

THE LAW SOCIETY OF BRITISH COLUMBIA

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

AND

JAMES W. LEES, K.C.

(a member of the Law Society of British Columbia)

RULE 3-7.1 CONSENT AGREEMENT SUMMARY

1. On May 9, 2025, the Chair of the Discipline Committee approved a consent agreement proposal submitted by James W. Lees, 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 2006 and 2020, while working full-time for the British Columbia Prosecution Service, the Lawyer billed unreasonably for additional work as an agent for the federal prosecution service, contrary to rule 3.6-1 of the *Code of Professional Misconduct for British Columbia (the “Code”)*.
3. Under the proposal, the Lawyer agreed to a restriction on practice as follows:

Pursuant to rule 3-7.1(2)(b), effective the date this consent agreement is approved, the Lawyer is restricted from changing his practice status (currently non-practicing) to practicing, with the Law Society of British Columbia, unless he is employed as Crown Counsel with the BC Prosecution Service, or otherwise only with the permission of the Executive Director of the Law Society.
4. In making its decision, the Chair of the Discipline Committee considered an Agreed Statement of Facts dated 2 May 2025, and a letter from the Lawyer to the Chair of the Discipline Committee. The Chair also considered that the Lawyer does not have a prior professional conduct record.

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 are summarized below.

Summary of Facts

Member Background

8. The Lawyer was called and admitted as a member of the Law Society of British Columbia on 31 May 1984. He has held non-practising status with the Law Society since 22 October 2021. The Lawyer practiced in the area of criminal law, primarily as a prosecutor in Surrey, Delta and Richmond, British Columbia.
9. The Lawyer was employed by the British Columbia Prosecution Service (previously known as the Criminal Justice Branch of the provincial Ministry of Attorney General, referred to here as the "BCPS") from 1986 to 2021.
10. The Lawyer has no prior disciplinary history in British Columbia, or any other jurisdiction.

Background Facts

11. The Lawyer worked for 35 years — from 1986 to 2021 — as a BCPS prosecutor.
12. In addition to this, he worked for the law firm Cherrington, Minten for three years (1996 to 1999), and J.M. LeDressay and Associates for 21 years (1999 to 2020) handling federal prosecution work that arose out of Langley and Delta that was contracted out to Cherrington, Minten and, later, J.M. LeDressay and Associates. The LeDressay firm is referred to here as the "Firm".
13. The subject matter of the consent agreement is the manner in which he billed the federal prosecution service while simultaneously working as a full-time provincial prosecutor. The federal prosecution service was previously under the federal Department of Justice ("DOJ"), but is now the Public Prosecution Service of Canada ("PPSC"); this document employs the term "PPSC" to refer to both.

Conduct

14. In British Columbia there is both a federal prosecution service (the PPSC) and a provincial prosecution service (the BCPS). BCPS prosecutors handle the bulk of criminal

cases, most of which are under the *Criminal Code*. Meanwhile, federal Crown counsel prosecute offences under other federal statutes, such as the *Controlled Drugs and Substances Act*. The terms “prosecutor” and “Crown counsel” are used interchangeably. In this province, the PPSC employs a team of prosecutors who handle all cases in Vancouver, and serious cases throughout BC. The federal Crown often contracts with law firms that are known as “standing agents” or “federal agents”, to handle less complex prosecutions in many parts of the province.

15. The Lawyer was a BCPS staff prosecutor, while also working for the Firm as a federal agent.
16. The Lawyer began working as a BCPS prosecutor in 1986. From 2006 to 2020 he was a full-time provincial prosecutor. From 1996 onwards, he worked as a standing federal agent while maintaining his employment status with the BCPS.
17. In 1996-1998, the Lawyer was given direction from members of Cherrington, Minten, as well as his agent supervisor and a standing agent from another law firm handling federal contract work, as to how he could bill his time. This included: billing for waiting time in court; not being required to do other work when waiting in court; no cap on the amount of waiting time that could be billed; and billing for negotiation time where he spoke to — and made himself available to speak to — defence counsel.
18. The Lawyer billed his federal prosecution work on this basis for the remainder of his career. He recorded his time on daily time sheets, which were submitted to his law firm before being sent to the PPSC for payment.
19. From 2002 to 2020, the Lawyer worked in Surrey for the BCPS and for J.M. LeDressay and Associates handling the Firm’s non-trial federal prosecutions arising out of Langley and Delta.
20. The Lawyer did this work openly throughout his career. He obtained explicit approval from senior leadership at the BCPS in Delta in 1998-2002, as well as from the PPSC and the firms, to handle BCPS and PPSC courtroom work on the same day. When he moved to Surrey in 2002, he sought and obtained approval from senior BCPS management and J.M. LeDressay and Associates to continue with the work arrangement. Over the years, BCPS senior management at Surrey changed, but management was aware of his ongoing work as a federal agent and did not raise concerns with him.
21. Senior BCPS management did not know how much he billed or the manner in which he billed, and did not question him about this. The PPSC apparently did not monitor or scrutinize the Lawyer’s federal billings. The federal prosecution service did not voice any problem or concern until it filed the present Law Society complaint.

22. The Lawyer's time sheets and billings were transparent. The PPSC would have seen that he was billing hours of waiting time most of the days of the week soon after arriving in Surrey in 2002. His billing practices were consistent for over 20 years, although the amount of time billed increased significantly.
23. The Lawyer believed the PPSC was aware of his billings, the manner in which he billed, and that the PPSC was regularly monitoring and scrutinizing his billings. The law firms were fully aware of how the Lawyer was recording and billing his federal time while working simultaneously for BCPS. Had the PPSC or the law firms told him that his billings were unreasonable, he would have changed his billing practices.
24. From 2002 to 2020, the Lawyer's primary work at the Surrey Provincial Court was appearing on provincial and federal files in remand court on initial and early appearances, negotiating with defence counsel to resolve files, and appearing in disposition court to speak to sentence. His secondary work was federal charge assessment, reading and analyzing the evidence to determine whether it supported charges. The secondary work was conducted at his home office in the early morning, evening, and weekends.
25. The Lawyer gained a reputation as a capable and hard-working prosecutor who was able to resolve many files before trial. He was designated Queen's Counsel in 2009 and was an expert in charge assessment. He vigorously applied the charge assessment test, resulting in fewer charges being approved, saving the public substantial amounts.
26. From 1998 to 2002, in Delta, the Lawyer billed around 6-8 hours per week on federal court appearances, about half of which was waiting time.
27. Between 2002 and 2020, the volume of work at Surrey Provincial Court (which absorbed Delta and Langley cases after those courthouses closed) was exponentially higher. The Lawyer's billings in Surrey increased quickly as a result. Between 2005 and 2020, he was billing, on average, between 25 and 30 hours per week on federal court appearances — approximately four times more than in Delta. Of that, 70 per cent was waiting time. During most of those waiting hours, the Lawyer was speaking in court to BCPS files.
28. The Lawyer billed these amounts for his federal prosecution work:
- Fiscal 2017-2018: 2472 hours
 - Fiscal 2018-2019: 2545 hours
 - Fiscal 2019-2020: 3204 hours
29. Of the total hours, the Lawyer estimates that approximately 50-60 per cent reflected court time, while the remainder was work done at his home office, mainly charge assessment.

30. These billings were in addition to his work, and salary, as full-time BCPS Crown prosecutor.
31. Beginning in 2003, the Lawyer billed the PPSC (through J.M. LeDressay and Associates) for travel time to and from court, even though he was already required to be there as a BCPS prosecutor. In November 2003, the Firm advised him that other lawyers billed their travel time even if they were already appearing on their own defence or family law files.
32. The Lawyer billed for his time when available to meet with defence counsel, rather than only the time spent in such meetings or discussions. He billed in this fashion after explaining to his first agent supervisor why it assisted resolving files without trial, having “drop-in” or “availability time” to meet with defence counsel. The Lawyer received permission from his agent supervisor to bill in this fashion.
33. Each day, the Lawyer billed all of his time until the last federal file was called in court, even though he would be addressing provincial files within that time.

Complaint

34. In February 2021, the Law Society initiated an investigation in response to a complaint, which led to the present consent agreement. In September of 2021, the Lawyer’s employment with the BCPS was terminated. He became a non-practicing member of the Law Society of British Columbia in 2021.
35. Rule 3.6-1 of the *Code* provides as follows:
- A lawyer must not charge or accept a fee ... unless it is fair and reasonable and has been disclosed in a timely fashion.
36. The Lawyer accepts that the manner in which he billed his time did not accord with this rule. He received double payment for his time every day in court (his BCPS salary as well as compensation from the Firm for his federal prosecution billings).
37. The Lawyer’s PPSC billings, independent of his BCPS work and salary, were very high. For the 15 years between 2005 and 2020, he dipped below 2200 hours per year only once. His average for this 15-year period was 2622 hours per year. These figures arose because of the manner in which the Lawyer had always billed, including travel time, available time, and waiting time, even when he was speaking to provincial cases in court.
38. During the period 2006 to 2020, the Lawyer failed to contact his agent supervisor to determine whether the manner in which he billed his court appearances remained appropriate, given the significant increase in work and billings. He assumed that his court

appearance billings were appropriate for the following reasons: he continued to bill in the same manner as he had in Delta (1996 to 2002); the Firm was aware of his increased billings and voiced no concern; the PPSC never complained about his billings despite conducting audits during the 24 years that he was submitting time sheets; and the Firm was sending accounts to their client, the PPSC.

39. Although the Lawyer may have honestly believed that his billings were reasonable, he was mistaken because he failed to appreciate that the changes in circumstances rendered his billings unreasonable. Had he brought these changes in circumstances to the attention of the PPSC, he would likely have been told that the manner in which he billed was no longer reasonable. In continuing to bill as he did, he breached the requirement set out in rule 3.6-1 of the *Code*. The ultimate effect of the arrangement was not fair and reasonable to the PPSC.

Mitigating Factors

40. As detailed above, when the Lawyer commenced doing federal agent work, he was given direction as to how he was to bill for his time. He relied on that direction.
41. The Lawyer handled both his BCPS work and his PPSC agent work in open court. This was widely known at the Surrey Provincial Court.
42. The Lawyer submitted his time entries through the Firm in a context where he understood the Firm reviewed and approved his time, which was used to bill the PPSC, and likewise where the PPSC would review and audit accounts generally. He was never alerted to any concern or issue until 2021.
43. The Lawyer gained a reputation as a hard-working, capable and respected prosecutor. His misconduct involves billing as opposed to the quality of his work.