

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

GARY (KIN IP) LO

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On September 15, 2023, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Gary (Kin Ip) Lo (the “Lawyer”) under Rule 3-7.1 of the Law Society Rules (the “Rules”).
2. Under the proposal, the Lawyer admits that he committed the following misconduct, and that it constitutes professional misconduct pursuant to s. 38(4) of the *Legal Profession Act*:
 - a) between May 15, 2019 and February 10, 2021 in the course of representing his client Company A, the purchaser in a real estate transaction, he failed to disclose to the vendors and/or to the court that he did not hold all the 2018 deposit amounts in trust when he knew or ought to have known the vendors and the court believed that he did, contrary to rule 2.2-1 of the *Code of Professional Conduct for British Columbia* (the “Code”) and its commentary;
 - b) between approximately July 2019 and August 2020, he acted in a conflict of interest when he represented Company B in a real estate matter, while also representing, or having had represented, one or more of HS, Company A, Company C, Company D, Company E, Company F, contrary to one or more of rules 3.4-1, 3.4-2 and 3.4-10 of the *Code* and its commentary, and his fiduciary duties;
 - c) between approximately July 2019 and August 2020, in the course of representing his client Company B, he failed to obtain, record and retain the name, position and contact information for JJ, an instructing individual with respect to the matter for which he was retained, contrary to one or both of Rules 3-100(c) and 3-107(3);

- d) in approximately July 2019, in the course of representing his client XN in a financial transaction, he failed to take reasonable steps to verify the identity of XN, or obtain and retain a copy of every document used to verify her identity, contrary to one or more of Rules 3-102, 3-104, 3-105 and 3-107; and
 - e) between approximately March 2019 and October 2019, in the course of representing his clients Company G and Company H, Company I and Company J, and Company K in financial transactions, he failed to do one or more of the following:
 - i. take reasonable and timely steps to verify the identity of his clients by obtaining, recording and retaining a copy of every document used to verify their identities, contrary to one or more of Rules 3-102(b), 3-106 and 3-107; and
 - ii. make reasonable and timely efforts to verify the identity of directors and shareholders of his clients by obtaining, recording and retaining the names and occupations of all directors of the organization and/or the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization, contrary to one or more of Rules 3-103 (a) and (b), 3-106 and 3-107.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of six weeks, commencing on October 2, 2023.
 4. In making her decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts and a letter of admission to the Chair of the Discipline Committee dated September 7, 2023. The Chair also considered the Lawyer’s prior professional conduct record.
 5. This consent agreement will now form part of the Lawyer’s professional conduct record.
 6. Pursuant to Rules 3-7.1(5), 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 Agreed Statement of Facts is summarized below, with the names of other parties anonymized.

Member Background

8. The Lawyer was called and admitted as a member of the Law Society on May 17, 1996. Since his call to the bar, the Lawyer has practised law in Vancouver, British Columbia.

9. The Lawyer has been working at Gary K. Lo Law Corporation (the “Law Corporation”) since November 2013 and now practises as a sole practitioner, primarily in the area of real estate law, but also does some corporate and commercial work.
10. The Lawyer has a prior disciplinary history with the Law Society, as follows:
 - a) from July 3, 2007 to August 8, 2007, and also from July 2, 2008 to March 12, 2009, the Lawyer was administratively suspended for failure to file completed trust reports.
 - b) on June 15, 2010, the Lawyer had conditions placed on his practice. He undertook to not practise as a sole practitioner and to not operate or be an authorized signatory on a trust account without a second signatory.
 - c) on July 7, 2016, the Credentials Committee varied these conditions and the Lawyer entered into a Practice Supervision Agreement but the requirement for a second signatory on the Lawyer’s trust account continued.
 - d) on March 10, 2021, the Credentials Committee granted the Lawyer’s request to practise as a sole practitioner and on March 15, 2021, the Lawyer entered into a Practice Supervision Agreement and Trust Supervision Agreement.
 - e) on July 5, 2022, a hearing panel accepted the Lawyer’s admission of professional misconduct as part of a Rule 4-30 joint submission. The Lawyer admitted that he practised as a sole practitioner over an eight month period in breach of the June 2010 undertaking. The Lawyer was fined \$10,000.

Failure to Disclose

11. Around April 2019, the Lawyer was retained by Company A to act as its conveyancing counsel concerning its purchase of properties in Vancouver. The properties included ten neighbouring lots (the “A” Properties”), and three additional lots (the “B” Properties”).
12. In early 2018, prior to the Lawyer being retained, purchase contracts had been signed that required Company A to pay a series of deposits by bank drafts to the “Buyer’s solicitor in trust” on certain dates in 2018 and 2019 (collectively, the “2018 Deposits”), amounting to \$988,000 for the “A” Properties, and \$150,000 for the “B” Properties.

The 2018 Deposits

13. On May 15, 2019, the Lawyer received emails from Company A’s realtor asking for confirmation that the Lawyer had received the 2018 Deposits from Company A, attaching images of bank drafts purporting to represent that Company A had provided the 2018

Deposits to the Gary K. Lo Law Corporation (the “Law Corporation”). The Lawyer advised the realtor he had not received the 2018 Deposits.

14. Later that day the Lawyer contacted RC, a principal of Company A. RC provided a bank draft for \$150,000 to the Lawyer for the “B” Properties.
15. The Lawyer did not ask RC why there appeared to be bank drafts payable to the Law Corporation for the 2018 Deposits that had not been provided to him, or if the vendors of the “A” Properties (the “Vendors”) were aware the 2018 Deposits for the “A” Properties had not been provided to the Lawyer.
16. On June 3, 2019, RC brought two additional bank drafts to the Lawyer, payable to the Law Corporation in trust, amounting to \$458,000 for the “A” Properties.
17. A \$530,000 2018 deposit for the “A” Properties remained outstanding. A further deposit for the “A” Properties was due on May 30, 2019 (the “May 2019 Deposit”), but Company A did not make this deposit.
18. On June 18, 2019, RC assured the Lawyer that he could bring the funds if the Vendors’ lawyer made a demand but that he would like more time so that he did not have to draw funds from other sources.
19. The Lawyer admits that in hindsight, he should have stayed away from the real estate transaction once it appeared that Company A might have made inaccurate representations to the Vendors about the 2018 Deposits.

Failure to Disclose to the Vendors

20. On June 19, 2019, AL, counsel for the Vendors, wrote to the Lawyer stating that Company A was in default of the purchase contracts for its failure to pay the May 2019 Deposit on the “A” Properties. AL demanded the forfeiture of the 2018 Deposits for the “A” Properties, totalling \$988,000, and indicated he would commence an action if the funds were not received by close of business on June 25, 2019.
21. The Lawyer then requested RC “bring in the deposit asap.”
22. The Lawyer replied to AL stating that he would respond once he had instructions, but significantly, the Lawyer failed to disclose that he did not hold all the 2018 Deposits for the “A” Properties in trust, when he knew or ought to have known that the Vendors believed he did.
23. On both June 25, 2019 and June 27, 2019, the Lawyer contacted RC to request the deposit funds. In the June 27, 2019 email, the Lawyer stated that he had \$458,000 in trust for the

“A” Properties but that he was “required to have \$988K so there is a shortfall of \$530,000.” RC confirmed that this was correct but did not bring in the remaining deposit.

24. On July 2, 2019, AL wrote to the Lawyer again and asked whether he had obtained instructions from Company A. The Lawyer had not received instructions, and did not reply to AL.
25. The Lawyer admits he should have advised AL that he did not hold all of the 2018 Deposits for the “A” Properties in a timely fashion.
26. The Lawyer said he had trusted Company A to sort everything out, as he had previously represented Company A in other real estate transactions without issue. The Lawyer admits that his trust in Company A was misplaced and that it was his responsibility to disclose in a timely manner to the Vendors that he did not hold all the 2018 Deposits.

Failure to Disclose to the Court

27. Around August 9, 2019, the Lawyer and Company A were served with a Notice of Civil Claim commencing a civil action against Company A and the Law Corporation (the “Civil Action”). The Vendors claimed that Company A had breached sale contracts by failing to pay the May 2019 Deposit, and sought forfeiture of the \$988,000 that they believed Company A had paid to the Law Corporation in trust.
28. XY acted for Company A and the Law Corporation on a joint retainer in the Civil Action.
29. The Vendors filed a summary trial application. XY filed a response to the summary trial application on behalf of the Law Corporation (the “Response”). The Response indicated that the Law Corporation held deposits totalling \$988,000, when in fact the Lawyer still only had \$530,000 of the \$988,000 2018 Deposits in trust for Company A on the “A” Properties.
30. Before the Response was filed, the Lawyer briefly reviewed a draft with XY, but the Lawyer and XY did not discuss the deposits.
31. The Lawyer admits that he should have, but did not, turn his mind to the allegations in the Notice of Civil Claim. Had the Lawyer done so, he would have immediately disclosed that he did not hold all the 2018 Deposits for the “A” Properties in trust.
32. The Lawyer assumed his only role was to wait for instructions and pay out the deposit funds he did have.

33. The Lawyer advised, and the Law Society accepts, that his failure to disclose the state of the deposits to the court was unintentional. The Lawyer admits it was his responsibility to disclose to the court in a timely manner that he did not hold all the 2018 Deposits.
34. On February 3, 2021, the Supreme Court found in favour of the Vendors and ordered the Law Corporation to pay the \$988,000 that it held in trust to the Vendors. On February 10, 2021, the Law Corporation sent a letter to counsel for the Vendors enclosing a trust cheque for \$458,000, explaining that was the entire amount paid into their trust account for the 2018 Deposits in relation to the “A” Properties.
35. The Vendors filed an application in the Supreme Court for the defendant’s production of documents and information regarding the “A” Properties 2018 Deposits. In the end, the application did not proceed as Company A paid the balance of the judgment to the Vendors, which meant the Vendors received the full amount of the 2018 Deposits for the “A” Properties.

Conflict of Interest

36. Between approximately July 2019 and April 2020, the Lawyer represented Company B in a private lending transaction with Company C. Company B was the lender of a \$10,000,000 third mortgage to Company C, which was owned or controlled by HS. The guarantors of the Loan were HS and Company F, which was owned or controlled by HS.
37. In his retainer letter to Company B, the Lawyer advised Company B that he had previously acted for Company C in regard to the property being mortgaged and stated that he would not be evaluating “potential repayment risk of the Borrowers and whether the mortgage security provided by the Borrowers is sufficient, which will be your responsibility.” Despite this, in January 2020, the Lawyer opened a new file for Company B regarding the repayment of the loan, and offered advice to Company B on the issue.
38. Between 2016 and 2021, the Lawyer represented HS and some of their companies in at least 13 different matters, including Company A (see paragraphs 11 to 35 above). The Lawyer acted in a conflict of interest by performing legal services for Company B while also representing and having represented HS and their companies.
39. The Lawyer was prohibited from acting against HS and their companies unless the Lawyer had informed consent from both Company B and HS and/or their companies, and there was no substantial risk that the Lawyer’s loyalty to, or representation of, either client would be materially and adversely affected.
40. The Lawyer did not obtain consent from the parties to act despite the conflict, did not recommend or require either party to obtain independent legal advice and knew that they

had not received such advice, and did he not disclose and explain to HS, Company B or Company C the nature of the conflicting interests, or how or why a potential conflict might develop.

Client Identification and Verification

Requirement to Identify JJ

41. In July 2019, the Lawyer opened a file to represent Company B in the Loan. The Lawyer did not obtain, record or retain the name, position and contact information of JJ who instructed him on the terms of the \$10,000,000 private lending transaction between Company B and Company C (see paragraphs 36 to 40 above), as required by Rule 3-100(c) and Rule 3-107(3) of the Rules.
42. The Lawyer never met JJ in person and relied on the fact that JJ was referred to him by an existing client. The Lawyer did not obtain a copy of JJ's ID and acknowledges that he did not take any steps to identify or verify JJ.

Requirement to Verify the Identity of XN

43. The Lawyer provided legal services in respect to a financial transaction when he acted for FN and XN as lenders on a private mortgage secured by a property in Ontario.
44. On July 3, 2019, the Lawyer verified FN's identity at a face-to-face meeting. However, the Lawyer never met XN in person, nor did he use an agent to verify XN's identity.
45. The Lawyer believed that he did not need to verify XN's identity independently as FN was the lawful attorney for XN and FN had provided him with the Enduring Power of Attorney. The Lawyer acknowledges that he did not take sufficient steps to verify the identity of XN.

Corporate Clients

46. The Lawyer acted for Company G and Company H in the purchase of real estate property. The Lawyer obtained and retained some of the required documents for client identification and verification, but not all. For instance, the Lawyer did not obtain a document listing directors' information for Company G, or documents showing that Company H was wholly owned by Corporation A. The Lawyer also failed to obtain or record the name, address and occupation of all persons owning 25 per cent or more of the organization or of the shares in Corporation A.
47. On another file, the Lawyer acted for the borrowers, Company I, Company J and DW in a loan transaction. DW was the instructing individual for Company I and Company J. The

Lawyer obtained a copy of DW's Driver's Licence. However, the Lawyer did not take any steps to identify or verify the shareholders of Company I and Company J.

48. Further, the Lawyer acted for Company K in a private loan transaction. The Lawyer verified the identity of NT, Company K's instructing individual, but did not take any steps to verify the identity of Company K's shareholders.

Other Considerations

49. Although serious, the Lawyer's failure to disclose to the Vendors that he did not have all the 2018 Deposits for Property "A" in trust did not result in a loss of the 2018 Deposit. Company A provided the previously unpaid portion of the 2018 Deposit for Property "A" to the Vendors after the Civil Action.
50. The Lawyer's failure to disclose to the court that he did not have all the 2018 Deposits in trust was unintentional. He admits that he should have turned his mind to the allegations pleaded in the Notice of Civil Claim and the Response, and had he done so, he would have immediately disclosed he did not hold all the 2018 Deposits in trust.
51. The Lawyer has taken steps to improve his office procedures to ensure that the client identification and verification requirements are met. The Lawyer re-evaluated and changed his office procedures in relation to client identification and verification, and arranges for third party verification in instances where he cannot personally meet with a client.
52. The Lawyer now requires all corporate clients to supply him with copies of their Register of Directors and Central Securities Register in order to identify the individuals who are authorized representatives of the company and those providing the instructions. In cases where the instructions are given by individuals that are not directors or officers of the company, the Lawyer obtains written confirmation of their authority from the director.
53. The Lawyer has reviewed the rules related to conflicts of interests set out in the *Code* and the Model Conflicts of Interest Checklist provided by the Law Society. The Lawyer is working with a Practice Supervisor, and will consult with him and other experienced practitioners whenever he encounters situations dealing with potential conflicts of interest. The Lawyer plans to meet with his practice supervisor during his suspension to develop procedures and policies to deal with potential conflicts of interest.