

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

DONALD L. WILKINSON

(a member of the Law Society of British Columbia)

RULE 3.7-1 CONSENT AGREEMENT

1. On March 23, 2026, the Chair of the Discipline Committee approved a proposal submitted by Donald L. Wilkinson (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. On approximately January 31, 2023, while acting as executor and representing the Estate of AA (the “Estate”), the Lawyer misappropriated or improperly withdrew \$14,057.24 from trust, purportedly as his executor fees, when he was not entitled to some or all of those funds, contrary to Rules 3-64 and 3-55(1) of the Law Society Rules, rules 2.2-1 and 3.6-1 of the *Code of Professional Conduct for British Columbia*, and his fiduciary duties.
 2. On approximately November 5, 2020, while acting as executor and representing the Estate, the Lawyer misappropriated or improperly withdrew \$30,502.08 by issuing the following trust cheques payable to BB when he ought to have known that BB was not entitled to those funds, contrary to Rules 3-64 and 3-55(1) of the Law Society Rules, rule 2.2-1 of the *Code of Professional Conduct for British Columbia*, and his fiduciary duties:
 - a. trust cheque for \$6,000.00, purportedly reimbursing BB for expenses incurred while acting as attorney for AA;

- b. trust cheque for \$12,251.04, purportedly for Power of Attorney fees; and
 - c. trust cheque for \$12,251.04, purportedly for acting as joint executor of the Estate.
3. On approximately February 27, 2023, while acting as executor and representing the Estate, the Lawyer misappropriated or improperly withdrew \$10,885.12 from trust, purportedly as care and management fees for the period of June 16, 2020 to June 16, 2022, when he was not entitled to some or all of those funds, contrary to Rules 3-64 and 3-55(1) of the Law Society Rules, rules 2.2-1 and 3.6-1 of the *Code of Professional Conduct for British Columbia*, and his fiduciary duties.
4. Between approximately April 2019 and May 2023, while acting as executor and representing the Estate, the Lawyer failed to provide the quality of service required of a competent lawyer in a similar situation, contrary to rules 2.1-3, 3.1-1, 3.1-2 and 3.2-1 of the *Code of Professional Conduct for British Columbia*, including by doing the following:
- a. failing to properly review the enduring power of attorney for any terms awarding fees to the attorney;
 - b. incorrectly advising BB that she was entitled to renounce executorship, when he knew or ought to have known that she had intermeddled with the Estate;
 - c. incorrectly advising BB that she was entitled to compensation for performing her duties as attorney;
 - d. incorrectly advising BB that she was entitled to be reimbursed for \$6,000.00 in expenses while performing her duties as attorney;
 - e. failing to obtain records from BB supporting her claim for expenses incurred while acting as an attorney;
 - f. failing to properly review the Last Will and Testament of AA, in particular clause 18 which required that his executor fees be determined on an hourly basis; and
 - g. failing to properly review section 88 of the *Trustee Act* to determine:
 - i. appropriate executor's fees; and
 - ii. appropriate care and management fees.

5. Between approximately April 2019 and May 2023, while acting as executor and representing the Estate, the Lawyer failed to properly supervise his legal assistant, CC, or he improperly delegated to CC his responsibilities in relation to the Estate, or both, contrary to rule 6.1-1 of the *Code of Professional Conduct for British Columbia* and Rule 3-54 of the Law Society Rules, including by doing the following:
 - a. failing to personally review the January 8, 2002 Enduring Power of Attorney of the Deceased, properly or at all; and
 - b. failing to review the January 14, 2008 Last Will and Testament of the Deceased, properly or at all.
3. The Lawyer consented to resign his membership in the Law Society of British Columbia. He is past the usual age of retirement. Having resigned as a result of disciplinary proceedings under section 15(3)(a) of the *Legal Profession Act*, the Lawyer would be subjected to a mandatory credentials hearing if he were ever to apply for reinstatement. A credentials panel would then consider his professional conduct record, including the current admitted misconduct, and the onus would be on the Lawyer to establish his “good character and repute” and fitness to become a barrister and solicitor.
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 the Lawyer’s prior professional conduct record. This consent agreement will now form part of the Lawyer’s professional conduct record.
5. In approving the consent agreement proposal, the Chair of the Discipline Committee also considered that the proposed suspension was consistent with the outcome in prior, similar matters.
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 anonymized and summarized below.

Summary of Misconduct

Member Background

8. The Lawyer was called to the bar and admitted as a member of the Law Society of British Columbia (the “Law Society”) in May 1995.
6. The Lawyer has a professional conduct record consisting of a conduct review in 1999, a practice standards “file-side chat” in 2015, and an administrative penalty in 2023.

Estate of AA

7. Between approximately January 2019 and May 2023, the Lawyer acted as the solicitor and executor of the Estate of AA (“AA” or the “Deceased”).
8. In January 2002, AA made an enduring power of attorney (the “EPOA”) appointing her husband as her attorney, and appointing her grand-daughter BB (“BB”) as attorney if AA’s husband was unable to act.
9. The Lawyer executed the EPOA as the officer.
10. The EPOA did not contain a clause expressly authorizing compensation to the attorney.
11. BB became AA’s attorney when AA’s husband predeceased AA in January 2017.
12. In January 2008, AA made a Last Will and Testament (the “Will”), appointing her husband to be her executor and trustee.
13. AA appointed the Lawyer and BB as co-executors and trustees of her Will in the event that AA’s husband predeceased her.
14. The Lawyer drafted the Will and witnessed AA’s signature.
15. The Deceased named seven specific beneficiaries of her Will, including BB and another individual, DD (the “Specific Beneficiaries”).

16. The Deceased named two residuary beneficiaries of her Will: an organization, EE Canada, and her daughter, FF (the “Residuary Beneficiaries”).
17. The Will provided that the residue of the estate was to be split, with 90% to be held in a discretionary trust for FF (the “FF Trust”).
18. Clause 18 of the Will allowed the Lawyer to charge his regular legal fees for services rendered as trustee, but did not allow him to charge double fees for work performed as AA’s trustee and work done as solicitor of the Estate.
19. Clause 18 of the Will stipulated that the Lawyer’s executor’s fee should be charged on an hourly basis, not as a percentage of the value of the Estate.
20. AA died in April 2019.
21. After AA’s death and between April and September 2019, BB performed a number of tasks for Deceased’s estate.
22. The Lawyer also itemized a number of tasks that BB performed before renouncing her appointment as executor.
23. On April 15, 2019, BB met with CC, the Lawyer’s legal assistant, at the Lawyer’s office. BB was provided with a copy of the Will and became aware that she had been appointed a co-executor of the Will.

Executor and Power of Attorney Fees

24. On June 6, 2019, the Lawyer issued invoice no. 145936, billing his executor’s fee on an hourly basis, recording 2.30 hours at \$400 per hour. The fees totaled \$880.00 plus GST and PST for a total of \$985.60.
25. The Lawyer paid invoice no. 145936 to himself from trust on September 23, 2020.
26. On August 19, 2019, BB emailed CC advising that acting as executor was “costing [her] too much time and money and is official [sic] a hardship for [her]”.

27. On August 26, 2019, CC emailed the Lawyer, suggesting they should let BB know that she may be entitled to compensation for her time and expenses as power of attorney and for acting as an executor.
28. On August 27, 2019 CC emailed BB informing her of the option to opt out of being a co-executor.
29. On September 26, 2019, the Lawyer wrote to BB stating:

I understand that my assistant [CC] has been in touch with you regarding your involvement as a joint Trustee of your grandmother's estate. Based on one of your earlier emails, it sounded to me that you have a lot on your plate at the moment. As such, you said that I would be in charge in looking after [the Deceased's] estate. I do not mind doing so. In fact, I will end up doing the bulk of the work associated with the estate in any event. As such, I would recommend you renounce your appointment as a co-executor. This will save a lot of time sending documents back in forth from my office to you and from you to me.

If you wish to remain involved, I would probably have you look after [the Deceased's] income tax situation and the application for a CRA clearance certificate. Also, there is a need to transfer title from [the] condo [...].

On the other hand, if you want me to look after those things and the rest of the estate work, please let me know and I will have [CC] send you the renunciation form for your signature.
30. Also on September 26, 2019, after writing to BB as set out in paragraph 29 above, the Lawyer instructed CC to send BB the Notice of Renunciation, which includes a declaration that the executor has not intermeddled with the estate. BB signed the Notice of Renunciation on the same day.
31. On February 27, 2020, the Lawyer signed the Form P10 Affidavit of Assets and Liabilities for Domiciled Estate Grant; Exhibit A of this Affidavit indicated that the gross value of the estate was approximately \$1.2 million.
32. On June 16, 2020, Grant of Probate was issued to the Lawyer.
33. On August 13, 2020, CC emailed the Lawyer, stating:

If you contact [BB] and sort out what she wants or would accept as Executor fees and POA fees, we could probably bill this file. [...] we will need to do your account and know what we are going to be paying [BB].

34. On September 9, 2020, the Lawyer emailed BB, stating:

...we are gathering up monies from various sources so we can payout monies to the beneficiaries as soon as possible. I wanted to say to you that in addition to your share of estate as set out in [the Deceased's] Will, I think you should receive a percentage share of the estate to cover your involvement as a Trustee before you renounced your appointment. I would think 1% of the value of the estate would be appropriate. For example, let's say the estate is worth \$1,000,000. In that case, your fee at 1% would be \$10,000. Would you be willing to accept this amount? Please let me know at your convenience.

35. On September 10, 2020, BB responded to the Lawyer, stating:

...I appreciate the offer of 1% and accept that is fair. [...]

36. On September 15, 2020, the Lawyer advised BB that she could receive fees for acting as the Deceased's attorney and receive compensation for expenses she had incurred while acting as attorney.

37. In particular, the Lawyer and BB communicated by email on September 15, 2020 as follows:

a. the Lawyer to BB:

...

In addition to your executor fee, you are also allowed compensation for doing the work of an attorney under a Power of Attorney. Would you like to suggest a reasonable fee for all the work you did as the Power of Attorney?

...

I look forward to your reply about your attorney fee.

b. BB to the Lawyer:

...

As for my fee for POA I had no idea that was even a thing. Happy to know it is though. I asked google what is fair in Canada for such a fee and it seems to vary. Am I allowed to ask your advice on this matter?

c. the Lawyer to BB:

... Regarding your POA fees, it depends on how much work was done. I would suggest the same fee as the executor fees, being 1% of the value of the estate (approx. \$10,000) plus out of pocket expenses. Out of pocket expenses would include air flights, gas for the car, food, etc.

Let me know what you think re: fees and an estimate of your expenses. Thanks.

38. On October 21, 2020, CC emailed the Lawyer, stating:

... I would like to do the specific payouts to the beneficiaries on this file. In order to prepare the Consents, I need one more piece of information from you.

I see that [BB] has agreed to 1% of the value of the estate as her share of the Executor's fees. That came to \$12,251.04.

Your share is \$36,753.11.

Also – [BB] was the attorney on [the Deceased's] POA. She is entitled to some pay from that as well. Has she agreed to anything in that regard?

39. On October 27, 2020, the Lawyer again advised [BB] that she was entitled to fees for acting as the Deceased's attorney:

... I don't know if I mentioned it to you earlier, but your grandmother's Power of Attorney (POA) allows for her attorney (you) to receive remuneration for acting as her attorney. What would you like to charge the Estate for your services? \$3,000? \$5,000 \$7,500? \$10,000 or something else? You will also receive money for acting as her executor for part of the process? I believe we discussed this already.

40. BB responded to the Lawyer on October 27, 2020, stating:

[...] Yes we had previously discussed this.
We decided on
POA 1% of estate (\$10,000 give or take)
plus out of pocket expenses of \$6000.00
Executor (help) 1% of estate (\$10,000 give or take)
This was mentioned to be \$26,000 (give or take)
Plus [AA] had left me a small inheritance.

41. The Lawyer created a "sample" Statement of Account dated October 29, 2020, documenting tasks that he had performed as executor from April 1, 2019 to September

- 30, 2020. In it, the Lawyer recorded 41.20 hours of work at \$400 per hour, for an executor's fee of \$16,730.00, plus GST and PST, for a total of \$18,737.60.
42. The Lawyer did not issue the "sample" Statement of Account dated October 29, 2020; instead, he issued invoice no. 150639, in the amount of \$36,753.11 for his executor's fees, representing 3% of the value of the Estate.
 43. With GST and PST applied, the total of invoice no. 150639 came to \$41,784.97.
 44. The Lawyer paid himself for invoice no. 150639 from trust on October 29, 2020.
 45. The Lawyer withdrew executor's fees of \$41,784.97 from trust on October 29, 2020, without first obtaining the approval of the beneficiaries or obtaining a court order.
 46. On November 2, 2020, the Lawyer sent letters to each beneficiary enclosing the Grant of Probate and a document entitled "RE: THE ESTATE OF [AA], DECEASED – CONSENT" (the "Initial Consent").
 47. The Initial Consent listed the bequests to the Specific Beneficiaries and the residue to be split 90% to FF and 10% to the other residuary beneficiary.
 48. On November 5, 2020, the Lawyer sent a letter to BB enclosing three cheques payable to her:
 - a. \$12,251.04, representing 1% of the value of the estate, for POA fees;
 - b. \$12,251.04, representing 1% of the value of the estate, for acting as joint executor of the Deceased's estate; and
 - c. \$6,000.00 for reimbursing expenses incurred while acting as attorney.
 49. The Lawyer did not review the EPOA to determine whether it awarded fees to the attorney.
 50. On November 5, 2020 the Lawyer also requested that BB provide any receipts supporting her expenses.

51. The Lawyer did not receive from BB or otherwise obtain documents supporting BB's expenses.
52. Between November 10, 2020 and June 8, 2021, each beneficiary signed the Initial Consent.
53. In early 2021, the Lawyer sent letters to the Specific Beneficiaries enclosing a trust cheque of their bequest and a document titled "FINAL RELEASE AND CONSENT" ("Final Release"), which the Lawyer requested be signed and returned.
54. Between January 26, 2021 and March 16, 2021, the Specific Beneficiaries, with the exception of DD, signed the Final Release and received trust cheques of their bequests.
55. The Lawyer did not obtain a Final Release signed by DD.
56. On January 30, 2023, the Lawyer issued invoice no. 159448 invoicing executor's fees of 1% of the gross value of the Estate. His fees totaled \$12,251.04 plus GST and PST, for a grand total of \$14,057.24.
57. The Lawyer paid himself for invoice no. 159448 from trust on January 31, 2023.
58. Prior to withdrawing funds from trust in payment of invoice no. 159488, the Lawyer did not:
 - a. provide the Residuary Beneficiaries a revised Trust Reconciliation disclosing the invoice; or
 - b. obtain signed releases from each of the Residuary Beneficiaries with respect to the invoice.
59. On May 8, 2023, CC provided EE Canada, a Residuary Beneficiary, with a copy of a trust reconciliation dated November 16, 2022 and a Final Release.
60. The November 16, 2022 trust reconciliation provided to EE Canada did not disclose the executor's fee of \$14,057.24 that the Lawyer took on January 31, 2023, for invoice no. 159488.

61. The Lawyer was not entitled to the \$14,057.24 withdrawn from trust on January 31, 2023 in payment of his executor fees.
62. On May 9, 2023, EE Canada signed the Final Release.
63. On May 18, 2023, the Lawyer sent a letter to EE Canada enclosing a trust cheque of \$107,490.54.
64. The Lawyer did not provide a Final Release to FF.
65. The Lawyer paid himself a total of \$56,827.81 in executor's fees, representing 4.5% of the total estate assets of \$1,255,103.55.
66. Between the Lawyer and BB, executor's fees totaled 5.5% of the total estate assets, exceeding the 5% allowed in s. 88(1) of the *Trustee Act*.
67. The Lawyer did not obtain the approval of the Residuary Beneficiaries or obtain a court order prior to taking executor's fees.
68. The Lawyer failed to provide full and accurate information about the Estate accounting to the Residuary Beneficiaries.
69. As a result of the Lawyer's taking of executor fees in the amount of \$14,057.24 without obtaining the approval of the Residuary Beneficiaries or a court order, the Residuary Beneficiaries received a smaller bequest than they were entitled to.

Care and Management Fees

70. On February 27, 2023, the Lawyer issued invoice no. 159734, charging annual care and management fees of \$17,067.32 for the period June 16, 2020 to June 16, 2022 relating to FF's Trust.
71. Section 88(3) of the *Trustee Act* limits a trustee to a care and management fee not exceeding 0.4% of the average market value of the assets.

72. The Lawyer failed to review section 88(3) of the *Trustee Act* prior to calculating his care and management fee.
73. The Lawyer calculated his care and management fee by taking 0.8% of the gross value of the Estate on June 16, 2021 and June 16, 2022.
74. During the investigation, the Law Society auditor emailed the Lawyer inquiring how he determined the average net market value for the calculation of the care and management fees from June 16, 2020 to June 16, 2022.
75. In response, the Lawyer explained that “the amount of pay I received was what was in the account on or about June 2, 2021 and 2022. I have not charged anything since June 2, 2022. My assistant, [CC], simply took the balances on those days and assessed my percentage care and maintenance fee based on that balance amount.”
76. A correct calculation of the Lawyer’s annual care and management fees for the period from June 16, 2020 to June 16, 2022 would have totaled \$6,182.20.
77. The Lawyer took an excess of \$10,885.12 in payment of the care and management fee, which he was not entitled to.
78. As a result of the Lawyer taking an excess of \$10,885.12 in care and management fees, the Residuary Beneficiaries received a smaller bequest than they were entitled to.

Competence and Quality of Service

79. At the material times, the Lawyer took the position that BB was entitled to executor fees for work she performed for the estate between April 9, 2019 and September 26, 2019.
80. By performing work for the Estate between April 9, 2019 and September 26, 2019, BB intermeddled with the Estate.
81. Having intermeddled with the Estate, BB was required to apply to court in order to renounce her position as executor.

82. The Lawyer failed to recognize that renunciation of an executor's position is incompatible with taking executor's fees.
83. The Lawyer's advice to BB that she could take executor fees and also renounce her position as an executor after intermeddling with the Estate was legally incorrect.
84. The Lawyer failed to familiarize himself with the legal conditions under which BB could renounce executorship.
85. Prior to paying power of attorney fees and expenses to BB, the Lawyer:
 - a. failed to review the EPOA for any terms awarding fees to the attorney;
 - b. incorrectly advised BB that she was entitled to fees for performing her duties as attorney;
 - c. incorrectly advised BB that she was entitled to be reimbursed for \$6,000 in expenses while performing her duties as attorney; and
 - d. failed to obtain records from BB supporting her claim for reimbursement.
86. Section 24(1) of the *Power of Attorney Act* states that an attorney must not be compensated for acting unless the enduring power of attorney expressly authorizes the compensation and sets the amount or rate.
87. AS the EPOA did not contain a clause expressly authorizing compensation to the attorney, BB was not entitled to receive power of attorney fees.
88. The Lawyer failed to properly determine whether BB was entitled to attorney fees prior to advising BB that she was entitled to same and facilitating the transfer of Estate funds to BB purportedly as payment of those fees.
89. The Lawyer failed to obtain supporting records from BB for expenses she stated she had incurred while acting as attorney for the Deceased.

90. The Lawyer failed to properly review and comply with clause 18 of the Will, which required that his executor fees be determined on an hourly basis.
91. The Lawyer failed to review section 88 of the *Trustee Act* to determine the appropriate entitlements to executor's fees and care and management fee in the circumstances.

Failure to Supervise

92. The Lawyer did not personally review the EPOA, properly or at all.
93. The Lawyer did not personally review the Will, properly or at all.
94. The Lawyer improperly delegated the review of the EPOA and the Will to his legal assistant, CC.

Mitigating Factors

95. The Lawyer was cooperative with the Law Society investigation, has admitted his misconduct and is remorseful.
96. Since the misconduct, the Lawyer has ceased practising law. He agreed to resign his membership in the Law Society as a result of this consent agreement. Being past the usual age of retirement, it is unlikely that the Lawyer will apply for reinstatement in the future; however, if he did, he would be subjected to a mandatory credentials hearing.