust Funds

14. On December 30, 2021, the Lawyer made three improper trust withdrawals, totaling \$656.32, by transferring funds from his trust account to his general account, for client refunds, when he had not delivered a bill.
15. The funds related to two strata holdback releases and the return of excess funds that had been sent to him by another lawyer. No invoices or bills were issued or delivered before the Lawyer transferred these funds out of trust. The Lawyer did not obtain a personal benefit in relation to the funds, and all funds were subsequently returned to the trust account and paid out to the clients.

16. The Lawyer explained that he transferred the funds to the Firm's general account because he intended to return the amounts to his client by Interac electronic transfer and the Rules did not permit withdrawals to be made by Interac directly from a trust account. In addition, his bank sometimes charged transfer fees to the trust account despite the requirement that any fees be charged to a general account. He also did not maintain the permitted \$300 of his own funds in trust to allow for exigencies such as unexpected bank fees.
17. As above, the Lawyer explained that he thought regardless of where the funds were held, they were impressed with a trust and that he could hold the funds "in trust" in his general account for administrative convenience.
18. The Lawyer acknowledges that the funds should not have been withdrawn from trust prior to delivering a bill, and that the trust accounting rules cannot be ignored for administrative convenience.

Disbursements Charged

19. On March 17, 2022, the Lawyer completed a real estate purchase on behalf of two individual clients (the "Clients"). The Lawyer received wire funds from the Clients' US bank account. The US bank sent the funds to him in US dollars instead of Canadian dollars, and due to currency conversion rates, the funds were \$405,243.77 in excess of the amount required to complete the property purchase. That same day, the Lawyer asked the Clients to have their bank complete a form in order to return the excess funds, and noted a \$50 wire fund fee.
20. On March 31, 2022, the Lawyer transferred \$10,514.25 from his trust account to his general account. This amount included \$2,789.90 in relation to the Clients' file, a \$50 wire fee charge and a \$250 "administration fee" for handling the excess funds.
21. As the \$50 wire transfer fee was an anticipated disbursement, it should have been held in trust.
22. On July 19, 2022, the Lawyer emailed the Clients, advising that he still held excess funds for them and offered ways to send the funds back. The Clients advised that they now had a

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Canadian bank account but did not provide their Canadian banking information to the Lawyer until August 15, 2022.

23. The Clients also consented to the \$250 administration fee on August 15, 2022.
24. In October 2022, the Lawyer returned the \$50 “wire transfer fee” to the Firm’s trust account and later returned the funds to the Clients.
25. With respect to the \$250 “admin fee”, the Lawyer explained that he had intended to bill that amount for dealing with the excess funds but had not amended the Clients’ Order to Pay to reflect the charge. The Lawyer decided to bill a lump sum of \$250 as an “administration fee” for dealing with the excess funds.
26. The Clients were first advised of the \$250 charge 4.5 months after the Lawyer had withdrawn the funds from trust.
27. The Lawyer acknowledges that it is unusual to charge administration fees, but if a client provides fully informed consent about paying such a fee, it may be charged. However, as in all cases, funds may not be withdrawn from trust prior to obtaining a client’s consent for any unforeseen charges and before a bill has been delivered to a client. The \$50 charge for the wire transfer fee should have been held in trust.

Client Verification

28. On December 14, 2021, the Lawyer met with the Clients via video conference call and viewed their identification documents during the call. At the time, the Covid pandemic was in effect and the Clients were located in the United States. The Lawyer took photographs of his screen while the Clients held their identification documents in front of the camera. Prior to the video conference call, on December 3, 2021, the Lawyer had received copies of the Clients’ US passports by email.

29. At the time, the Lawyer was familiar with the client identification and verification rules found in the Law Society Rules. However, the Lawyer failed to retain an agent in the United States to verify the identity of the Clients.
30. The Lawyer explained that because the purchase of the properties was in cash and did not require the notarization of any documents, he did not want to trouble the Clients by having them meet with an agent to have their identification verified.
31. The Lawyer acknowledges that he ought to have retained an agent to verify his Clients' identities because they were not present in Canada and were not physically present before him. He has now adopted the Sample Agreement with Agent for Verification, found in the Law Society's Client Identification, Verification, and Source of Money Checklist.

Mitigating Factors

32. The Lawyer is remorseful and has admitted all of the misconduct under investigation. He sought to resolve his matter through the consent agreement process at an early stage in the investigation.
33. The Lawyer has reviewed the Law Society's Trust Accounting Handbook. He has adopted the Law Society's Trust Accounting Checklist, Checklist of Internal Controls, and Client Identification, Verification, and Source of Money Checklist in his practice. He has also completed the Law Society's Trust Accounting Basics, Trust Accounting Regulatory Requirements, and Anti-Money Laundering webinars.