

**THE LAW SOCIETY OF BRITISH COLUMBIA**

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

AND

**PATRICK C. BURKE**

(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 July 12, 2024, the Chair of the Discipline Committee approved a consent agreement proposal submitted by Patrick C. Burke (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*:
  - i. Between approximately March 2019 and August 2022, the Lawyer improperly handled approximately \$23,665.85 received as retainer funds from clients by failing to deposit the trust funds into a pooled trust account, contrary to Rule 3-58(1) of the Law Society Rules.
  - ii. Between approximately January 1, 2012 and January 1, 2023, the Lawyer collected Goods and Services Tax (“GST”) from clients but failed to remit the funds and interest to the Canada Revenue Agency in payment of the GST in a timely way, contrary to rule 7.1-2 of the *Code of Professional Conduct* for British Columbia.
  - iii. Between approximately January 1, 2013 and January 1, 2023, the Lawyer represented to the Law Society in his 2013 – 2022 Annual Practice Declarations that his law firm had paid GST in full and on time when he knew that answer was not true.
3. Under the proposal, the Lawyer agreed to be suspended from the practice of law for a period of (6) six-weeks, commencing on July 19, 2024.

4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated June 27, 2024, 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**

#### *Member Background*

8. The Lawyer was called to the bar and admitted as a member of the Law Society of British Columbia on August 5, 1987.
9. The Lawyer practises part-time in the areas of family law, wills and estates, mediation, and civil litigation.
10. Since his call to the bar, the Lawyer has practised law as a sole practitioner in Surrey, BC.

#### *Background Facts*

11. The Law Society conducted a compliance audit of the Lawyer's practice. The audit covered the period of June 1, 2020 to September 16, 2022.
12. The audit revealed a number of professional conduct issues related to the Lawyer's handling of trust funds and compliance with trust accounting rules.

#### *Fixed Fee Agreements*

13. Between March 2019 and August 2022, the Lawyer received at least \$23,665.85 as advanced payments for fixed fee retainer agreements in relation to 21 client matters (the "Retainer Agreements").
14. The Retainer Agreements provided that a non-refundable retainer payment would be credited against legal work and disbursements the Lawyer had completed or would complete.

15. In some cases, the Retainer Agreements provided that the Lawyer would refund any unused portion of the initial or subsequent retainers to the client, whereas other agreements provided that the Lawyer would refund the “unused portion of a subsequent retainer”.
  16. In most cases, the clients signed acknowledgements noting that the advances would be deposited directly into the Respondent’s general account as a “non-refundable retainer”.
  17. The monies were not deposited into trust as required by the Law Society Rules (the “Rules”). The funds were deposited into the Lawyer’s general account and he made personal use of the funds prior to having completed the legal work required. The Lawyer ultimately completed the work required to match the value of the retainers in all but two cases. In those two cases, the balance of the retainer in excess of the work completed was refunded to each client.
  18. The Lawyer did not adequately explain to the clients the usual practice of depositing fixed-fee retainer funds into a trust account and then billing and withdrawing the funds upon completion of the legal work. He also did not advise the clients to seek independent legal advice regarding his personal use of the funds immediately upon receipt.
  19. The Lawyer did not deliver invoices to the clients prior to depositing the funds into his general account as required by the Rules.
  20. There is no indication any of the Lawyer’s clients raised a complaint or concern regarding the Retainer Agreements.
  21. The Lawyer has since rectified his accounting practice to bring it into compliance with the Rules.
- GST*
22. The Lawyer was required to file Goods and Services Tax (“GST”) returns for his law firm on an annual basis.
  23. The Lawyer did not file the 2014, 2015, 2017, 2018, 2019, or 2020 GST returns on time.
  24. The Lawyer did not pay the 2012, 2013, 2017, 2018, 2019, 2020 and 2021 GST on time.
  25. The overdue remittances were not paid until after the compliance audit uncovered the overdue amounts.
  26. The Lawyer is now up to date with respect to his law firm’s financial obligations pertaining to GST filings and payments.

27. The Lawyer's failure to promptly meet the financial obligations of his practice was caused by significant personal and family financial pressures.

*Misleading the Law Society*

28. The Lawyer provided false and misleading statements to the Law Society in each of his Annual Trust Reports for the years 2013-2022 when he answered the following question in the affirmative:

During the reporting period, has the practice paid [GST] in full and on time? If no, provide an explanation why the necessary remittances have not been made.

29. The Lawyer knew that his responses were false and misleading at the time he submitted the annual trust reports. He admits that his answers were designed to prevent the Law Society from further looking into the state of his firm's GST filings and payments.
30. The Lawyer says that he was embarrassed, under a lot of stress, and afraid of the repercussions of admitting the truth.

*Mitigating Factors*

31. The Lawyer has no prior professional conduct history.
32. The Lawyer was cooperative with the Law Society and admitted all of his misconduct.