

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

AND

**PAUL CHRISTOPHER DOROSHENKO, KC**

(a member of the Law Society of British Columbia)

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**RULE 3-7.1 CONSENT AGREEMENT SUMMARY**

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1. On December 19, 2023, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Paul Christopher Doroshenko, KC (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*:
  - (a) Between September 16, 2016 and July 3, 2019, in the course of and subsequent to acting as the articling principal and employer for his articling student, M.O., the Lawyer failed to act with courtesy, civility, and good faith contrary to rule 7.2-1 of the *Code of Professional Conduct for British Columbia*, by advancing allegations against M.O. in a Notice of Civil Claim filed in the New Westminster Registry of the British Columbia Supreme Court with regard to her loyalty, truthfulness, and competence, which the court determined were unfounded.
3. Under the proposal, the Lawyer agreed to pay a fine of \$15,000 within 30 days of the Law Society’s acceptance of this consent agreement proposal and complete the online webinar repeat of the CBABC’s Equality, Diversity & Inclusion Series by no later than March 31, 2024.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated December 14, 2023, and a letter to the Chair of the Discipline Committee.
5. This consent agreement will now 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 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.

## **Summary of Facts**

### *Background*

8. Paul Christopher Doroshenko, KC (the “Lawyer”) was called to the bar and admitted as a member of the Law Society of British Columbia on May 19, 2000.
9. The Lawyer 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.
11. Since October 24, 2008, the Lawyer has practised law through his law firm, Acumen Law Corporation (the “Firm”).
12. The Firm currently has offices in Vancouver and Richmond, British Columbia.
13. The Firm specializes in “driving” law, including the defence of criminal and regulatory offences committed while driving, reviewing driving prohibitions, judicial review applications arising from decisions of the Superintendent of Motor Vehicles, and defending traffic tickets. The Firm’s practice also includes criminal defence work unrelated to driving offences.
14. The Firm has made extensive use of requests and applications under the *Freedom of Information and Protection of Privacy Act* (“FOIPPA”) in order to obtain information about, among other things, the nature and workings of the Immediate Roadside Prohibition regime under the *Motor Vehicle Act*. The Firm regards the information gathered by way of FOIPPA requests as providing it a competitive advantage and thus considers it proprietary information.
15. The Lawyer has a professional conduct record as follows:
  - (a) The Lawyer entered into a Rule 3-7.1 Consent Agreement on April 28, 2021, in relation to numerous trust accounting breaches by the Lawyer over a period of six years. The breaches arose largely from the Lawyer’s failure to adequately supervise his staff. The Lawyer agreed to be suspended from the practice of law for a period of two months,

and to complete five additional hours of Continuing Professional Development credits related to trust accounting.

(b) The Lawyer attended a Conduct Review on June 18, 2021, in relation to an inappropriate music video posted by the Lawyer to the Firm's YouTube channel and other social media accounts. The Conduct Review Subcommittee accepted the Lawyer's admission of acting contrary to rules 2.2, 4.2-5, and 5.6-1 of the *Code of Professional Conduct for British Columbia*, and took no further action.

16. In 2015, M.O. was attending law school in Ontario and contacted the Lawyer to inquire about an articling position. The Lawyer offered her an articling position at the Firm following her April 2016 graduation from law school.
17. On November 18, 2015, M.O. and the Lawyer entered into an Articling Agreement for a 12-month articling term from May 2017 to May 2017 (the "Articling Agreement").
18. Shortly before commencing her articles, M.O. married N.D., who was her law school classmate.
19. M.O. commenced her employment with the Firm as an articling student in its Vancouver office (the "Office") on May 24, 2016.
20. During the relevant period, N.D. was employed as an articling student at a corporate commercial law firm in Vancouver.

#### *Events During Articling Period*

21. During her articling period, M.O.'s duties included attending various courts in the lower mainland for procedural appearances such as arraignments or appearances to fix dates in connection with criminal charges. She also performed legal research and wrote letters on behalf of clients requesting administrative relief in connection with requirements imposed on drivers by the Superintendent of Motor Vehicles.
22. M.O. frequently attended the Office in the evenings and weekends to complete her work. She also took materials belonging to the Firm and its clients home from time to time.
23. M.O. entered the Office after hours on four occasions in June 2016, on eighteen occasions in July 2016, and on four occasions in early August 2016.
24. On August 4, 2016, M.O. failed to attend on time for an arraignment hearing at Provincial Court in Vancouver for a client charged with a serious criminal offence (the "Arraignment"), due to a misunderstanding. M.O. was in court in Abbotsford, British Columbia that morning.

25. M.O. spoke with the Regional Crown Counsel regarding the Arraignment later that morning. They arranged for M.O. to attend at a different time, and the Arraignment took place later that day.
26. On August 5, 2016, the Firm hosted a party in the boardroom of the Office to mark the impending departure of two employees (the "Party").
27. The Party commenced at 4:30 pm, and food and drinks were served. Both the Lawyer and M.O. attended the Party. The Lawyer left the Party at 5:30 pm, after which the Party continued.
28. M.O. and other Firm employees drank alcohol at the Party. After the Lawyer's departure from the Party, M.O. complained about her pay to some of the Firm employees.
29. After the Party ended, M.O. and four other Firm lawyers went to a restaurant. M.O. was intoxicated and accused the other articling student at the Firm of trying to seduce or steal her husband, which the lawyers reported as highly disturbing.
30. M.O. also made comments which some other lawyers interpreted as threats to the Firm.
31. The Lawyer received communications from the four Firm lawyers with accounts of M.O.'s conduct during and after the Party.
32. On August 8, 2016, the Lawyer summoned M.O. to a meeting in his office to discuss her conduct (the "Meeting"). The Lawyer told M.O. that he was deeply concerned about her dedication to the firm. He provided her with a copy of the Articling Agreement. The Lawyer advised M.O. that she was suspended from work, and confiscated her keys to the Office. The Lawyer advised M.O. that she was to return at the end of that week, when they would discuss her future.
33. After the Meeting, M.O. was upset and attempted to discuss the incident with another Firm lawyer, who was uncomfortable with the conversation and asked her to leave. M.O. then left the Office.
34. On August 12, 2016, the Lawyer met with M.O. again and advised her that she could return to work on conditions. He required her to attend counselling, and to satisfy him that she had done so. The Lawyer further advised M.O. that she was no longer permitted to come into the Office unaccompanied during evenings and weekends.
35. M.O. arranged to attend counselling through the Lawyer Assistance Program, and informed the Lawyer of this.
36. Between August 15 and September 9, 2016, M.O. attended five counselling sessions.

37. In late August 2016, M.O.'s keys to the Office were returned to her.
38. On September 9 and 10, 2016, M.O. entered the Office after hours again.
39. On September 12, 2016, M.O. commenced the Professional Legal Training Course ("PLTC"). The Lawyer had requested that M.O. return her keys at the commencement of PLTC as she would no longer need them. The Lawyer was under the impression she had done so by September 12, 2016. The Lawyer was also under the impression that M.O. was no longer in possession of client files or other materials of the Firm.
40. Between September 10 and 14, 2016, the Lawyer learned of and investigated a website at the domain name roadsideprohibitions.com. The website included blog entries entitled "BC Driving Prohibitions Blog" (the "Blog"). N.D. and M.O. were involved in the creation of the Blog.
41. The Blog offered information of interest to persons facing a driving prohibition under the *Motor Vehicle Act*. Similar information was offered in the blogs maintained by the Firm and another Firm lawyer, which the Lawyer considered an important part of the Firm's marketing efforts. The Lawyer reviewed the content of the Blog and became concerned that unpublished government documents, copies of which had been obtained by the Firm through *FOIPPA* requests and stored in the Lawyer's personal office, were likely the source of some of the information in the Blog posts. The Lawyer believed the Blog threatened the Firm's competitive position.
42. Additionally, at this time the Firm was in possession of certain documents obtained by way of a *FOIPPA* request, which the Attorney General of British Columbia had subsequently asserted privilege over (the "Privileged Documents"). The Attorney General applied for injunctive relief restraining the Firm from making any use of the Privileged Documents and ordering their return. The Supreme Court of British Columbia denied the application but the Attorney General successfully appealed that decision. The appeal was underway during M.O.'s articling term. Because of the ongoing (and ultimately successful) injunction proceedings, the Firm regarded the Privileged Documents as particularly sensitive and believed it had an ethical obligation to safeguard them and ensure they were not disseminated.
43. On September 13, 2016, the Lawyer made an inquiry to the Blog in the name of R.S. A response was delivered to R.S. from N.D.'s email account.
44. The Lawyer sent a follow up inquiry in the name of R.S. On September 14, 2016, a second response was delivered to R.S. from N.D.'s email account, and signed with M.O.'s name.

45. As a result of his inquiries and his review of the content of the Blog, the Lawyer believed that the Blog was set up by M.O. and N.D. to compete with the Firm. The Lawyer further believed that M.O. and N.D. were in unauthorized possession of privileged, confidential or other sensitive documents which were the property of the Firm or its clients.
46. M.O. and N.D. entered the Office after hours on September 14, 2016 to retrieve M.O.'s framed law school diploma from her office.
47. While they were in the Office, M.O. and N.D. encountered the Lawyer. The Lawyer asked M.O. to return her keys to the Office, and M.O. complied. The Lawyer did not mention his discovery of the Blog.
48. The Lawyer sought advice from a Law Society Practice Advisor respecting, among other things, the Firm's obligations to safeguard its clients' privileged information and potential actions the firm should take in that respect.
49. On or about September 15, 2016, the Lawyer retained counsel and sought advice about remedies including the potential commencement of a civil action.

#### *Termination and Legal Proceedings*

50. On September 16, 2016, the Firm and the Lawyer filed a Notice of Civil Claim against M.O. and N.D. in the New Westminster Registry of the Supreme Court of British Columbia (the "NOCC"), seeking notional damages, punitive damages, and injunctive relief. The claims against M.O. in the NOCC included breach of contract, theft, wrongful use of proprietary and privileged materials belonging to the Firm, and trespass.
51. On September 21, 2016, M.O. was served with the NOCC along with a September 16, 2016 letter from the Lawyer, terminating M.O.'s employment.
52. In the NOCC, the Firm and the Lawyer pleaded the following:
  - (a) M.O. entered the Firm's premises, alone and with N.D., after hours and without permission;
  - (b) M.O. failed to attend a scheduled court appearance in June 2016 *[sic]*;
  - (c) M.O. engaged in disloyal and "trouble making" activity at an office party and subsequent dinner with co-workers on August 5, 2016, and by making untenable accusations against co-workers;
  - (d) M.O. was insubordinate and disobeyed the Lawyer's instructions by failing to leave the office immediately when she was asked to on August 8, 2016 and by refusing to attend counselling as instructed;

- (e) M.O. avoided responsibility and demonstrated that she was unfit to practice law;
  - (f) M.O. took materials belonging to the Firm and its clients home without permission;
  - (g) M.O. entered into competition with the Firm by creating the Blog and posting materials on it based on similar blog postings by the Lawyer and another Firm lawyer for Firm's benefit; and
  - (h) M.O. permitted N.D. access to privileged materials of the Firm's clients and confidential materials belonging to Firm, and failed to notify the Lawyer of the breach of privilege.
53. M.O. and N.D. retained counsel to defend the claim.
54. On September 23, 2016, counsel for M.O. and N.D. delivered a box of documents to counsel for the Lawyer containing various materials, including client files, Firm precedents, and *FOIPPA* disclosure, which was proprietary and privileged material.
55. On October 4, 2016, M.O. filed a Response to Civil Claim and Counterclaim against the Firm and the Lawyer for wrongful dismissal.
56. On July 10, 2017, the claim against N.D. was settled and dismissed by consent.
57. As part of that settlement, N.D. returned an additional box of documents containing proprietary and privileged material, beyond that which was included in the box delivered to counsel for the Lawyer. The Lawyer reviewed these documents and concluded that these were documents that had been stored in his personal office. N.D. further swore an affidavit attesting that he had returned everything he had and retained no further materials.

*BC Supreme Court Trial*

58. A trial took place on June 17-21 and July 2-3, 2019, before a judge of the Supreme Court (the "Trial Judge").
59. On August 13, 2019, the Trial Judge released his Reasons for Judgment (the "Trial Decision") making the following findings:
- (a) The action against M.O. was dismissed.
  - (b) The action brought by M.O. against the Firm was allowed, and the Firm was ordered to pay ordinary damages of \$18,934 and aggravated damages of \$50,000.
  - (c) The action brought by M.O. against the Lawyer was allowed, and the Lawyer was ordered to pay M.O. nominal damages of \$10 for breach of the Articling Agreement.

(d) M.O. was awarded ordinary costs of both actions if a hearing was not requested within 14 days of the release of the Trial Decision.

60. In concluding that M.O. was wrongfully dismissed, the Trial Judge made the following findings of fact:

(a) M.O. was entitled to have her employment continue for the full 12-month term of the Articling Agreement, unless she was guilty of misconduct constituting just cause for immediate termination.

(b) M.O. was no longer in possession of material belonging to the Firm or its clients.

(c) There was no evidence M.O. was ever in possession of or misused information that could be described as a trade secret.

(d) M.O.'s attendance at the Office after hours was not trespass.

(e) M.O.'s failure to attend a scheduled court appearance was the result of a misunderstanding, and a trivial event.

(f) M.O.'s conduct during and after the Party did not amount to a breach of her duty of loyalty.

(g) There was no merit to the allegations that M.O. was insubordinate, deliberately avoided responsibility, or performed her work incompetently.

(h) By bringing materials home, M.O. did not breach her duty of loyalty to the Firm or rules made known to her or reasonably discerned by her.

(i) M.O. did not enter into competition with the Firm and the Lawyer through the Blog.

(j) A breach of client privilege occurred when N.D. scanned a Firm client file to his Gmail account. M.O.'s failure to report N.D.'s access to a client file to the Lawyer was a serious error in judgment, but not a fundamental breach of her obligations as the Lawyer's articled student and the Firm's employee.

61. In concluding that M.O. was entitled to a substantial award of aggravated damages, the Trial Judge made the following further findings of fact:

(a) Much of the conduct of the Firm and the Lawyer against M.O. was unfair and unduly insensitive.

(b) The Lawyer's response on discovering the Blog was disproportionate.



- (c) M.O. was the victim of unfair, bullying, bad faith conduct by the Firm and the Lawyer, and suffered substantial and prolonged emotional distress because of that conduct, that is well outside the norm for dismissed employees.

*Court of Appeal*

- 62. On September 11, 2019, the Firm and the Lawyer filed an appeal of the Trial Decision to the British Columbia Court of Appeal.
- 63. On September 24, 2019, M.O. filed a cross-appeal.
- 64. The hearing of the appeal took place on January 13-14, 2021. At the hearing of the appeal, the Firm and the Lawyer did not challenge the Trial Judge's findings of fact in the Trial Decision.
- 65. On May 10, 2021, the Court of Appeal released its Reasons for Judgment making the following findings:
  - (a) The appeal of the Firm and the Lawyer was dismissed.
  - (b) The cross-appeal of M.O. was allowed.
  - (c) The general damages award against the Firm was increased by \$100,000, resulting in general damages of \$118,934 and aggravated damages of \$50,000 against the Firm.
  - (d) The \$10 damages award against the Lawyer for breach of the Articling Agreement was upheld.
  - (e) M.O. was awarded punitive damages of \$25,000 jointly and severally against the Firm and the Lawyer.
  - (f) M.O. was awarded costs of the appeal and the cross-appeal.
- 66. In increasing M.O.'s general damages award, the Court of Appeal made the following findings:
  - (a) As a result of her wrongful dismissal, M.O. lost the opportunity to become a lawyer at the end of her articling period.
  - (b) The Trial Judge's failure to award damages for loss of opportunity in these circumstances was an error in principle.
- 67. In awarding M.O. punitive damages, the Court of Appeal found that the Trial Judge failed to deal with M.O.'s punitive damages claim in the Trial Decision, and the awards of general

and aggravated damages were not sufficient to achieve the goals of denunciation, deterrence, and retribution.

*Mitigating Factors*

68. The Lawyer retained, and relied on the advice of, experienced trial counsel in drafting the pleadings, advancing the matter, and conducting the trial and appeal.
69. In the course of filing and pursuing the NOCC, the Lawyer held an honest belief that privileged and other highly sensitive materials, including the Privileged Documents, were improperly retained by M.O.
70. Based on the advice of his counsel, certain evidence was not presented by the Lawyer to the Court at trial which may have affected the nature of the findings, had the Court been made aware of it.
71. The following are two examples.
72. First, the Trial Judge found that several factors weighed heavily in his finding of bad faith. One important example was cited at paragraph 128(b) of the Trial Decision:

The decision to serve [M.O.] in front of her classmates at PLTC was unnecessary and psychologically brutal. [M.O.] lived a short walk from Acumen's office. Mr. Doroshenko knew her address. In his evidence, Mr. Doroshenko suggested that he made the decision to serve [M.O.] at PLTC because the server could not locate her at home. This is manifestly untrue. The notice of civil claim was filed on September 16 and [M.O.] was served before classes were done for the day. This was a deliberately public firing;

73. Unbeknownst to the Trial Judge, M.O. was not served on September 16, 2016 (the same day the Notice of Civil Claim was filed) but on September 21, 2016. The Lawyer advises that attempts were made to serve M.O. at her residence and that service at PLTC was not the first resort. Trial counsel for the Lawyer was in possession of an affidavit of service confirming that M.O. was served on September 21, 2016, but this document was not before the Trial Judge or the Court of Appeal. Additionally, the Lawyer later became aware that M.O. was served discreetly outside of her classroom, and not in front of her classmates.
74. Second, N.D. was the subject of a Law Society credentials hearing which took place in March 2019. The decision of the hearing panel (the "Credentials Decision") was released shortly before the commencement of the trial and was not before the Trial Judge or the Court of Appeal.

75. The findings set out in the Credentials Decision included:
- (a) N.D. had obtained material belonging to the Firm “from his wife,” such as:
    - (i) a client file which he knew was from the Firm and which contained confidential client information; and
    - (ii) a binder of materials that he also received from his wife, which he knew or ought to have known contained confidential and/or proprietary information of the Firm; and
  - (b) N.D. admitted that he had misappropriated confidential information from the Firm.
76. N.D. did not give evidence at trial. Likewise, M.O. did not give evidence before the credentials hearing panel.
77. The Lawyer admits that his conduct in pursuing the allegations in the NOCC against M.O. was unduly insensitive and ill-advised. The Lawyer advises that, were he put in the same position today, he would handle matters differently.

*Sanction*

78. The Lawyer has agreed to pay a fine of \$15,000 and to reflect on how to help create a more inclusive, respectful, and positive workplace. In furtherance of the latter, the Lawyer has agreed to complete the online webinar repeat of the CBABC’s Equality, Diversity & Inclusion Series, comprised of the following courses:
- (a) The Canadian Bar Association: EDI Series Part 1: Including Lawyers with Disabilities;
  - (b) The Canadian Bar Association: EDI Series Part 2: Unconscious Bias in the Workplace; and
  - (c) The Canadian Bar Association: EDI Series Part 3: Pathways to Lawyer Well-Being: Inclusive Environments Matter.
79. In approving the consent agreement proposal, the Chair of the Discipline Committee also considered that the proposed sanction was consistent with the outcome in prior, similar matters.