CLIFF No: 394404
DATE: 17-July-2012

MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Update to the Provincial Court's Justice Delayed Report as of March 31, 2012

PURPOSE OF NOTE:

FOR INFORMATION: The Honourable Shirley Bond, Minister of Justice and Attorney General

ISSUE:

In July 2012, the Office of the Chief Judge (OCJ) will be releasing the Provincial Court's bi-annual update to their Justice Delayed report, current to March 31, 2012.

EXECUTIVE SUMMARY/RECOMMENDATION:

The report shows decreases in hearing delay for adult criminal cases, child protection cases, and family cases. However, the delay for small claims' hearings has risen somewhat from the last report. The Provincial Court has indicated that the small claims settlement conference issue has been addressed and the delay is expected to be mitigated in the future.

The judicial complement continues to be equivalent to about 127 JFTEs, although the percentage of part-time (i.e., senior program) judges continues to increase as more judges opt for the part-time program. The JFTE complement remains below the 143.65 benchmark level the Provincial Court maintains is needed.

Adult criminal cases pending (i.e., scheduled for a future appearance of any type) remained relatively stable from the previous report in September, 2011, however the percentage pending greater than 180 days decreased slightly, indicating a decrease in the age of the backlog. There continues to be approximately 2,500 cases pending for greater than 18 months.

The impaired driving administrative sanction program implemented in October, 2010, has resulted in a reduction of impaired driving cases entering the court system (historically 8,000 cases per year decreased to 2,400 cases in 2011/12) and appears to have created caseload and hearing capacity in the Provincial Court by limiting impaired driving cases proceeding to court to the most serious matters. This is thought to have had a material impact on backlog and hearing delay. Consequently, the number of pending impaired driving cases and those awaiting trial are also decreased since the changes were introduced.

Justice transformation initiatives such as Bail Reform, Civil Dispute Tribunal, Small Claims reform, and the *Family Law Act* and rules changes are all focussed on process improvements, or streaming matters out of court, creating greater efficiency and access to justice.

The next justice delayed report update is expected from the OCJ for September 30, 2012.

IMPACT ON OTHER MINISTRIES OR BRANCHES:

Criminal Justice Branch is impacted as the Provincial Court adjusts rota days between, criminal and family/small claims.

BACKGROUND:

The following are the hearing delays for each division of the Court, as of March 31, 2012:

- Adult criminal
  - 2 day trial – 9.4 months, down from 10.6 months in September, 2011
  - ½ day trial – 7.3 months, down from 8.9 months in September, 2011

- Child Protection
  - 1st appearance – 1 month, unchanged from September, 2011
  - Family case conference – 3 months, unchanged from September, 2011
  - ½ day hearing/trial – 7.6 months, down from 8.4 months in September, 2011

- Family
  - 1st appearance – 1 month, unchanged from September, 2011
  - Family case conference – 3 months, unchanged from September, 2011
  - ½ day hearing/trial – 8.1 months, down from 8.7 months in September, 2011

- Small Claims
  - Settlement conference – 6 months, up from 4 months in September, 2011
  - ½ day trial – 11.4 months, up from 10.3 months in September, 2011
  - 2 day trial – 14.6 months, up from 12.7 months in September, 2011

According to the Provincial Court's standards for hearing cases, the time to trial has exceeded what is considered to be reasonable (90 per cent of half-day adult criminal trials within six months and 90 per cent of two day trials within eight months).

Similar Provincial Court hearing delay standards for child protection, family, and small claims cases are not being met in many sites across the province.

The court locations with the longest hearing delay in adult criminal continue to be:
- Surrey (14 months for ½ day trials, 15 months for 2 day trials)
- Port Coquitlam (10 months for ½ day trials, 12 months for 2 day trials)
- Terrace (10 months for ½ day trials, 11 months for 2 day trials)

The court locations with the longest hearing delay in child protection are:

- New Westminster (13 months for a ½ day hearing)
- Chilliwack (9 months for a ½ day hearing)
- Abbotsford (7 months for a ½ day hearing)

The court locations with the longest hearing delay in family are:

- New Westminster (13 months for a ½ day hearing)
- Chilliwack (9 months for a ½ day hearing)
- Abbotsford (7 months for a ½ day hearing)

The court locations with the longest hearing delay in small claims are:

- New Westminster (12 months to a settlement conference, then 7 months to a ½ day trial)
- Port Coquitlam (14 months to a settlement conference then 11 months to a ½ day trial)
- Victoria (18 months to a settlement conference, then 5 months to a ½ day trial)

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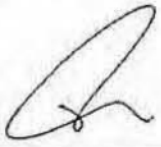
APPROVED BY: *"approved by Kevin Jardine"*
Kevin Jardine
Assistant Deputy Minister
Court Services Branch
Dated: July 18, 2012



Richard J. M. Fyfe QC
Deputy Attorney General
Dated: August 29, 2012

CLIFF No: **394615**
DATE: July 26, 2012
REQUESTED BY: July 27, 2012

MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Safety and security policies, procedures and equipment at the Prince George Courthouse

PURPOSE OF NOTE:

FOR INFORMATION OF: The Honourable Shirley Bond, Minister of Justice and Attorney General

FOR MEETING: Yes, Monday, July 30, 2012 at 3:00 p.m. in Prince George

ISSUE:

To brief the Minister on Court Services' emergency preparedness in preparation for her meeting with s.22 on July 30, 2012. This meeting is following up on issues raised at an October 28, 2011 meeting.

EXECUTIVE SUMMARY:

Court Services Branch (CSB) has developed and implemented numerous policies and procedures, as well as equipped and trained staff to protect the safety and security of courthouse users. This includes specific security upgrades, new lockdown procedures, upgraded panic alarms and the installation of Automated External Defibrillators (AED) with staff certified in their use.

BACKGROUND:

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3.

s.22

4.

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6. A protocol is in place for sheriffs to attend the courthouse to address after hours security issues.

7. The policy on panic alarms was updated and implemented in October 2011. The update includes a review of the location and type of alarm (audible and visible) and regular testing.

8. s.19 all courthouses with sheriffs on site have an Automated External Defibrillator (AED). First Aid Attendants and some sheriffs (where the location is so small is does not have an Attendant) have been certified in its use and operation.

PREPARED BY: Janet Donald
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s.19

APPROVED BY:

"approved by Kevin Jardine" Dated: July 26, 2012
Kevin Jardine
Assistant Deputy Minister,
Chief Court Administrator & Director of Sheriffs

Dated: July 26, 2012
Richard J.M. Fyfe QC
Deputy Attorney General
Ministry of Justice and Attorney General

Pages 6 through 28 redacted for the following reasons:
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s.14
s.14
s.19

CLIFF No.: 394969
DATE: August 10, 2012
Required: ASAP

MINISTRY OF JUSTICE
LEGAL SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Richard and W.H.M. v. H.M.Q./Woodlands School Class Action

PURPOSE OF NOTE:

ONLY FOR INFORMATION OF: Deputy Attorney General and Attorney General

ISSUE:

Sealing order for court applications in the Woodlands School Class action (*Richard and W.H.M. v. H.M.Q.*)

EXECUTIVE SUMMARY:

Further to a memorandum to all counsel from the Honourable Chief Justice Bauman, a Judicial Management Conference was heard on August 2, 2012. Judgment was reserved. A separate briefing note will be prepared with respect to the content of that hearing.

Class counsel applied for a sealing order for specific documents where class members' names were disclosed. The Province did not need such an order for most of its materials, but did consent to a specific order. Pursuant to the terms of the Settlement Agreement and schedules thereto, all claims files, including awards issued, are confidential. The Chief Justice suggested that there be a general sealing order to facilitate the court process going forward. Class counsel readily agreed. Provincial counsel did not object, and the terms of the formal order are now being settled.

In the result, subject to applications by the parties or the media, the public reasons of the Chief Justice will be the only public record of the various materials and submission placed before him.

These materials will include current (and future) discussions on extensions of settlement deadlines, terms of case management and expediting claims, and the future of the administration of the claims process in light of the decisions of the Adjudicators.

Pre-1974 materials are not part of the current process. Therefore Woodlands publicity on this topic will not be affected.

IMPACT ON OTHER MINISTRIES OR BRANCHES:

Child & Youth Mental Health – Headquarters

Ministry of Children & Family Development

BACKGROUND:

The Plaintiffs are former residents of the Woodlands School, a residential facility for the care of the mentally handicapped and persons in need of psychiatric care, operated by the Province between 1878 and 1996. In 2002, a class action was filed against the Province on behalf of all persons who were resident at Woodlands and who suffered physical, sexual or psychological abuse.

Following three complaints of alleged physical abuse to New Westminster Police and media attention in February, 2000, the Ministry of Children & Family Development ("MCFD") retained former Ombudsperson Dulcie McCallum to review and investigate Woodlands records to determine if there was evidence of sexual or physical abuse. In August, 2001, a report entitled *The Need to Know: An Administrative Review of Woodlands School* (the "Report") was released. It found that "abuse at Woodlands was systemic in nature".

The class action was commenced shortly after the publication of the Report.

In February, 2008, the Province's application to the BC Supreme Court to amend the class definition was granted. Following the BC Court of Appeal's decision in the *Arishenkoff* case, the class definition was amended to include only those individuals who were resident at the Woodlands School on or after August 1, 1974. In April, 2009, BC Court of Appeal dismissed the Plaintiffs' appeal of the Supreme Court decision. The Supreme Court of Canada dismissed the Plaintiffs' application for leave to appeal the Court of Appeal's decision.

In October, 2009, the Province concluded a settlement agreement with the Plaintiffs.

In reasons for judgment handed down on July 7, 2010, the Chief Justice approved the settlement agreement. On August 10, 2010, the Chief Justice approved the notice which was published in newspapers around the province on September 18-19, 2010.

The Settlement Agreement provides that eligible class members will have a one year period from the date on which the notice was published to submit a claim (until September 19, 2011). On September 12, 2011, the Plaintiffs made an application to extend the claims period deadline indefinitely. The Province opposed that application and proposed an extension of six months. In reasons for judgment handed down on November 4, 2011, the Chief Justice granted an extension of the claims period deadline for one year, until September 19, 2012.

At the September 12, 2011 hearing, Mr. Klein argued that the Province has unreasonably delayed the disclosure of resident files, which has impacted his ability to file claims within the one year claims period provided for by the settlement agreement. Mr. Klein further advised that he would not be filing any further claims until the Judges have handed down their decisions on the first four claims. To date, a total of 10 claims have been filed: eight by Mr. Klein, and two by another lawyer.

Reasons for Decision

Reasons for decision on the first nine claims were handed down on June 1, 2012. The Adjudicators made a number of findings which will be helpful to the Province in future claims.

Pursuant to the terms of the Settlement Agreement and schedules thereto, all claims files, including awards issued, are confidential.

Further to a memorandum to all counsel from the Honourable Chief Justice Bauman, dated June 4, 2012, a Judicial Management Conference was heard on August 2, 2012. In his memorandum, the Chief Justice indicated that he wished to discuss the future of the administration of the claims process in light of the nine initial decisions handed down by the Adjudicators.

Mr. Klein applied to the Court for a further extension of the claims period deadline (currently September 19, 2012).

Conclusion

Further to earlier confidentiality orders to protect the privacy of Woodlands claimants, the Chief Justice has pronounced a sealing order for the Woodlands class action court file, subject to liberty to apply to the media and affected parties.

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APPROVED BY:

Richard J.M. Fyfe, Q.C. Dated: August 14, 2012
Deputy Attorney General

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Pages 32 through 43 redacted for the following reasons:
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s.14

CLIFF #:395425
DATE: Aug 27, 2012
Required Date: Aug 27, 2012

MINISTRY OF JUSTICE
LEGAL SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Northern Gateway Pipeline - Participation by the Province at the hearing being conducted by the Joint Review Panel assessing the Northern Gateway Pipeline.

PURPOSE OF NOTE:

ONLY FOR INFORMATION OF: Deputy Attorney General, the Attorney General and the Office of the Premier

ISSUE:

To describe the process of the hearing and to set out the Province's approach with respect to cross-examination at the hearing.

Process before the Joint Review Panel

The Northern Gateway pipeline is being considered by a Joint Review Panel (JRP) established under the *National Energy Board Act* and the *Canadian Environmental Assessment Act (2012)*. In addition to the applicant, Northern Gateway Pipelines Partnership (NGP), there are many other parties (interveners or government participants) involved in the proceeding. As an intervener, the Province has full rights of participation in the hearing.

Very extensive written evidence has been submitted in the proceeding, by NGP and many other parties. On September 4, 2012 the formal hearing concerning the pipeline will commence. During the formal hearings, parties will have the opportunity to question other parties that have submitted evidence. The Province has decided to question NGP with respect to the evidence it has submitted.

The JRP has organized questioning on the evidence thematically and by location. The following sets out the location of the hearings, the general topics to be covered and estimated dates:

- Edmonton September 4 to 28: The economic need for the pipeline, supply and markets, and financial and tolling matters.
- Prince George October 9 to November 9: Environmental and socio-economic effects, and operations, safety, accident prevention and response related to the terrestrial portion of the pipeline.
- Prince Rupert November 22 to December 18: First Nations interests and environmental and socio-economic effects, and operations, safety, accident prevention and response related to the marine terminal and marine shipping.

Following the questioning phase, parties will have the opportunity to present final argument to the JRP. This is currently planned for March and April 2013. After the completion of argument, the JRP will be making a recommendation to the federal government with respect to the approval of the pipeline. It is expected that this recommendation will be made toward the end of 2013. Federal Cabinet will then make a final decision on the pipeline.

The Province's Goals in the Hearing

The Province's goals in the hearing flow from the requirements recently identified by the Province for it to consider support for the pipeline, in particular the need for world-leading practices for oil spill response, spill prevention and recovery with respect to both the terrestrial and marine aspects of the project, both issues of serious concern for British Columbians.[1] In its questioning, the Province will test the adequacy of the measures NGP has proposed to prevent and respond to marine or terrestrial spills, and to obtain where possible commitments from NGP to reduce the risk of spills, and be able to respond fully and effectively to spills when they happen, for inclusion in any certificate issued.

With respect to the Edmonton phase, the questioning of the Province will be limited. However, counsel will focus on the extent and coverage of NGP's insurance, and commitments concerning the corporate responsibility of NGP's partners for its liabilities, including those which exceed NGP's insurance coverage. A sufficient source of funds is essential to effective and comprehensive spill response.

In Prince George, the Province will be focusing on NGP's plans for spill prevention and response respecting the land portion of the pipeline. Unlike some parts of the marine aspect of the project, NGP has significant responsibility and accountability in this regard. In particular, the Province will be asking questions concerning:

- The reason for the absence of detailed spill response plans, and the ability of NGP to assert today that it is adequately prepared for spills in the absence of these plans;
- The ability of NGP to deal with sinking oil, as was experienced in the 2010 Enbridge pipeline spill in Michigan;
- The ability of NGP to address spills from the pipeline in remote areas of the Province, including the ability of NGP to transport and maintain personnel in remote areas;
- The willingness of NGP to make full compensation for any monetary loss suffered, and compensation for loss of any habitat;
- NGP's practices that led to the Michigan spill, and the validity of its assurances that such practices will not be repeated here.

In Prince Rupert, the Province will also focus on the first three points above, and in addition:

- The operation of escort and rescue tugs;
- The relationship between NGP and the response organization responsible for spills;
- The nature and extent of the commitments NGP has made to exceed regulatory standards for spill response.

Conclusion

Ministry of Justice counsel and Derek Sturko, the official providing instructions on this matter, would be pleased to discuss this matter further if desired.

PREPARED BY: **Christopher Jones, Ministry of Justice**

APPROVED BY: _____ DATE: August 27, 2012

Richard J. M. Fyfe, QC
Deputy Attorney General

[1] Respecting the remaining three requirements, many First Nations are themselves actively participating in the hearing. The sharing of the economic benefits of the project and related heavy oil development is not a matter before the JRP. A positive recommendation from the JRP would come only at the end of the hearing process.

CLIFF NO: 482190
DATE: July 6, 2012

MINISTRY OF JUSTICE
MANAGEMENT SERVICES BRANCH
BRIEFING NOTE

Prepared For: Honourable Shirley Bond, Minister of Justice and Attorney General

ISSUE:

The 2011/12 Public Accounts of the Province of British Columbia are scheduled to be released at the earliest on July 16, 2012. The purpose of this note is to provide an overview of how the Ministry of Justice (JAG) will be disclosed.

BACKGROUND:

The Public Accounts will reflect that JAG ended the fiscal year 2011/12 with a surplus in the operating budget of $2.728 million. Ministry Operations was balanced to zero, with the Judiciary and Special Accounts accounting for the surplus.

The Public Accounts are made available on the Ministry of Finance's web site (www.fin.gov.bc.ca./pubs.htm) upon their release. The Public Accounts will be released no earlier than July 16th and as late as the 24th or 25th. The timing is dependent on when the Ministry of Finance receives the Office of the Auditor General's audit opinion.

KEY POINTS:

Additional Operations Budget:

In fiscal 2011/12, Ministry of Justice received approval to access the Contingencies (all ministries) and New Programs Vote and Statutory Appropriations for additional funding for operations. Government reorganizations are also presented as "Other Authorizations". As a result, the Public Accounts will show JAG as having "Other Authorizations" totalling $57.707 million for the following purposes:

	$ million
Total Contingencies (All Ministries) and New Programs Vote:	
Major Trials	9.100
Court Services – court support	7.500
Crown Counsel Association Agreement	1.000
Independent Investigations Office	1.000
Downtown Community Court	0.494
Vancouver Riot Prosecution	0.500
RCMP contract	22.700
Crime Victim Assistance Program	8.299

Corrections structural shortfall	3.073
OSMV – IRP Operating Costs	4.041
Total Contingency Access	**57.707**
Total Statutory Appropriation:	
Crown Proceeding Act	4.957
Public Inquiry Act	4.794
Emergency Program Act – Landslides, summer fires and fall flooding	67.268
Total Statutory Appropriation	**77.019**

Ministry Operations Budget Variances for 2011/12:

Ministry Operations was balanced to zero with the Judiciary and Special Accounts accounting for the surplus of $2.728 million.

In fiscal 2011/12 several JAG core businesses had budget variances. The information below identifies and describes these:

	$ million
Prosecution Services (Mainly due to major trials and Vancouver riot prosecution)	**1.674 deficit**
Legal Services (Due to greater than anticipated Recoveries)	**(2.452) surplus**
Corrections (Mainly due to structural pressures)	**4.152 deficit**
Policing and Security Programs (Mainly due to RCMP contract)	**1.435 deficit**
Emergency Management BC (Due to under spending on flood mitigation projects resulting from a lack of funding at the local government level, weather delays and delays in approvals from federal government)	**(4.319) surplus**
Executive and Support Services (Mainly due to efficiency measures and targeted discretionary expenditure reductions)	**(1.252) surplus**
Statutory Services (Mainly due to higher than expected PGT client recoveries)	**(0.672) surplus**
Judiciary (Mainly due to Provincial court savings from delays in judicial appointments)	**(1.985) surplus**

The above do not total $2.728 million, as branches with minor variances are not itemized.

Ministry Capital Expenditures for 2011/12:

The Public Accounts will report JAG capital expenditures of $8.917 million against a budget target of $13.102 million, resulting in a surplus of $4.185 million. The surplus was primarily due to IM/IT project delays, and delays in the acquisition of equipment for the Alouette Correctional Centre for Women, and is expected to be expended in fiscal 2012/13.

Detailed Schedules of Payments:

Additional schedules are available on the Internet in support of the Public Accounts. These schedules of payments include salary and travel expenses for Ministers and Deputy Ministers, Order in Council appointees and employees earning more than $75,000, government transfers and payments to suppliers in excess of $25,000, and a detailed listing of all purchases made on the Corporate Purchasing Card.

Payments to Minister Shirley Bond, Minister Barry Penner, and Minister Kash Heed will be reported in the Public Accounts as follows:

Member	Minister's Salary Increment	Minister's Travel	Capital city Allowance
Minister Bond	$47,274	$61,405	$17,541
Minister Penner	$22,716	$29,466	$7,006
Minister Heed	$363		

The cost for Minister Heed was paid in 2011/12, but related to 2010/11.

Ministry financial staffs have reviewed the supplementary schedules. There were no unexplained issues or sensitivities. Management Services has assisted GCPE in preparing Issues Notes on Purchasing Card and Other Supplier transactions.

The Corporate Purchasing Card is used as an efficient way to make many small dollar purchases. In the past there have been questions to ministries about Purchasing Card transactions. A review of Purchasing Card transactions for 2011/12 was undertaken and the purchases have proven to be for valid business purposes.

Travel Expenditures:

The Ministry has reviewed travel expenditures for the year and no unusual items were found. There were no Individuals with total travel claims in excess of $30,000.

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_____
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_____
Dated:

Cliff: 482640
Date: July 19, 2012

MINISTRY OF JUSTICE
CORRECTIONS BRANCH
BRIEFING NOTE

PREPARED FOR: The Honourable Shirley Bond
Minister of Justice & Attorney General
FOR INFORMATION

ISSUE:

Corrections Branch domestic violence behavioural programming delivery.

BACKGROUND:

- Community Corrections assesses sentenced offenders in order to identify needs associated with the potential to re-offend.
- Medium and high risk offenders and those with specific court ordered conditions are required to attend spousal assault programming designed specifically for spousal assault offenders.
- A comprehensive spousal assault program is delivered to medium and high risk sentenced spousal assault offenders in custody and the community. The program includes a 10 week pre-treatment Respectful Relationships (RR) module delivered by Corrections staff, followed by a 17 week Relationship Violence Program (RVP) module delivered by contracted service providers.
- Evaluation results indicate that when delivered in the community, participation in RR followed by the RVP reduced spousal assault recidivism by up to 50% over a two year tracking period.
- RR/RVP programming is available in approximately 45 communities and is additionally offered in rural and remote communities when a critical mass of offenders can be assembled (four to six).
- A Relationship Violence Prevention Program Cultural Edition (RVPP-CE) is delivered to sentenced domestic violence offenders in their first language through contract with three lower mainland multi-cultural service agencies.
- Probation officers co-facilitate the RR program with Aboriginal justice contractors in a variety of communities.
- Barriers to program access in rural and remote areas have been minimized by paying for offender travel costs to attend programming in neighbouring communities.

DISCUSSION:

- Spousal assault programming is not provided at the pre-adjudication (bail) stage as this invites participation for the primary purpose of avoiding court sanctions, as opposed to addressing the dynamics of power and control that underlie domestic violence.
- Programming efficacy can be compromised by inclusion of voluntary offenders at the pre-adjudication stage because of varying degrees of denial and may contribute to a false sense of safety among victims.

- Facilitators for the pre-treatment RR module are probation officers who have received specialized training in the subject areas of facilitation and dynamics of spousal assault and who have experience working with spousal assault offenders.
- Facilitators for the 17 week RVP module are required to have an undergraduate degree, or higher academic credentials in psychology, social work or counselling and at least one year experience with domestic violence program delivery or counselling. Affiliation with a professional group licensed to practice counselling or psychology in the province is preferred.
- Quality assurance of the pre-treatment RR module is conducted by local managers who observe the facilitation.
- Quality assurance of the RVP module is conducted by the agencies contracted to provide this programming and reported to a contract manager at Corrections Branch.
- The expertise and support required to deliver the spousal assault programming is specific to Corrections Branch and the agencies contracted to co-facilitate the RR module and facilitate the RVP module.
- The rigorous quality assurance oversight of program content and delivery, along with the

s.13

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Cliff: 483004
Date: July 26, 2012

MINISTRY OF JUSTICE
CORRECTIONS BRANCH
BRIEFING NOTE

PREPARED FOR: The Honourable Shirley Bond, Minister of Justice & Attorney General
FOR INFORMATION

ISSUE:

Corrections Branch funding for electronic monitoring at Hope for Freedom Society

BACKGROUND:

- Hope for Freedom Society is a privately operated, registered non-profit organization offering residential recovery services for addiction and homelessness.

- Hope for Freedom Society has requested that the Ministry of Justice provide reimbursement for costs associated with the transportation of offenders residing at the recovery home and who are subject to electronic monitoring, as well as installation and maintenance of Telus landlines used to provide electronic monitoring services.

- Hope for Freedom Society estimates its costs associated with the installation and maintenance of Telus landlines required for electronic monitoring to be $655 annually, per recovery home being operated under this society.

- The Corrections Branch offers two types of electronic monitoring service hook-ups, both of which require a standard power outlet:

    - Landline monitoring necessitates that a line be installed in the offender's residence. Optional features and equipment beyond the basic telephone service are not permitted; and

    - Cellular monitoring.

- The landline telephone service provider used to operate the electronic monitoring units is Telus because of their ability to offer a basic service telephone line without optional features.

- The availability of cellular monitoring units is restricted to geographic areas within BC where Rogers cellular service is available, due to an established security firewall protocol.

- Corrections Branch telecommunications /cellular costs associated with the use of electronic monitoring units are as follows:

    - No cost for electronic monitoring in conjunction with a landline telephone; and
    - $300 per unit for cellular monitoring, per year.

- The costs associated with setting up a landline telephone through Telus, for the purposes of electronic monitoring, are the responsibility of the offender.

- Where cellular monitoring is an option, no costs will be incurred by the offender.

DISCUSSION:

- Where Rogers cellular service is available and the residence is determined to be technically suitable, cellular monitoring units may be available to offenders residing in a recovery home.

- The Corrections Branch does not have the funding resources to provide recovery homes, where an offender who is subject to electronic monitoring resides, for offender transportation, and installation and maintenance of electronic monitoring.

- s.13

- Hope for Freedom Society is within an area of coverage provided by Rogers cellular service and is therefore eligible for cellular monitoring at no cost to the society.

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Cliff: 482295
Date: July 13, 2012

MINISTRY OF JUSTICE
EMERGENCY MANAGEMENT BC
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE:

For discussion with the Ministers of Environment, Justice and Attorney General, Aboriginal Relations and Reconciliation and Community, Sport and Cultural Development, regarding government direction and support for Japanese tsunami debris response. Meeting scheduled for Tuesday July 17, 2012 from 1:00 to 1:30 p.m.

BACKGROUND:

On March 11, 2011 a magnitude 9 earthquake in Tohuku Japan caused a tsunami, which swept an estimated 1.5 million tons of wood, plastics and other buoyant materials into the Pacific Ocean. This debris is dispersed across a large area and is moving eastward with prevailing winds and ocean currents towards North America.

The US lead for tracking the tsunami debris is the National Oceanographic and Atmospheric Administration (NOAA). BC has partnered with NOAA to receive up-to-date modeling, which indicates the bulk of dispersed debris will start arriving in early 2013, with highly wind driven items, arriving sooner. There is, however; great uncertainty as to exactly where or how much of the debris will make landfall.

To date, there have been a handful of confirmed reports of items from the tsunami reaching North America. High profile examples of confirmed Japanese tsunami debris include:

- 150 ton dock, with 1.5 tons of encrusted marine life, on an Oregon beach;
- Scuttling of a derelict fishing vessel in Alaskan waters; and,
- Container/motorbike washing up on northeastern Haida Gwai.

There is currently no provincial or federal marine debris program in place to manage marine debris on BC's coastline. As such, no single provincial or federal agency leads for the management of marine debris. However, there are mechanisms in place for managing:

- Materials that threaten public safety, both onshore (chemicals, radioactive material, physical hazards) and offshore (navigation hazard, derelict vessel); and,
- Materials that threaten the environment (habitat smothering, sensitive ecosystem hazard, aquatic invasive species, hydrocarbon spill, marine mammal entanglement).

In BC, the Tsunami Debris Coordinating Committee (TDC) has been established to bring together related provincial and federal government agencies with local governments, First Nations and stakeholders to coordinate the response to tsunami debris. Planning is currently underway, with the intent to have a management strategy available in the coming weeks, well ahead of the arrival of the bulk of the debris in 2013 and in-line with planning developments in neighbouring states.

Tsunami debris clean-up is anticipated to be a long term issue (initial estimate of 5 to 10 years in duration).

DISCUSSION:

The US response – particularly in Washington State – has signaled that they will: (1) develop a plan that outlines clear authorities and leads for responding; (2) conduct radiation testing on beaches; and, (3) commit to having state emergency funding (~$700,000) available, if required. Washington Governor Christine Gregoire has also said that the debris is not yet at a level where federal emergency assistance is required, but has written a letter to NOAA detailing expectations of increased federal agency involvement.

In BC, the TDC is developing a management plan for Ministers to review and approve. Similar to Washington, the BC plan will publicly commit to provincial support being available for contingency funding and leadership to assist with cleanup and disposal, should the situation warrant it. Such an approach would allow the government to coordinate response on a case-by-case basis and limit financial commitments until the scope of the threat is apparent.

Potential items of significance to the Ministry of Justice/Emergency Management BC (EMBC) include:

- Public concern about radiation (HLTH lead, EMBC support);
- Emergency Coordination Centre (ECC) capacity to handle increased call volume if requested to answer reports of tsunami debris; and,
- EMBC's review of the *Emergency Program Act* to identify the extent to which the funding mechanism, which focuses upon imminent or current risks to public safety or damage to property, may be applicable to non-emergency marine debris removal activities.

To date, the volume of debris has not been significant, but the magnitude of the threat is unknown and estimating the response resources required is a challenge, particularly in light of the inaccessibility of much of the BC Coastline. Radiation is not considered a risk to the public as the debris was already at sea prior to the nuclear accident, and radiation measurements at sea were found to be at normal levels, however; public fears of radiation need to be addressed.

Prepared by:
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Approved by:
Becky Denlinger
ADM, EMBC
250 953-4083

Cliff No: 483018
Date: July 26, 2012

MINISTRY OF JUSTICE
EMERGENCY MANAGEMENT BRITISH COLUMBIA
BRIEFING NOTE

PREPARED FOR: Minister Shirley Bond
FOR INFORMATION

ISSUE:

An article recently printed in the Vancouver Sun raised questions about sawmill fires, the impact sawdust and wood chips have played in fires and responsibility of the Office of the Fire Commissioner (OFC) to investigate and advise on fire threats and trends.

BACKGROUND/CONTEXT:

- Two tragic sawmill fires at the Lakeland Mill in Prince George and the Babine Forest Products mill in Burns Lake, which claimed four lives, have brought attention to the role wood dust and chips play in the ignition of fires in saw mills.

- It is critical to recognize that the fire protection system and ultimate responsibility for the safety of residents, staff and/or property rests with owner/occupier. It is the owner /occupier's responsibility to ensure their operations meet the provisions of the BC Fire Code and all other applicable by-laws and codes. Inspections and penalties are secondary to the need for on-going compliance and due responsibility.

- As per legislation, the OFC is working closely with the BC Safety Authority, WorkSafe BC and the BC Coroner's Service in the investigation of the Lakeland and Babine mill fires. The OFC has received the fire investigation report for the Babine mill fire.

- Under the *Fire Services Act (FSA),* the Fire Commissioner must collect and disseminate information about fires in British Columbia, investigate and inquire into a fire, investigate conditions under which fires are likely to occur, study methods of fire prevention and supply advice and recommendations.

- Local Authorities select Local Assistants to the Fire Commissioner (LAFC) and it is the responsibility of LAFCs to investigate, within three days of a reported fire, the cause origin and circumstances of each fire. After the fire investigation is complete, the local assistant must submit a report to the Fire Commissioner.

- The FSA offers no penalties through which to enforce the reporting of fires by owners, occupants, residents and the general public.

- In order for the OFC to investigate fires and collect statistics, fires must be reported. Reporting fires and the collection of statistics is a complex and challenging process as legislation does not enforce that all fires must be reported. Under the FSA it is the

duty of the occupier or owner of the building, motor vehicle etc. to report a fire to responsible authorities. Oftentimes, fires are not reported to the authorities which means that the OFC does not have complete data sets to identify trends.

- The OFC collects and reports on the data received. Through the data collected, the OFC attempts to discern trends and issues related to fire safety. Once trends are identified the OFC issues safety bulletins to raise awareness.

- An old, unsupported data collection software system has made tracking, analyzing and reporting statistics challenging. A backlog of data from previous years (2007 through 2008) is now complete. OFC has a very limited staffing capacity to conduct trends analysis.

- That said, available statistics show that it is very seldom that fire deaths, injuries or property loss occur from industrial fires. The Smoke Alarm Campaign, being spearheaded by Minister Bond is aptly focused on the key area where the majority of British Columbian fire deaths occur:
    - In residential homes when a working smoke alarm was not present than when one was present but not working
    - In households with at least one young child, older adult, or person with disability;
    - In rental units; and
    - In households in low-income areas, rural communities and First Nations reserves.

Created by:
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Commissioner
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Cliff No.: 483073
Date: July 27, 2012

MINISTRY OF JUSTICE
EMERGENCY MANAGEMENT BC
BRIEFING NOTE

PREPARED FOR: Lori Wanamaker
Deputy Solicitor General
FOR INFORMATION

TOPIC:

District of Sicamous and Columbia Shuswap Regional District (CSRD) key flood recovery issues.

ISSUE:

Premier Christy Clark intends to visit the District of Sicamous on July 30, 2012. Local officials are likely to raise several recovery issues for discussion. The Emergency Management BC (EMBC) situation report (July 27) summarizes a range of recovery issues.

This briefing note focuses on two specific issues:

1. Flood mitigation works proposed for Sicamous Creek (also known as 2 Mile Creek) within the District of Sicamous.
2. Flood mitigation works requested by residents and local authorities for Hummingbird Creek at Swansea Point in the CSRD.

BACKGROUND:

On June 24, 2012, flash floods caused Hummingbird Creek and Sicamous Creek to spill their banks. Numerous residences and properties as well as several roadways sustained damage, and the evacuation of over 300 residents was required. Emergency response activities are complete, but community recovery activities are ongoing, led by the local authorities. EMBC is coordinating ministry recovery activities, and is the primary point of contact for local authorities with respect to coordination with the Province.

DISCUSSION:

1. Sicamous Creek ("2 Mile") Flood Mitigation Works

    - The flooding of June 24 caused Sicamous Creek to change course, cutting off Highway 97A at the 2 Mile Bridge location, 3km south of Highway 1, and impacting numerous residences as well as the large Waterway houseboat facility.

- A temporary bridge was installed on July 1st and the highway was reopened. Ministry of Transportation and Infrastructure (MOTI) plans to return Sicamous Creek to its original location. However, because of concerns that the 200 meters of creekbed between Highway 97A and Mara Lake cannot adequately contain periodic flood flows, local authorities and residents have requested that flood mitigation work be undertaken before the creek is returned to its original channel. This location has flooded previously, most recently in 1997.
- Engineering recommendations exist outlining a creekbed widening and bank armouring plan designed to reduce flooding risk for this portion of Sicamous Creek.
- MOTI and EMBC have now identified funding sources for this proposed work at the 2 Mile location, estimated to cost $250,000.
- The Province has offered to undertake these works if the District of Sicamous will undertake ongoing operating and maintenance. These ongoing requirements are anticipated to be minimal.
- On July 26, correspondence was received by EMBC that the District of Sicamous Council (Council) agreed in principle to the Province's offer, subject to review and approval of a written agreement with the Province. Council identified four items to be addressed prior to final approval of an agreement:
  - Review by District of Sicamous staff of the detailed plans for the proposed works in order to assess ongoing maintenance requirements.
  - An assessment of whether the proposed works will provide adequate flood protection.
  - Assessment of liability exposure for the District of Sicamous, with respect to the Sicamous Creek works and discussion of how an agreement with the Province might limit this exposure.
  - Clarity regarding replacement and appropriate design for the small McLaughlin Bridge located between the highway and Mara Lake. This bridge, which provided access to the property of s.22 was also damaged and removed as a result of the recent flooding. Because this small bridge became clogged with debris, it appears to have contributed to flooding at the 2 Mile location. EMBC, MOTI, and the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) are investigating the complex history of this bridge to determine if any legal liability for the Province may exist, and what plans are appropriate for replacement of the bridge.
- EMBC and MOTI are working on each of the above issues with the objective of achieving an approved written agreement with Sicamous as soon as possible.

2. <u>Hummingbird Creek at Swansea Point Flood Mitigation Works</u>

- Significant flooding also occurred on Hummingbird Creek at the Swansea Point location (approximately 24 km from the town of Sicamous along Highway 97A).
- Local authority representatives have voiced a concern that the MOTI culvert at Hummingbird Creek is of an inadequate size and that this contributed to the flooding and debris flow damage at the Swansea Point location.

- Debris flows have occurred previously at this location. In 2004, the Province offered funding for a debris basin ($3.0 M in 2004) and a new bridge ($1.1 M in 2004) crossing Hummingbird Creek, in order to prevent the recurrence of such events. However, the Swansea Point Community indicated, by referendum in June 2004, that it would not undertake the associated operating and maintenance cost. The current capital cost of the required works is estimated at $4.7 M for the basin and $1.7 M for the bridge for a total of $6.4 M. MOTI has noted that the existing culvert meets appropriate design standards and is adequate to handle 1:200 year freshet flows, but was plugged by the debris flow during the June 2012 event. s.14

The CSRD has forwarded a letter from the Hummingbird Resort Strata Council requesting that the Province fund flood mitigation work on Hummingbird Creek. The CSRD has also written to the Fire and Emergency Management Commissioner directly, inquiring as to whether the Province will fund work on the creek.

NEXT STEPS:

1. Sicamous Creek
   - As noted above, EMBC and MOTI will work towards a written agreement with the District of Sicamous to provide for installation and maintenance of the required flood mitigation works on Sicamous Creek.

2. Hummingbird Creek
   - No existing programs or funding sources have been identified which would provide for immediate implementation of mitigation works at Hummingbird Creek.
   - Due to the significant cost of the proposed works at Hummingbird Creek, no immediate funding solution is available.
   - In the longer term, the CSRD can be encouraged to apply for shared funding towards a debris basin, through the Flood Protection Program, administered by EMBC.

Prepared by:
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250-516-6869

Approved by:
Rebecca F. Denlinger
Assistant Deputy Minister / Fire and
Emergency Management Commissioner
250-953-4083

Cliff No.: 483117
Date: July 31, 2012

MINISTRY OF JUSTICE
EMERGENCY MANAGEMENT BC
BRIEFING NOTE

PREPARED FOR: Lori Wanamaker
Deputy Solicitor General
FOR INFORMATION

ISSUE:

To identify the status and implications of the Central Coast Regional District and the Town of Golden's decisions to undertake community referendums as a basis for confirming the communities financial support of their approved Flood Protection Program projects.

BACKGROUND:

Central Coast Regional District (CCRD) and Town of Golden

The CCRD and the Town of Golden have informed the Flood Protection Program (FPP) that they will be initiating public referendums to determine their communities' potential participation in, and funding of, their approved projects under the Building Canada Fund Communities Component (BCF-CC). In the event that funding of the projects are rejected by the electorate under the referendum it is anticipated that the works will not proceed.

All local governments were required to confirm that they would provide 33 per cent of the total projects cost as pre-requisite for their application's approval under the BCF-CC cost-sharing model. However, the CCRD and Town of Golden experienced changes in administration in the last municipal elections and the new administrations chose not to include the borrowing capacity in capital plans instead directing staff to consult with the electorate.

The two approved projects, which were scheduled and budgeted to be delivered over two fiscal years (2012/13 and 2013/14), and are now subject to upcoming referendums include:

- CCRD: Bella Coola Airport dike upgrade
  - The total approved project cost is $3.5M. The local authority has informed the FPP that the project may be reduced in scope and budget by $1M.

- Cancellation or deferral of the work will have implications of between $1.6M to $2.4M in federal and provincial funding.
- The local authority is pursuing the establishment of a 'Service Area' to raise the necessary funds in the event that the referendum is approved.
- Anticipated Referendum Date: December 2012.

	Budget ($M)			
	Local	Provincial	Federal	Total
Approved Project	**$1.2**	**$1.2**	**$1.2**	**$3.5**
Revised Project				
Potential Change	*-$0.3*	*-$0.3*	*-$0.3*	*-$1.0*
Potential Budget	**$0.8**	**$0.8**	**$0.8**	**$2.5**

- Town of Golden: Kicking Horse River Dike Upgrade
  - The total approved project cost is $3.4M.
  - A recent Alternative Approval Process, which required 10 per cent opposition from the electorate to reject the funding proposal, was unsuccessful with 27 per cent opposition.
  - On July 25, 2012, Council confirmed that the local authority would proceed with a referendum regarding funding for the project on September 8, 2012.

	Budget ($M)			
	Local	Provincial	Federal	Total
Approved Project	**$1.1**	**$1.1**	**$1.1**	**$3.4**

FPP

Since the FPP's establishment in 2007 there has only been one other approved BCF-CC project that did not proceed due to a lack of community funding. In April 2012, the City of Prince George conducted an Alternative Approval Process which resulted in sufficient opposition to funding initiative that the City withdrew its approved request for $5.4M in federal and provincial funding.

The FPP is currently working with the Ministry of Forests, Lands and Natural Resource Operations and other provincial and federal partners to recommend reallocation of the City of Prince George's approved funding to eligible BCF-CC community applicants. Announcement of potential funding is scheduled for mid-September 2012. It is anticipated that all available funding will be re-committed at that time.

DISCUSSION:

The CCRD and Town of Golden's decisions to refer funding of their approved BCF-CC projects to referendum will result in either the cancellation of the project(s) or significant delays in their implementation.

Cancellation: Rejection of the referendum will result in a failure to resolve identified hazards to public safety and property values in the communities. The province may also incur future costs associated with the provision of emergency management services and supports under the Emergency Program Act.

Delay: Approval of the referendum will significantly postpone construction of the works resulting in an FPP surplus in 2012/13 followed by budget pressures in the following fiscal year 2013/14.

- 2012/13: Full utilization of the FPP's 2012/13 budget will be problematic given the prohibition on carrying funds between fiscal years and rejection of an FPP request to grant unused funds in 2011/12.
- 2013/14: The FPP budget, which is based upon the approved projects spending plans, is fully committed in 2013/14. Deferral of CCRD and Town of Golden expenditures into next fiscal year will generate as yet undefined pressures.

The FPP is continuing to monitor the situation and will develop options for the reallocation of funds to other communities in the event that the project(s) are no longer supported by the local government. Efforts will also be made to identify opportunities to re-profile communities' multi-year spending plans

Prepared by:
David Curtis
Executive Director
250-953-4083

Cliff: 482842
Date: July 23, 2012

MINISTRY OF JUSTICE
CORONERS SERVICE
BRIEFING NOTE

PREPARED FOR: MINISTER SHIRLEY BOND
FOR INFORMATION

ISSUE:

At 10:00 am July 24th, 2012, the Coroners Service will announce that it will resume recovery efforts at the site of the mudslide at Johnsons Landing in the west Kootenay.

BACKGROUND:

Four people were buried in debris following a mudslide at Johnsons Landing on July 12, 2012. The bodies of Valentine Webber, 60 and his daughter, Diana, 22, were recovered from the area near their former home in a search conducted last week. Mr. Webber's younger daughter, Rachel, 17, and German national Petra Frehse are still missing despite extensive excavations at two sites. The recovery effort was suspended July 18th, 2012 to reassess recovery options.

DISCUSSION:

Recovery efforts on the slide area were focused on two sites: Site 1, the area surrounding the former Webber residence, and Site 2 where Ms. Frehse's house had been located.

Because of the enormity and difficulty of the search area, the amount of work already done there and the condition of artefacts and indicators found in the initial search, it has been determined that it is virtually impossible that the remains associated to Site 2 are recoverable. This site will not be revisited.

With respect to Site 1, intelligence gathered from family and friends indicated it was highly likely that the three Webber family members would have been located in the same general area when the slide struck. All initially identified high potential areas were carefully examined and resulted in finding Valentine and Diana Webber relatively close to each other in proximity to the former residence. Rachel's remains were not located within this initial high priority search parameter. It is considered likely however, that the remains may be near the edges of the original search area in an area previously considered of moderate probability. These areas are now considered the new high probability area and new recovery efforts will be focused on these areas. These areas will be completely and thoroughly searched in a two day recovery effort to begin mid-week.

The road to Johnsons Landing is now open and weather forecasts are favourable for the next few days. In addition, geotechnical experts advise that the slope is stabilizing. All of these indicators support a good window for the successful recovery of Rachel Webber's remains. The search will be supervised by the Coroners Service with the assistance of local SAR members and technical specialists. All site safety requirements will be ensured.

Prepared by:
Lisa Lapointe
Chief Coroner
BC Coroners Service
250-953-4002

Pages 1 through 20 redacted for the following reasons:
- -
S. 3(1)(h)
S.3(1)(h)
Sections 13, 14, 15(1)(g) and 22

Cliff: 482478
Date: July 13, 2012

MINISTRY OF JUSTICE
CORPORATE POLICY AND PLANNING OFFICE
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice
FOR INFORMATION

s.12

Pages 22 through 55 redacted for the following reasons:
- -
S. 12
S. 12, 13, 14
S. 14
s. 12, 13, 14

CLIFF No: 394685
DATE: July 27, 2012

MINISTRY OF JUSTICE
COURT SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Arrest of a First Nations' Woman at the Chilliwack Courthouse

PURPOSE OF NOTE:

FOR INFORMATION OF: The Honourable Shirley Bond, Minister of Justice and Attorney General

FOR MEETING: No

ISSUE:

On July 25, 2012, an incident occurred at the Chilliwack courthouse regarding the arrest of a First Nations' woman during a protest. Related articles appeared in the Vancouver Sun and two local newspapers. A letter regarding the matter was sent to the Minister from Grand Chief Doug Kelly of the Stó:lō Tribal Council

EXECUTIVE SUMMARY:

Patricia Kelly, a member of the Sto:lo Nation, was arrested following a protest at the Chilliwack courthouse on July 25, 2012. Ms. Kelly was singing and drumming in the courthouse prior to an appearance on a federal fisheries matter. Ms. Kelly was requested to stop drumming and was verbally warned of an impending arrest for disturbance of the peace, but did not comply. A sheriff attempted to affect an arrest by placing his hand on her elbow, at which time he was allegedly assaulted. Following her arrest, Ms. Kelly was placed in cells. She was later detained by the RCMP and released on a Promise to Appear.

At the time of the incident two courtrooms were in session.

All sheriffs receive cultural sensitivity training, which includes a segment on First Nations.

BACKGROUND:

1. On July 25, 2012 Patricia Kelly, a member of the Sto:lo Nation, was scheduled to appear at the Chilliwack courthouse in front of Chief Judge Crabtree on a federal fisheries matter that originated in 2004.

2. Follow peaceful drumming outside the courthouse Ms Kelly and six to eight supporters entered the courthouse shortly before 9:30 am. One of the supporters continued to drum inside the courthouse. The supporter was asked by a deputy sheriff to stop drumming as the

decorum of the courthouse was being compromised. The supporter complied with the request. Ms. Kelly took-up the drum and began singing and drumming.

3. At this time two courts were in session and three additional courtrooms were to begin at 9:30 am. With the exception of her own court hearing, all scheduled and ongoing matters did proceed through the incident.

4. Ms. Kelly was asked to stop drumming and given three options:

    a. Take the drum outside and continue the ceremony/protest in front of the courthouse.
    b. Give her drum to a supporter to take outside
    c. Give her drum to the sheriffs who would place it in a safe area for her to retrieve when she leaves the courthouse.

5. Ms. Kelly did not comply with the request and continued to drum and sing in the courthouse.

6. A deputy sheriff then warned her that if she did not comply with their direction they would be required to place her under arrest. She did not comply; the sheriff then placed his hand on her elbow in order to affect her arrest. At this point s.22

7. The incident was not captured by the surveillance cameras, as the coverage in the courthouse does not capture the angle on the public stairwell where the arrest took place.

8. During this time one supporter, s.22 He was restrained by the sheriffs and was eventually also taken to cells. He was released approximately two hours later without charge. All the other supporters remained passive and left the courthouse without incident.

9. Ms. Kelly was then taken to cells where s.22
   A female deputy who was s.22

10. Ms. Kelly did appear in court at approximately 10 am on the fisheries matter with Chief Judge Crabtree presiding. At that time her bail conditions related to the fisheries charges were amended with the additional condition to keep in touch with the Native Court worker as to any change in residence and employment. She was then taken to the RCMP station and was released later that day. Court reconvened at 11:30 am; Ms. Kelly was not in attendance, as she was in RCMP custody. She is to appear on the 29th of August 2012 at 9:00 am on the fisheries matter.

11. The RCMP attended the scene and are investigating the incident. To date no new charges have been laid. Ms. Kelly was released on a Promise to Appear in court on September 24, 2012.

12. All sheriffs received cultural sensitivity training, including a segment on First Nations, during their sheriff recruit training at the Justice Institute.

13. An article (attached) on the incident appeared in the Vancouver Sun, the Chilliwack Times and the Chilliwack Progress.

14. Grand Chief Doug Kelly President of the Stó:lō Tribal Council wrote to Minister Bond (attached) to "*investigate this matter and work with Grand Chief Joe Hall and me to ensure that our women, children, and citizens are safe from your sheriffs working in the Chilliwack Courthouse*".

15. Court Services Branch has initiated an investigation of the matter.

PREPARED BY:

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Lead, Executive Operations
Court Services Branch
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ATTACHMENTS:

Appendix A – articles from Vancouver Sun, Chilliwack Times and Chilliwack Progress respectively.
Appendix B – Letter to Minister Bond from Grand Chief Doug Kelly

APPROVED BY:

"approved by Kevin Jardine"
Kevin Jardine
Assistant Deputy Minister,
Chief Court Administrator & Director of Sheriffs

Dated: July 27, 2012

Richard J.M. Fyfe QC
Deputy Attorney General
Ministry of Justice and Attorney General

Dated:

APPENDIX A

Sto:lo woman charged with assault after drum incident at Chilliwack courthouse

Patricia Kelly fighting eight-year-old illegal fishing charges

By Paul J. Henderson, Chilliwack Times July 26, 2012

Kelly is defending herself and spent much of Thursday arguing that University of Lethbridge globalization studies professor Anthony Hall was an expert on section 35 of the Constitution, which protects aboriginal and treaty rights.

"Kwitsel Tatel's experience is illustrative of a larger pattern that repeatedly points the litigious machinery of federal authority against some of the most important affirmations of human rights in the Canadian constitution," Hall wrote in an article entitled The Case of Kwitsel Tatel that Kelly is using as the basis for her defence.

Kwitsel Tatel is Kelly's traditional name.

Hall is the author of a number of books including The American Empire and The Fourth World. He is also a conspiracy theorist who has written and spoken skeptically about the official story of what happened on Sept. 11, 2001.

Kelly's first day in court was lost due to her arrest and detention Wednesday, and by Thursday afternoon the matter of whether Hall was an expert or an advocate was still being argued in Chilliwack court.

APPENDIX B

Hon. Shirley Bond,

s.16

Dk: Grand Chief Doug Kelly
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Pages 64 through 74 redacted for the following reasons:
- -
s. 12, 13, 14

CLIFF No: 391618
DATE: July 17, 2012
REQUIRED DATE: TBD

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

s.12, s.14

Pages 76 through 90 redacted for the following reasons:
- -
S. 12, 14

CLIFF No: 392376
X-Ref: 386253
DATE: 24 April 2012
Updated: 14 May 2012
REQUIRED DATE: n/a

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Re-approval of the 2012/2013 Government Letter of Expectations (GLE) in respect of the Legal Services Society (LSS).

PURPOSE OF NOTE:

FOR DECISION BY: Minister

MEETING REQUIRED: YES

ISSUE:

The Crown Agencies Resource Office (CARO) requires the implementation of a GLE for LSS, in addition to the legally binding Memorandum of Understanding (MOU).

EXECUTIVE SUMMARY:

- A Cabinet briefing note and LSS GLE were approved by the Minister and submitted to CARO for the overall GLE review process in September, 2011. This version was approved by Cabinet.
- The Minister requested revisions to the GLE following the announcement of the Justice Reform Initiative in February 2012. The attached GLE includes revisions that reflect the request for LSS to provide advice about a number of issues that may create savings and permit the reallocation of funding to enhance legal aid.
- Revisions to the GLE must be approved by the Minister of Finance.
- The attached GLE meets all *pro forma* requirements, including template language that is applicable to all Crown corporations and was added by CARO for 2012/13.

BACKGROUND / DISCUSSION:

- Government policy, set by the CARO, requires that all Crown agencies implement a GLE. The purpose of the GLE is to communicate government's general expectations for all Crown agencies, as well as specific direction relevant to each Crown agency.
- LSS is a statutory corporation charged with delivering the province's legal aid program. LSS is governed by the *Legal Services Society Act* (*LSSA*).

- The *LSSA* requires, inter alia, that the Attorney General and LSS negotiate an MOU that considers:

    a. what the level of government funding will be;
    b. the types of matters for which LSS will provide legal aid;
    c. the priority assigned thereto;
    d. those other activities LSS must, or must not, undertake; and
    e. how LSS will participate in justice reform initiatives.

- The *LSSA* indicates that one of the roles of LSS is "to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia."

- As part of the Justice Reform Initiative that the government announced on February 8, 2012, the Attorney General wrote to the Chair of the LSS Board of Directors, David Crossin, Q.C., requesting that LSS provide advice no later than July 2012 respecting:
    - new legal aid service delivery models;
    - changes to the LSS tariffs to provide incentives for justice system efficiencies;
    - the use of telecommunications and the Justice Centre; and
    - how LSS might diversify its revenue stream to expand non-governmental revenue in a manner which will permit funding stability.

Prepared by: Jillian Hazel
Policy Analyst
250.356.8062

ATTACHMENTS:
1. Government Letter of Expectations
2. Letter from the Attorney General to the LSS Board Chair

Approved by: Jay Chalke, QC — Date: 14 May 2012
Assistant Deputy Minister

Approved by:
David Loukidelis QC — Dated: June 15, 2012
Deputy Attorney General

Approved by:
_____
The Honourable Shirley Bond
Minister of Justice and Attorney General

Approved by:
_____
John Dyble
Deputy Minister to the Premier

GOVERNMENT'S LETTER OF EXPECTATIONS

BETWEEN

MINISTER OF JUSTICE AND ATTORNEY GENERAL
(AS REPRESENTATIVE OF THE GOVERNMENT OF BRITISH COLUMBIA)

AND

THE CHAIR OF THE LEGAL SERVICES SOCIETY
(AS REPRESENTATIVE OF THE CORPORATION)

FOR 2012/13

PURPOSE

This Letter of Expectations (the Letter) provides Government's annual direction to the Crown corporation and is an agreement on the parties' respective accountabilities, roles, and responsibilities. The Letter confirms the Corporation's mandate and priority actions, articulates the key performance expectations as documented in the Shareholder's Expectations Manual for British Columbia Crown Agencies[1], and forms the basis for the development of the Corporation's Service Plan and Annual Service Plan Report. The Letter does not create any legal or binding obligations on the parties and is intended to promote a co-operative working relationship.

[1] The Province of British Columbia's Crown Agency Accountability System (http://www.gov.bc.ca/caro/publications/index.html) establishes guiding principles for the governance of Crown corporations. The Shareholder's Expectations Manual identifies roles and responsibilities for the Government and Crown corporations, and provides for a Shareholder's Letter of Expectations (Letter) to be jointly developed.

CORPORATION ACCOUNTABILITIES

Government has provided the following mandate direction to the Legal Services Society under the Legal Services Society Act:

a) The Society's objects are to:
   i. Assist individuals to resolve their legal problems and facilitate their access to justice;
   ii. Establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia; and
   iii. Provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia.

b) The Society's guiding principles are to:
   i. Give priority to indentifying and assessing the legal needs of low income individuals in British Columbia;
   ii. Consider the perspectives of both justice system service providers and the general public;
   iii. Coordinate legal aid with other aspects of the justice system and with community services; and
   iv. Be flexible and innovative in the manner in which it carries out its objects.

SPECIFIC CORPORATION ACCOUNTABILITIES

To achieve this mandate, the Corporation is directed to take the following specific actions:

- Establish a working group to meet on a monthly basis, as required;
  - Comprised of:
    - Executive Director, Criminal Justice and Legal Access Policy Division, Ministry of Justice or such other designate as may be assigned by the Assistant Deputy Minister, Justice Services Branch, and
    - Director, Strategic Planning, Policy and Human Resources Legal Services Society, or such other designate as may be assigned by the Executive Director, Legal Services Society, and
    - Other staff of the Government and / or the Corporation, as occasion may require.
  - To meet periodically, on a continuous basis, to consider,
    - The budget development cycle;
    - The financial position on the Corporation;
    - The establishment of strategic priorities for the Corporation in alignment with the Government's strategic priorities, policy objectives and fiscal plan;
    - Issues relating to the Corporation's objects that might affect Government's responsibility for legal aid and access to justice; and
    - Coordination of policy and program development, and such other issues as may arise.

- Share information and consult with the Government to support policy, planning and program coordination, by:
    - Ensuring that legal aid service delivery aligns to the Government's strategic priorities, policy objectives and fiscal plan;
    - Collaborating with Government on matters and issues outside the scope of core services, such as large cases;
    - Collaborating with the Government to develop a workable definition of "low income individuals", as used in the Act;
    - Promoting early, collaborative dispute resolution in child protection cases and family law cases;
    - Liaising with the Government in relation to each area of law; and
    - Participating in the coordination of services among the Corporation, Government, and other justice system service providers to achieve efficiencies in the delivery of legal aid services
- Provide advice to the Attorney General no later than July 2012, respecting:
    - New legal aid service delivery models;
    - Changes to the LSS tariffs to provide incentives for justice system efficiencies;
    - The use of telecommunications and the Justice Centre; and
    - How LSS might diversify its revenue stream to expand non-governmental revenue in a manner which will permit funding stability.

  Advice should take into consideration:
    - Prior work undertaken in these areas;
    - The experiences of other jurisdictions;
    - Consultation with stakeholders as necessary; and
    - Concerns raised by the Canadian Bar Association, BC Branch.

  Advice should be made on the assumption that government funding will remain at $68.6 million and should include the goal of reducing the costs of delivering current legal services so that savings may be reallocated to enhance legal aid.

GENERAL CORPORATION ACCOUNTABILITIES

Over the past decades, British Columbians have come to expect high quality products and services delivered by their Crown corporations. The Province is well served by our Crown corporations and it is up to the Boards and Senior Management teams of these organizations to manage in the best interests of the Province and our citizens.

As a Crown corporation, it is critical that the operations of the entity be done as efficiently as possible, in order to ensure families are provided with services at the lowest cost possible. In addition, it is expected that Crown corporations, to the greatest extent possible, participate in the Government's open data and public engagement opportunities.

British Columbians rightly expect openness and transparency from both their Government and Crown corporations and it is incumbent upon both parties to be as open and transparent as possible with citizens.

Government sets broad policy direction to ensure the Corporation's operation and performance is consistent with government's strategic priorities and Fiscal Plan, and as such, the Corporation will:

- Ensure that the Corporation's priorities reflect Government's goals of putting families first; creating jobs and building a strong economy; and open government and public engagement;

- Prior to commencing collective bargaining or initiating changes to non-union compensation on or after January 1, 2012, coordinate with Government to develop detailed plans for funding proposed compensation changes or other incentives under the Province's Cooperative Gains Mandate. Plans must be based on real savings and must not include proposals for:
    - increased funding from Government,
    - reductions in service, or
    - transferring the costs of existing services to the public,
    - but may include revenue generation opportunities.

  Plans must be reviewed and approved by Government before any proposed changes to union or non-union compensation are made. Any changes to an approved plan also require approval by Government.

  Commencing the effective date of any changes to the collective agreement and/or non-union compensation plans, the Corporation must report annually to Government on the implementation of a plan, including information on progress in meeting savings targets;

- Government is undertaking reviews of all Crown corporations. The Corporation is expected to participate in the review as requested, and to implement the results of the review;

- At this time of fiscal constraint, government has initiated a review of incentive pay and will be communicating with Boards in early 2012;

- Conduct its affairs with the principles of integrity, efficiency, effectiveness, and customer service;

- Display annual *Financial Information Act* – Statement of Financial Information and Executive Compensation Disclosure Schedules, a Remuneration for Appointees to Crown Agency Boards Schedule and Corporate Governance Disclosure in an easily accessible website location;

- Inform Government immediately if the Corporation is unable to meet the performance and financial targets identified in its Service Plan;

- Comply with Government's requirements to be carbon neutral under the *Greenhouse Gas Reduction Targets Act*, including: accurately defining, measuring, reporting on and verifying the greenhouse gas emissions from the Corporation's operations; implementing aggressive measures to reduce those emissions and reporting on these reduction measures and reduction plans; and offsetting any remaining emissions through investments in the Pacific Carbon Trust, which will invest in greenhouse gas reduction projects outside of the Corporation's scope of operations;

- Ensure Government is advised in advance of the release of any information requests by the Corporation under the *Freedom of Information and Protection of Privacy Act*;

- Ensure any debit/credit card payment services provided to the public are in compliance with the international Payment Card Industry Data Security Standards;

- For Corporations subject to the *Public Sector Employers Act*, ensure the Corporation's membership in the Crown Corporation Employers' Association is in good standing;

- Annually assess the Board appointment process to ensure that succession results in a balance of renewal and continuity of Board membership, and provide the results of this assessment to the Shareholder for consideration;

- Ensure that Board appointments to Crown corporation subsidiaries comply with Board Resourcing and Development Office's Best Practice Guidelines and are approved by Cabinet; and,

- Comply with Government's requirement that lobbyists not be engaged to act on behalf of the Corporation in its dealings with government.

GOVERNMENT'S RESPONSIBILITIES

SPECIFIC GOVERNMENT RESPONSIBILITIES

Specific to the Corporation, Government will:

- Approve the Corporation's mandate to:
    a) assist individuals to resolve their legal problems and facilitate their access to justice;
    b) establish and administer an effective and efficient system for providing legal aid to individuals in British Columbia; and
    c) provide advice to the Minister of Justice and Attorney General respecting legal aid and access to justice for individuals in British Columbia under the Legal Services Society Act.

GENERAL GOVERNMENT RESPONSIBILITIES

Government is responsible for the legislative, regulatory, and public policy frameworks in which Crown corporations operate. In order to meet these responsibilities and support achievement of government's performance expectations, Government will:

- Issue performance management guidelines, including annual guidelines for Service Plans and Annual Service Plan Reports (http://www.gov.bc.ca/caro/publications/index.html);

- Review and provide feedback and final approval of the Corporation's Service Plans and Annual Service Plan Reports; and

- On a quarterly basis, meet with the Corporation to review the achievement of the goals, objectives, performance and financial targets and risk assessments identified in the Corporation's Service Plan, and provide direction to the Corporation as required.

Government has developed the following policies and resources to support the Ministries and Corporations with their regulatory and public policy requirements:

- Shareholder's Expectations Manual for British Columbia's Crown Agencies (http://www.gov.bc.ca/caro/publications/index.html);

- Best Practice Guidelines – BC Governance and Disclosure Guidelines for Governing Boards of Public Sector Organizations (http://www.lcs.gov.bc.ca/brdo/governance/index.asp);

- Remuneration Guidelines for Appointees to Crown Agency Boards (http://www.aved.gov.bc.ca/psec/appointeerenumeration.htm)

- Capital Asset Management Framework (http://www.fin.gov.bc.ca/tbs/camf.htm)

AREAS OF SHARED ACCOUNTABILITY

REPORTING

Government and the Corporation are committed to transparency and accountability to the public and have reporting and disclosure requirements in the *Budget Transparency and Accountability Act*, the *Financial Administration Act*, and/or the *Financial Information Act*. Government provides an Information Requirements and Events Calendar (http://www.gov.bc.ca/caro/publications/index.html) to the ministries responsible and the Corporations that set out the dates the Crown corporations must submit their financial information, service plans, annual service plan reports, and other information to government in order to meet the statutory reporting dates and other government requirements.

The parties agree that each will advise the other in a timely manner of any issues that may materially affect the business of the Corporation and/or the interests of Government, including information on any risks to achieving financial forecasts and performance targets.

The Corporation will post the most recent signed copy of the Government's Letter of Expectations on its website and the Crown Agencies Resource Office will post a signed copy of the Letter on its website.

REVIEW AND REVISION OF THIS LETTER

The Attorney General is accountable for undertaking reviews of this Letter and monitoring its implementation. Government and the corporation may agree to amend this Letter on a more frequent than annual basis.

Honourable Shirley Bond
Minister of Justice and Attorney General

E. David Crossin, Q.C.
Chair, Legal Services Society

Date

Date

cc. Honourable Christy Clark
Premier

John Dyble
Deputy Minister to the Premier and Cabinet Secretary

Peter Milburn
Deputy Minister and Secretary to Treasury Board
Ministry of Finance

David Loukidelis, Q.C.
Deputy Attorney General
Ministry of Justice

Mark Benton, Q.C.
Executive Director
Legal Services Society

Marie Ty
Executive Director
Crown Agencies Resource Office

BRITISH
COLUMBIA

Mr. E. David Crossin, Q.C.
Chair, Board of Directors
Legal Services Society
400 – 510 Burrard Street
Vancouver BC V6C 3A8

Dear Mr. Crossin: David:

I want to thank you and the other members of the Legal Services Society (LSS) board and executive for meeting with me to discuss justice system reform on January 10. Your vision for a more effective and efficient justice system is one that I am confident is shared by all British Columbians and certainly by this government. I also share your opinion that innovative reforms are needed to reduce the cost and complexity of our justice system.

On February 8, 2012, the premier and I made a significant announcement with respect to justice reform. We have appointed Mr. Geoff Cowper, Q.C. to chair our justice reform initiative. This initiative takes the perspective that our justice system is in need of change, and this government is prepared to lead this change and demand better accountability and outcomes in our justice system.

As set out in the *Legal Services Society Act*, one of the roles of LSS is ". . . to provide advice to the Attorney General respecting legal aid and access to justice for individuals in British Columbia." In this capacity I am seeking your advice on a number of issues:

- new legal aid service delivery models;
- changes to the LSS tariffs to provide incentives for justice system efficiencies;
- the use of tele-communications and the Justice Centre; and
- how LSS might diversify its revenue stream to expand non-governmental revenue in a manner which will permit funding stability.

In considering these matters I ask that you consider, but not be bound by, prior work undertaken in these areas and the experiences of other jurisdictions and that you consult with stakeholders as necessary. Please also consider the current concerns raised by the Bar as manifested in the duty counsel withdrawal. One of the goals of this advice should be to reduce the costs of delivering current services so that savings can be reallocated to enhance legal aid.

.../2

Ministry of
Attorney General

Office of the
Attorney General

Mailing Address:
PO Box 9044 Stn Prov Govt
Victoria BC V8W 9E2
e-mail: AG.Minister@gov.bc.ca
website: www.gov.bc.ca/ag

Telephone: 250 387-1866
Facsimile: 250 387-6411

As you conduct this work, I encourage you to engage with Mr. Cowper as part of the justice reform initiative. I believe that the advice you will provide with respect to legal aid is very much a part of our broader look at how we administer justice services in British Columbia.

The government recently announced an increase to annual legal aid funding of $2.1 million to maintain current family law and child protection legal aid services. While the government will continue its efforts to find additional resources for legal aid, given the current economic climate you should assume in preparing your advice that the annual revenue from government will remain at $68.6 million.

I would be grateful if you could provide your advice not later than July, 2012.
Please accept my thanks in advance for your considered advice. I look forward to further discussions about how reforms and efficiencies in legal aid and access to justice may be realized.

Sincerely,

Shirley Bond
Minister of Justice
and Attorney General

CLIFF No: 394293
DATE SENT TO ADM: 13 July 2012
REQUIRED DATE: 13 July 2012

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: Provincial and Territorial Ministers Responsible for Justice and Public Safety Report to Premiers on Violence Against Aboriginal Women and Girls

PURPOSE OF NOTE:

FOR DECISION BY: Minister Bond

MEETING REQUIRED: Yes

ISSUE:

Provincial and Territorial (PT) Ministers Responsible for Justice and Public Safety are asked to approve by July 17, 2012, a follow-up report (see attached) to the PT Ministers' December 2011 report to Premiers on violence against Aboriginal women and girls.

EXECUTIVE SUMMARY:

- At their meeting on June 27, 2012, PT Deputy Ministers Responsible for Justice approved the PT Ministers Responsible for Justice report to Premiers on violence against Aboriginal women and girls. Deputies agreed to seek Ministers' approval of the report prior to July 17 so that the report could be submitted to Premiers for review prior to the Council of the Federation's July 26, 2012 meeting.
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BACKGROUND / DISCUSSION:

- Following a meeting with the leaders of the five National Aboriginal Organizations in July 2011, the Council of the Federation directed PT justice ministers to "consider the root causes of violence against Aboriginal women and girls and report back in December 2011."

- Premier Clark led the discussion about violence against Aboriginal women and girls at the Council of the Federation meeting in 2011 and BC has been leading the work to respond to the Premiers' direction. The report to premiers is an opportunity to highlight what the justice system is doing and may be an opportunity to obtain premiers' support for further action to address the key priorities.

- Senior PT justice officials from BC, YK, AB, SK, MB, PE, and NL drafted a report, which was approved by Ministers and sent to premiers in December 2011. The report noted that PT Ministers would provide a follow-up report after their January 2012 meeting discussion of this issue. At their January 2012 meeting, PT Ministers agreed that the follow-up report be provided in advance of the July 26, 2012 meeting of the Council of the Federation.

- On a March 14, 2012 PT Deputy Ministers' conference call, PT DMs further directed officials to develop a framework for addressing violence against Aboriginal women and girls and include it in the July 2012 report to Premiers. The framework is based on FPT work already accepted by FPT Deputies and Ministers (i.e., recommendations and themes from the FPT Working Groups on Missing Women and Aboriginal Justice).

- PT Deputies approved the PT Ministers' report to Premiers and the framework at their June 27, 2012 meeting. Deputies agreed to seek their Ministers' approval of the report prior to July 17.

- Federal Deputy Ministers and federal officials declined to participate in the work related to the Premiers' direction; however, federal, provincial and territorial Deputy Ministers agreed at their June 28th meeting that federal officials would participate in work to address the FPT Ministers' January 2012 direction to continue to collaborate and develop a common approach to violence against Aboriginal women and girls.

Attachments: Appendix A: Provincial and Territorial Ministers Responsible for Justice Report to Premiers on the Ministers' January 2012 Discussion of Violence Against Aboriginal Women and Girls

Appendix 1: Justice Framework for Addressing Violence Against Aboriginal Women and Girls

Appendix 2: Addressing the Victimization and Abuse of Aboriginal People (Themes Drawn from the Working Group on Aboriginal Justice)

Prepared by: Sherri Lee
Senior Policy and Legislation Analyst
250 953-4261

Reviewed by: Jamie Deitch
Executive Director
Criminal Justice and Legal Access Policy Division

Approved by: Jay Chalke, QC — Date: 13 July 2012
Assistant Deputy Minister

Approved by: _____ Date: July 13, 2012
Richard J.M. Fyfe, Q.C.
Deputy Attorney General

Approved by: _____
The Honourable Shirley Bond
Minister of Justice and Attorney General

Pages 105 through 132 redacted for the following reasons:
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S. 16

CLIFF No: 392019
DATE: June 29, 2012
REQUIRED DATE: N/A

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: Public Guardian and Trustee's Child and Youth Guardianship Services Report 2010/11

PURPOSE OF NOTE:

- FOR INFORMATION OF: Minister of Justice and Attorney General
- MEETING REQUIRED: No

ISSUE: Issues outlined in the Public Guardian and Trustee's 2010/2011 Report on Child and Youth Guardianship Services (Report).

EXECUTIVE SUMMARY:

- The Report sets out general information on the child protection system in B.C.; services provided to Public Guardian and Trustee (PGT) guardian of estate clients; a summary of the critical incident reports received; and some of the major challenges to the delivery of child guardianship services faced by the PGT, and recommendations for improvement.
- The Report notes five actions for improvement, relating to the areas of quality of reporting by the Ministry of Children and Family Development (MCFD), external partnerships, law reform, and building financial literacy for children and youth.
- These actions primarily relate to matters within the responsibility of MCFD; however, two issues are of particular relevance to the Ministry of Justice:
  1. The noting of funding pressures, or unfunded pressures, for the PGT, relating to:
     - MCFD's ongoing initiative to transfer responsibility for guardianship-of-person of aboriginal children from MCFD to Delegated Aboriginal Child and Family Service Agencies (DAAs).
     - PGT initiatives to build financial literacy for children in care as they transition to adulthood.
     - the administration of Registered Disability Savings Plans (RDSPs) for those formerly receiving services, and establishing Registered Education Savings Plans (RESPs) for clients.
  2. Criticism that government has not reformed the law to provide a modern definition of public guardianship. While the definition remains outdated, as a result of fundamental differences in the manner that MCFD and the PGT view their roles as public guardians, this issue could not be resolved prior to introduction of the new *Family Law Act*.

BACKGROUND/DISCUSSION:

- This Report is the third annual report on the services provided by the PGT to minor children and youth for whom the PGT is guardian of estate.
- The Report deals with matters primarily within the responsibility of MCFD; and Ministry staff understand that the PGT has already been in discussions with MCFD regarding matters outlined in the Report.
- The following five "actions" for improvement are set out in the Report:

Quality of Reporting

1. "The PGT will continue to work with MCFD and RCY [the Representative for Children and Youth] to improve the definition of injury and harm with the intent of encouraging improved reporting for incidents involving children in continuing care."

External Partnerships

2. "Until funding pressures are resolved, the PGT will continue to strive to build relationships with DAAs, improve cultural competency of staff and use technology wherever appropriate to improve communication with its co-guardians."
    - The Report notes significant unfunded pressures for the PGT resulting from MCFDs ongoing initiative to transfer responsibilities for guardianship-of-person of aboriginal children in care from MCFD to 19 DAAs across the province. These challenges arise from the need for the PGT to develop independent operational relationships with each delegated agency, in addition to MCFD.

Law Reform

3. "The PGT will continue to call on government to address the lack of Guardian of Estate services available to children and youth in alternative care arrangements."
    - Children receiving provincial services under alternative care arrangements (e.g., extended family agreements; special needs agreements) do not receive the same protections associated with having a guardian of estate as children in continuing care.
4. "The PGT will urge government to reform the law to provide for a modern definition of public guardianship."
    - While the new *Family Law Act* will clarify parental roles and duties, it does not provide a modern definition of public guardianship. The Report states that the existing statutory definition of public guardian of estate, which defines guardianship by reference to the laws of England in 1660, remains largely unhelpful in providing direction about the nature and scope of the role of the public guardian of estate.
    - The Ministry worked with the PGT and MCFD to draft a modern description of public guardianship, but was unable to reach a consensus on a new description prior to introduction of the *Family Law Act*.

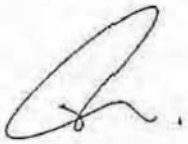
Building Financial Literacy for Children and Youth

5. "The PGT will continue to work with external partners to develop and implement tools and programs to build financial literacy amongst children and youth. However, the capacity of the PGT to continue establishing and maintaining RDSPs and RESPs is dependent on the PGT receiving appropriate resources."

Prepared By: Andrea Buzbuzian
250-356-5410

Reviewed and Approved By: Nancy Carter
Acting Assistant Deputy Minister
Date: June 29, 2012

Approved:



Richard J.M. Fyfe, Q.C.
Deputy Attorney General
Date: July 3, 2012

CLIFF No: 392751
X-Ref: 392264
DATE: July 23, 2012

MINISTRY OF JUSTICE
JUSTICE SERVICES
BRIEFING NOTE

TOPIC: Background information about the International Centre for Criminal Law Reform and Criminal Justice Policy

PURPOSE OF NOTE:

- FOR INFORMATION OF: Minister

ISSUE: The Attorney General has been asked to re-appoint the Honourable Anne Rowles as her representative on the Board of the International Centre for Criminal Law Reform and Criminal Justice Policy (ICCLR) and to meet with the ICCLR.

EXECUTIVE SUMMARY:

- The ICCLR has asked the Attorney General to reconfirm the Honourable Anne Rowles as the ministry's designate for 2012/2013. Ms. Rowles, who retired from the Court of Appeal in 2011, has served on the Board since 2007/08. Previous appointments have included Josiah Wood, Q.C., and Maureen Maloney, Q.C.

- A draft copy of a letter re-appointing Ms. Rowles and accepting a request to meet with the ICCLR is attached as an Appendix.

BACKGROUND:

- The ICCLR was created in 1991 jointly by the University of British Columbia, Simon Fraser University and the International Society for the Reform of Criminal Law as an initiative to improve the quality of justice through reform of criminal law and practice.

- The ICCLR is governed by a Board of Directors and managed under the direction and supervision of a President and Executive Director. The Board consists of two representatives each from the University of British Columbia, Simon Fraser University and the International Society for the Reform of Criminal Law, and one representative each from the Department of Justice Canada, the Department of Public Safety (Canada), the Ministry of Justice (BC), and the Department of Foreign Affairs Canada.

- In June of each year Charter Members of the ICCLR designate or re-designate an individual to represent their institution. These appointments have historically had a tenure spanning three to five years.

- Ms. Rowles replaced Josiah Wood, QC in 2007/2008 as the ministry's representative on the Board. She retired from the Court of Appeal on January 1, 2012 after ten years on that Court. This appointment would be her fifth annual appointment.

- The ICCLR was created with core funding from both federal and provincial governments. Although the province has not provided core funding for a number of years, from time to time the ministry has provided grant funding for specific research, most recently for a report on justice efficiencies.

- The ministry has benefited from the work of the Centre, and has relied on it to provide high quality research.

- The most recent report "Towards Human Trafficking Prevention: National and International Expert Group Meetings Final Report" was prepared for Public Safety Canada and released in May 2011.

    - The report comes out of a national and an international expert group meeting on the prevention of human trafficking.
    - The main goals of the project were to advance knowledge about the effective prevention of human trafficking for the purposes of sexual exploitation and forced labour.
    - An additional goal is to delineate possible elements of a human trafficking prevention framework for Canada.

- The ICCLR also produced three briefing notes in 2011 on the elimination of violence against women, human trafficking in Canada, and the victims of environmental crime. These reports and briefing notes are on the ICCLR website at: http://www.icclr.law.ubc.ca/.

- Currently, the ICCLR are proposing to initiate a research proposal responding to concerns of domestic violence.

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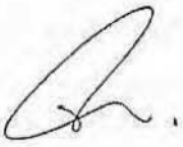
PREPARED BY: Michele Saunders
Research Officer, CJLAPD

ATTACHMENTS: Appendix 1 – Complete List of the Board of Directors
Appendix 2 – Reappointment letter for Ms. Rowles

Approved by: Jay Chalke, Q.C.
Assistant Deputy Minister

Date: July 25, 2012



Approved by:

Richard J. M. Fyfe, Q.C.
Deputy Attorney General

Management:
Mr. Daniel Préfontaine, Q.C., President, and Ms. Kathleen Macdonald, Executive Director.

Board Members	Representing
The Honourable Justice Richard Mosley (Chair)	• Federal Court of Canada and International Society for Reform of Criminal Law
Professor Neil Boyd *School of Criminology, Simon Fraser University*	• Simon Fraser University
Dean Emeritus Peter Burns, Q.C. *Faculty of Law, University of British Columbia*	• University of British Columbia
Professor Roger S. Clark *Board of Governors Professor, Rutgers University School of Law*	• International Society for Reform of Criminal Law
Mr. Alan H. Kessel *Legal Advisor, Legal Affairs Bureau, Department of Foreign Affairs*	• Foreign Affairs Canada
Professor Benjamin Perrin *Faculty of Law, University of British Columbia*	• University of British Columbia
Mr. Donald Piragoff *Senior Assistant Deputy Minister, Department of Justice*	• Department of Justice
The Honourable Anne Rowles *Retired Justice of the Court of Appeal of British Columbia*	• Attorney General of British Columbia
Mr. John B. Sandage *Director, Division of Treaty Affairs, UN Office on Drugs and Crime*	• (Ex Officio) UN
Professor Simon Verdun-Jones *School of Criminology, Simon Fraser University*	• Simon Fraser University
Mr. Richard Wex *Assistant Deputy Minister*	• Public Safety Canada

CLIFF #: 392264
X-Ref: 392751

Ms. Kathleen Macdonald
Executive Director
The International Centre for Criminal Law Reform
And Criminal Justice Policy
1822 East Mall
Vancouver BC V6T 1Y1

Dear Ms. Macdonald:

Thank you for your letter of April 4, 2012. Please accept my apologies for the delay in responding.

I am pleased to re-appoint the Honourable Anne Rowles to the Board of the International Centre for Criminal Law Reform and Criminal Justice Policy.

I look forward to working with the centre in the coming year on key issues related to the criminal justice system. My staff will be in contact to setup a meeting in the future.

Sincerely,

Shirley Bond
Minister of Justice
and Attorney General

CLIFF No: 393801
DATE: 24 July 2012
Required date: N/A

MINISTRY OF JUSTICE
JUSTICE SERVICES
BRIEFING NOTE

TOPIC:

Questions and Answers on the Civil Resolution Tribunal

PURPOSE OF NOTE:

- FOR DECISION OF: AG
- MEETING REQUIRED: NO

ISSUE:

We are seeking approval from the Attorney General for the release of the attached questions and answers relating to the Civil Resolution Tribunal (CRT).

EXECUTIVE SUMMARY/RECOMMENDATION:

The attached questions were submitted to ministry staff by David Bilinsky, a well-known Canadian law blogger, technology enthusiast and practice advisor at the Law Society of BC. JSB prepared the answers in a conversational format, as though they are from the Minister for justice stakeholders and the public.

BACKGROUND:

1. The attached questions and answers are likely to be posted by Dave Bilinsky to two popular Canadian law blogs Slaw.ca and Thoughtfullaw.com.

2. Mr. Bilinsky is a well known legal technology and justice reform commentator who, in addition to his blogs, is a practice advisor for the Law Society of BC.

3. In conversations with JSB, Mr. Bilinsky has expressed strong support for the Tribunal and for its use of technology and ADR to increase access to justice. He is likely to emerge as a champion for this initiative within the BC legal community.

4. Slaw has already generated discussion about the Tribunal – some of it critical but much of it positive.
    a. http://www.slaw.ca/2012/05/10/b-c-to-have-official-online-dispute-resolution/ (May 10, 2012) (see esp. the Jordan Furlong comment)
    b. http://www.slaw.ca/2012/05/28/odr-and-the-bc-courts/ (May 28, 2012)

5. Aside from Ministry news releases, much of the information circulated to the public has come from the Canadian Bar Association, Trial Lawyers Association of British Columbia and other BC lawyers who have generally voiced opposition to the initiative's reforms. Some of this information has been inaccurate.

6. While the responses could come from JAG staff, providing the responses on behalf of the Minister will signal strong Ministerial support for the CRT and its implementation.

PREPARED BY: Darin Thompson, Legal Counsel, Dispute Resolution Office

REVIEWED BY: David Merner, Executive Director, Dispute Resolution Office

APPROVED BY: Jay Chalke, QC
Assistant Deputy Minister

Date: 24 July 2012
(Revised)

Richard J. M. Fyfe, Q.C.
Deputy Attorney General

Date: July 27, 2012

_____

Honourable Shirley Bond
Minister of Justice and
Attorney General

Date: _____

Questions and Answers on the Civil Resolution Tribunal

1. What was the primary motivation behind Bill 44?

There are many good reasons for a Civil Resolution Tribunal. This is part of our work on increasing access to justice for citizens and reducing cost, complexity and delay.

The Tribunal provides an option for British Columbians who are looking for less formal approaches to dispute resolution. The courts provide essential dispute resolution services, but the traditional adversarial litigation system should not be the first place we turn to for help.

Also, we recognize that the world is changing at an incredible pace - driven in large part by technology - and the Civil Resolution Tribunal offers a way for technology to help the justice system change too.

Especially in the strata property area, the Civil Resolution Tribunal will provide an accessible option for resolving these types of disputes without requiring people to go to Supreme Court. In the small claims area, this is an opportunity to expand on the success of BC's small claims pilot project at Robson Square and the lessons we've learned from BC's two Online Dispute Resolution projects.

2. How does Bill 44 increase access to justice in BC?

In terms of service delivery, the Tribunal will operate through the internet, mail and telephone 24/7. We know that 93% of British Columbians have access to high speed internet and that at least 85% of us are already using the internet.

People who aren't online can get help from family or friends who are online, or visit a public terminal. Because many of the interactions between the parties and the Tribunal will be sequential rather than happening at the same time, we hope that it will be easy and convenient to get help from others.

In terms of approach, the Civil Resolution Tribunal will focus on resolving disputes with less formality and more collaboration. This will be a big improvement over forcing the parties to reframe their problems into adversarial legal terms, and then having to deal with a court process. We know the adversarial framing of disputes and navigation of court processes are difficult for most people, which is why the new Tribunal will offer an alternative approach.

In terms of speed, we are hoping to resolve disputes much faster than typically occurs in the courts. Our early targets for the new Tribunal will be 60 days from filing to resolution. Right now it's common to wait 6 months just for a first appearance in Small Claims Court and over a year for a trial.

3. What specific matters or disputes will be exclusively under the jurisdiction of the Tribunal and which ones may voluntarily be brought to the Tribunal.

Initially, the Civil Resolution Tribunal will handle the same types of cases as the Small Claims Court as well as a range of strata disputes.

The Tribunal's small claims jurisdiction will involve disputes up to $25,000 where the parties agree to the Tribunal resolving issue. The Small Claims pilot project at Robson Square has proved that streaming cases to specialized, highly skilled mediators and adjudicators delivers

excellent outcomes. The lessons from that pilot will help to inform the design of the Tribunal's new dispute resolution processes.

The strata cases will include a range of disputes over the application of the *Strata Property Act*, strata bylaws, common property, use and enjoyment of lots, monies owing or other issues between the strata council and owners or tenants. Right now, strata owners have to take their disputes to Supreme Court, regardless of whether the dispute is over a barking dog or an alleged failure on the part of the strata council to enforce its bylaws.

The Tribunal will provide better access to services for these kinds of disputes and more emphasis on collaborative dispute resolution. Collaborative approaches are quite appropriate in terms of protecting the relationships between strata property residents. In many cases, the people involved in strata disputes are neighbours and will continue to be neighbours after their dispute has been resolved.

4. Is the Tribunal meant to oust the jurisdiction of the Provincial Court of British Columbia (Small Claims)?

No. People can still file a claim with the Small Claims Court if they wish. However, to avoid duplication of proceedings and forum shopping, the *Civil Resolution Tribunal Act* will require the dispute to go through either the Tribunal or court for a final determination. You will not be able to go through the Tribunal process and court at the same time.

Once the Tribunal has resolved the dispute, it cannot be brought to court, except on a judicial review application to the Supreme Court.

The same will be true with respect to strata disputes.

5. Some have said that the Government has been starving the judicial sector for years in order to create a crisis that has led to Bill 44. Do you have any comments or thoughts on this?

Courts around the world are hungry for resources and governments continue to struggle with funding shortfalls across all program areas. In the face of these constraints, governments have to make difficult resource allocation choices (e.g. new medical technology vs. new highway infrastructure vs. justice system enhancements).

In any event, the historical model of the justice system, with its well-documented costs, complexity and delay faces major resource challenges. Meaningful justice transformation depends on services that deliver better solutions and better value for money. There should be no debate about whether good outcomes and good value for money can both be delivered. Our administrative tribunals have been exceeding expectations in both respects for a while now.

The great part is that we don't need to focus on an 'either/or' dichotomy - we think it is possible to introduce new ways of doing things and allow court resources to focus on those cases that need court resolution.

6. What do you expect to be the results of this Tribunal? How soon do you expect to be able to release initial results on the operation of the Tribunal?

With respect to the disputes, we are hoping users will see faster resolutions and we will see higher satisfaction levels. Speed will be important, and will probably be reflected in basic 'time to resolution' measurements. User satisfaction is qualitative, of course, and relates closely to a

sense that users have been treated fairly. Satisfaction is difficult to measure when a person's feelings with the process are intertwined with feelings about the outcome - that is, whether the person feels like their case was 'won' or 'lost.' But, because we want to focus on the users rather than on process, satisfaction will also be measured.

From an administrative perspective, the Tribunal's operations will be like many of our administrative tribunals: open, transparent and easy to understand. Taxpayers should be able to see whether they are getting good value for their money in the Tribunal.

We expect this performance information to become available within the first year of operations as an annual report from the Tribunal is required under the *Civil Resolution Tribunal Act.*

7. Will you be conducting surveys of the participants as to their experiences with the Tribunal?

Yes. By delivering the Tribunal's services through technology, we will invite feedback from users early and often throughout the process. It will be a great way to find out how things are working for users and how the processes can be improved from their perspective. The legislation includes specific reference to these activities, so they will not be taken lightly. Continuous feedback may help to avoid the need for more expensive one-time retrospective evaluation activities.

If we have these goals in mind at the design stage (and we do) the technology-based structure of the Tribunal can be created to provide real-time feedback. Again, the emphasis here will be on the outcomes and users, rather than on rigid processes, so this type of evaluation will be considered a key component of the Tribunal's administration.

8. In the legislation there is a general rule that parties are to act for themselves. Is this Tribunal designed to oust lawyers from the dispute resolution process?

As a starting point, this provision in Bill 44 is intended to keep the process focused on users and their issues. It's not about lawyers.

The legislation does set out a general rule that parties are to represent themselves, with exceptions for children and people with diminished mental capacity. It also leaves open the possibility for the Tribunal's rules to provide other exceptions, and for the Tribunal to exercise its discretion on a case-by-case basis.

However, it is important to recognize that there is no prohibition against consulting a lawyer. Parties will be free to get as much advice as they want, or can afford. Because the Tribunal will move away from the real-time courtroom appearance model, it should be very easy to access advice from lawyers willing to provide services in what may be a less-traditional way.

Evaluation data from the Small Claims Pilot Project suggested that only around 10% of small claims users used a lawyer through the entire process. About 42% of users received some assistance to complete their documents. Fifty per cent of this assistance came from non-lawyers. The Tribunal will build on this trend and leave open the potential for help from a variety of sources.

The Law Society of BC has taken some early steps in this area with respect to expanded responsibilities for paralegals and articled students and unbundled legal services. BC has a lot of other great sources of specialized help from public legal education and information providers,

community advocates and more. It would be great to provide a full range of options for Tribunal users who feel like they might need help.

Still, it's a possibility that some lawyers may highlight what they perceive to be problems with the rule that parties represent themselves. I'm hoping that most lawyers see this as a golden opportunity to adapt to the legal services landscape of the future. Ideally, they will figure out how they can adapt their own services to fit with a new model of service delivery, for example by hiring paralegals or other lower cost service providers to meet the need in BC for access to justice.

9. The legislation in s. 5 refers to parties having to avail themselves of Online Dispute Resolution services offered by the Tribunal. First, what kind of ODR services will be offered? Two, how will they work in practice? Three, can lawyers use these services when acting for their clients or will they exclude lawyers?

We expect the Online Dispute Resolution (ODR) services to involve self-help, triage and problem diagnosis tools and party-to-party negotiation tools.

The self-help, triage and problem diagnosis ODR tools will likely involve a question and answer layout to get basic information from a user, then push the right information to the user and stream the dispute in the right direction through the system. Ideally, this 'front end' of the Tribunal will help a person to figure out whether he or she really has a dispute, what type of dispute it is, what specific information applies, what steps can be taken immediately to try and resolve it, and so on. It could also help to stream people to other resources for more help, including public legal education and information groups, or other support organizations that provide similar functions in the strata property context.

The party-to-party ODR tools will provide the virtual place for parties to discuss the dispute and negotiate an outcome on their own, within the structure of the online system. We don't expect that all disputes will settle at this phase, of course, but some certainly will. Even if the disputes don't settle, the parties will have a much better idea about the issues, what information is available and therefore what needs to be done next.

Alternative dispute resolution already depends heavily on communication and information sharing. The internet is the best tool yet for communicating and sharing information easily, cheaply and efficiently. The Tribunal's ODR services will combine these benefits and deliver them to users.

The ODR tools will empower people to take the dispute resolution processes into their own hands and try to find a resolution as quickly as possible. If they can't manage to settle the dispute, they would next ask the Tribunal for additional help.

In terms of the role lawyers might play in the use of these tools, a party will indeed be able to consult with a lawyer if they wish, which should be easy since these interactions will not be in real-time.

10. How will the new Tribunal deal with the reluctant defendant who attempt to delay, defeat and otherwise frustrate dispute resolution methods?

Under the legislation, a case manager has the option to refer the dispute straight into the hearing phase for a resolution or dismissal if a party fails to comply with the Act, rules or orders during the case management phase. The same is true once the case enters the hearing phase if a party fails or refuses to participate.

This active management differs from some traditional legal processes that leave the determination of successive steps up to the parties and their lawyers. We think this is a change whose time has come, and one that will be welcomed by the average user. Again, this approach is already taken by many of BC's administrative Tribunals who resolve cases in an expeditious way.

11. I note that the Government may not be a party to a matter before the Tribunal. Doesn't this suggest that the Government is suggesting that the public use a process that they themselves refuse to participate in?

In the developmental phase of the Tribunal, a great deal of importance was put on keeping the processes as simple as possible. The added complexities of lawsuits against government were thought best to leave out initially. This approach has a precedent: the Provincial Court of British Columbia officially came into existence in 1969, yet it wasn't until 2004 that claimants could bring claims against the Provincial Government in a Small Claims case.

The decision to exclude government as a party may be reviewed at some point after the Tribunal becomes operational.

12. What is the role of Case Managers in this legislation? Are we moving away from a system where parties are responsible for presenting their cases to a process that is largely driven by the case manager?

The first responsibility of the case manager is to help the parties find a resolution by agreement on some or all of the issues in dispute. After that, this person will help to narrow the remaining issues and determine the facts that will help the Tribunal resolve the matter appropriately through the hearing phase.

The case manager can also provide a neutral evaluation of the respective strengths and weaknesses of the arguments and let parties know the likely outcome at a hearing. Under the right circumstances, and with the consent of the parties, the case manager may also be able to resolve the dispute by a decision. For relatively straightforward cases and parties who don't care to wait, moving straight to a decision will be a great option.

It's difficult to predict just how much of a change the Tribunal will make. The legislation makes it clear that an informal dispute resolution approach is preferred, which is a fairly significant contrast with the traditional adversarial litigation process in which the parties are fully responsible for presenting their cases to a judge. I expect the Tribunal will move in that direction – toward more case management, active dispute management, and the provision of "hands on" services to users where it is appropriate to do so. Again, the BC's civil administrative tribunals have demonstrated that this approach can, and does, work.

13. When do you anticipate that a matter would be referred to the Tribunal by a case manager?

A matter would be referred to the Tribunal when the collaborative dispute resolution processes have failed to resolve all of the issues in dispute. Some of the issues might have been resolved, and the remaining issues should be narrowed as much as possible. The parties should also have the evidence and information ready to help the Tribunal make its decision.

Other ways a matter would be referred to the Tribunal would be when a dispute appears to be frivolous, vexatious or an abuse of process. Here, it won't often make sense to ask the other

party to negotiate or to make other good faith attempt to resolve their disputes. Similarly, if a party fails to comply with the Tribunal's rules or an order, the case manager might refer the dispute to a Tribunal member for resolution by a decision as quickly as possible.

We expect that the rules will also set out timelines for different phases in the process that would prompt the dispute to move along. That approach is being adopted in BC's tribunal community as a way of focusing everyone on the need for timeliness.

14. I note that the Tribunal is not limited to hearing evidence that would be admissible in a court of law and otherwise is empowered to ask questions and 'inform itself' as to matters. Does this open the Tribunal to abuse and deciding cases on shaky evidence or on evidence not brought forward by one of the parties?

The intent here is to relax some of the process and procedure relating to evidence. It will also open the door for the Tribunal to ask some questions of its own, which could be helpful when dealing with people who aren't aware of the really important questions to ask or representations to make on their own. Again, this is an approach adopted by other administrative tribunals.

I'm confident that the Tribunal will exercise this discretion appropriately. It may help to point out that this authority also exists in section 16 of the *Small Claims Act* and Small Claims Rule 10 (1), and has been in use for some time. It also appears in section 40 of the *Administrative Tribunals Act*. Administrative tribunals are experienced in making good decisions with a more informal approach to evidence gathering and presentation.

15. I note that Judicial Review is available for Tribunal decisions but no Appeal. On what grounds could a decision be set aside? Why is there no ability to have the equivalent of a 'trial de novo' and/or an appeal in the Small Claims Court or Supreme Court?

Section 56 of the *Civil Resolution Tribunal Act* basically adopts section 59 of the *Administrative Tribunals Act*. Section 56 will make the legislated standard of review consistent with other British Columbia tribunals. The courts have considered and applied this standard in other cases. Of course, it's impossible to say with any certainty how the courts will apply the standard to specific cases coming from the Tribunal.

With respect to the absence of a trial *de novo* or appeal, the Tribunal's decisions are meant to be final and binding. If people are looking for the possibility of appeals or retrials, it would be best to head through the more traditional court process. The Civil Resolution Tribunal will be much more like BC's administrative tribunals in this respect. It is appropriate for the Legislature to instill a high level of deference to this Tribunal which will have specialized processes and deal with relatively specific subject matter.

16. If communications and other information takes place using electronic means, what protections have been put into place concerning the privacy of these communications?

Privacy of communications is critical. Keep in mind that BC is already a leader in this area of justice innovation, and that we have been getting information into and out of court files through the internet since 2005. This protection will be a priority and the Tribunal should be able to build on the knowledge and experience gained over several years of operating excellent services like Court Services Online.

17. Strata disputes specifically fall within the jurisdiction of this Tribunal. What do you expect to be the result of this change from the perspective of strata owners, strata councils and strata property management companies?

The legislation draws on extensive consultations carried out with stakeholders in the strata community, dating back to 2010. An online survey was also conducted, with 95% of respondents favouring a dispute resolution model that is reflected within the Tribunal. In this light, we anticipate that this new option will be a welcome change for strata owners, councils and others.

In terms of currently available dispute resolution choices, strata owners, strata councils and property managers are primarily limited to Supreme Court. As you can imagine, this is not seen as a desirable option in a lot of cases. There could be a lot of unmet demand out there that the Tribunal can help to release, and bring about a collaborative, accessible, reliable and enforceable dispute resolution outlet for people involved in strata disputes.

18. Some people have said that this change has been brought in without any consultation with either the Canadian Bar Association, the Trial Lawyers Association of BC or the Law Society. Do you have any comments in this regard?

In terms of setting up the general 'legislative architecture' for the Tribunal, it's true there was not a lot of outside consultation with traditional justice system stakeholders like lawyers or judges, because, unlike the current system, the expectation is not that they will be playing the dominant roles. We did draw on recent evaluation of the Small Claims Pilot Project, including its user survey data. We also drew on earlier work by the former Civil Justice Reform Working Group, led by the BC Justice Review Task Force, which highlighted the growing cost, complexity and delay in the traditional court system and the need for proportionality in dispute resolution.

It's clear that many organizations are concerned about access to justice and have their own ideas about what needs to be done. Some stakeholders have argued consistently that Government should divert more of its resources and program funding into an expansion of the status quo. Others want to see new ways of delivering justice. We see the Civil Resolution Tribunal as something falling squarely in the latter approach, and we look forward to hearing how the CBA, TLABC and Law Society see themselves playing a part of this effort to bring in meaningful change.

In addition, we will welcome discussions around the larger principles relating to justice reform, dispute resolution and a user-centric focus that may be spurred by this initiative. From recent calls for reform by Governor General David Johnston, to concerns over access to justice among the middle class expressed by Chief Justice McLachlin, to the disruptive nature of technology in the justice sector described by Professor Richard Susskind, the Tribunal will tackle critical issues head-on. Diverging views from well-established stakeholders, citizens and other interested groups will all be up for consideration.

19. Comments have been raised that the small court process could have been improved to address the same concerns that the new Bill is designed to address. Do you have any comments in this regard?

I strongly support the Small Claims Court Pilot processes and was hopeful that it would be possible to expand some or all of their benefits beyond Downtown Vancouver and Richmond, but this was not possible.

The great thing about the Tribunal is that it does not rely on the traditional bricks-and-mortar approach to service delivery, meaning we can implement it across British Columbia pretty readily. We are also hopeful that this initiative will help to make the alternative dispute resolution options that were a driving force behind the Small Claims Pilot processes much, much more available and accessible across BC.

The legislation does allow for interactions between the Tribunal and the court. For instance, a judge can order parties to go through the Tribunal process. Diverting cases in this way could help to push more collaborative dispute resolution, avoid delays for parties and free up judges to deal with the court backlogs that have become such a concern for everyone. We look forward to working with the courts on this and other options for collaboration.

20. Is this the first shot at introducing a 'no fault' injury scheme in British Columbia?

No. Not at all. There was no such policy impetus behind the development of this initiative.

21. What is the status of the decisions or orders of the Tribunal? How do they compare with the decision of a court?

The orders coming out of the Tribunal can be filed for enforcement with the courts. If they fall within the jurisdiction of the Provincial Court, they can be filed at a Small Claims Court registry. Otherwise, they can be filed at Supreme Court. These options will cover orders coming out of a hearing, or orders arrived at by consent between the parties (through, for example, settlement agreements).

It's generally understood that agreements between parties are less likely to require enforcement than orders made by a neutral third party. We hope to build on this trend by encouraging collaborative settlements through the Tribunal. However, many of these agreements could also become 'consent resolution orders' of the Tribunal, making them enforceable too.

Other provisions relating to the restriction on court proceedings will reinforce the finality of Tribunal orders by preventing people from taking the same matter to court once the Tribunal has dismissed or resolved it.

22. Who will be the people providing case management and Tribunal decisions? Will they be lawyers, judges or mediators?

The case managers will be staff chosen based on their ability to provide high quality service to Tribunal users, particularly when it comes to understanding issues behind disputes and turning things around with a problem solving approach. They may have a legal background, but it will be critical that they have dispute resolution skills and training. The legislation leaves open the possibility that Tribunal members can also function as case managers.

As for the Tribunal members themselves, the Tribunal membership is modeled on BC's administrative tribunals. Members will be appointed through a merit-based process, for fixed terms. These people will be free to make decisions without interference and will be free from bias. The goal is to appoint people who bring practical and specialized experience in resolving the types of cases that come to the Tribunal for resolution. I expect most, if not all, Tribunal members will be very experienced and most will likely be lawyers with backgrounds similar to the Justice of the Peace adjudicators who have been a key part of the success of the Small Claims Court Pilot.

23. What about people with literacy challenges or for whom English is a second language?

The idea is to uphold the legislated mandate of the Tribunal which is to accommodate, so far as reasonably practicable, the diversity of circumstances of the Tribunal's users. (This is in section 2 of the Act.) Rather than focus on tradition or process, we would like to see a focus on users.

The goal will be to present information and instructions in the simplest possible format. Use of icons and video could be incorporated to decrease the emphasis on text, which is the current practice for all court forms which must be used to start a proceeding, set out the basis of a claim and make what can often be complex legal or procedural arguments.

In addition, the largely asynchronous nature of Tribunal interactions will give users time to absorb information, seek assistance if necessary, and avoid the stress of being called to answer questions instantaneously, except where a teleconference, video or in-person hearing is required. It will also be easier to get help from a friend or relative on these issues, which is something that is much more complicated in a courtroom context. Hopefully, it will be possible to avoid the current situation in court where non-English speakers are required to hire and pay for their own interpreters and translators.

Lastly, reliance on technology as a service delivery tool opens up a lot of possibilities. It could turn out that multilingual text will become available through many stages of the process. Online translation programs are getting better and better, and could become a common tool for users in the future. It's early days still but we want to develop this Tribunal with an eye on where technology is going. A key part of the Tribunal's design is going to relate to relate to continuous improvement based on good data and evolving technology. We hope this will enable the Tribunal to become a model for the justice system in BC and for the common law world.

CLIFF No: 393904
DATE: July 30, 2012
REQUIRED DATE: n/a

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: Meeting with B.C. Dental Association regarding record retention and the new *Limitation Act*

PURPOSE OF NOTE:

- FOR INFORMATION ONLY: Attorney General
- MEETING REQUIRED: Yes – JSB will meet with the Association.

ISSUE:

B.C. Dental Association concerns with the transition rules under the new Limitation Act.

EXECUTIVE SUMMARY/RECOMMENDATION:

On May 14, 2012, the new *Limitation Act* received Royal Assent. The ministry is currently working on an implementation plan that would bring the Act into force on June 1, 2013. The new *Limitation Act* contains transition rules which provide a framework for transitioning to the new basic and ultimate limitation periods in cases involving pre-existing claims.

Dentists have raised the concern that the transition rules do not shorten the duration of time that their records are retained fast enough. However the transition rules were created to apply to all potential litigants to govern the period of time that a person has to start a civil court proceeding. While record retention policies are often linked to limitation periods, the new *Limitation Act* does not directly govern record retention. Because both the duration and commencement date of the ultimate limitation period is changing, the transition rules attempt to balance the rights of claimants and defendants. The end result is a trade-off: claimants can rely on previous legal advice and are not subject to a change of regimes for pre-existing legal problems on the one hand, while defendants of these pre-existing situations (formerly governed by a 30-year ultimate limitation period) have a slower transition to the new regime.

Nancy Carter and Jay Chalke will be meeting with the B.C. Dental Association to explain how the operation of the transition rules in the new *Limitation Act* will apply to existing dental records, and will provide them with government's rationale and background information surrounding the transition model that will be taking effect on June 1, 2013.

BACKGROUND/DISCUSSION:

1. The new *Limitation Act* (new *Act*) received Royal Assent on May 14, 2012. The ministry is currently working on an implementation plan that would bring the Act into force on June 1, 2013. The new *Act* will set out the time limits to start a proceeding to sue someone in the civil justice system. The new *Act* is a default statute. It applies to a broad range of civil lawsuits. If another more specific statute sets a limitation period, the new *Act*'s limitation periods do not apply.

2. The current *Limitation Act* contains two ultimate limitation periods: a general 30-year ultimate limitation period and a special six-year ultimate limitation period for medical malpractice and negligence claims against doctors, hospitals and hospital employees. The new *Act* will repeal these ultimate limitation periods and replace them with a single 15-year ultimate limitation period that applies to all claims.

3. Many professions and organizations have record retention policies that are based on the duration of limitation periods in the current *Limitation Act*. This ensures that a person retains records relating to information that may be the subject of a future lawsuit for the length of the limitation period. For example, as the current *Limitation Act* contains an ultimate limitation period of 30 years, many professions and organizations retain their records for 30 years in case they become a potential defendant in a lawsuit.

4. The B.C. Dental Association, on behalf of dentists, has lobbied the government to shorten the ultimate limitation period for several decades. Dentists have had an amendment to the *Limitation Act* on the books since 2000 that changes their ultimate limitation period to ten years. However, this amendment was never brought into force. The new *Act* repeals this amendment. Once the new *Act* comes into force, dentists will be governed by a 15-year ultimate limitation period.

5. The new *Act* contains transition rules which provide a framework for transitioning to the new basic and ultimate limitation periods in cases involving pre-existing claims. These rules are based on the model found in Ontario's reformed limitations legislation.

6. The transition rules ensure that with respect to pre-existing situations, people will be able to rely on legal advice given to them and decisions made under the current *Limitation Act* that pre-date the new *Act*. The rules preserve the current limitation periods for claimants that have already discovered their claims. The rules ensure that claimants, who discover their claims after the new *Act* comes into force, are not unfairly prejudiced due to the shortened limitation periods. Because both the duration and commencement date of the ultimate limitation period is changing, the transition rules attempt to balance the rights of claimants and defendants. The end result is a trade-off: claimants can rely on previous legal advice and are not subject to a change of regimes for pre-existing legal problems on the one hand, while defendants of these pre-existing situations (formerly governed by a 30-year ultimate limitation period) have a slower transition to the new regime.

7. As many professions and organizations have record retention policies that are based on the duration of limitation periods in the current *Limitation Act*, it is important that the transition rules in the new *Act* are understood, as they will affect the duration of time that records will be retained in the future.

8. As a result of the transition rules, professionals such as dentists will need to keep records created between 1983 and 1998 for at least 30 years (i.e., due to the intersection of the 30-year ultimate limitation period and the 15-year ultimate limitation period that runs from June 1, 2013, records created between 1983 and 1996 will need to be kept for 32 years, records created in 1997 will need to be kept for 31 years, and records created in 1998 will need to be kept for 30 years). (See Appendix B: Transition Matrix)

9. Dentists have raised the concern that the operation of the transition rules will have the effect of only allowing records created after the effective date of the new *Act* to be governed by the 15-year ultimate limitation period. Pre-existing records will continue to have to be retained under their previous 30-year policy. They are disappointed that the transition rules do not

result in a faster transition to the new regime for record retention. However, the transition rules were created to apply to all potential litigants to govern the period of time that a person has to start a civil court proceeding. While record retention policies are often linked to limitation periods, the new *Act* does not directly govern record retention. The transition rules cannot be changed to benefit the record keeping policies of potential defendants at the expense of unfairly prejudicing potential plaintiffs.

Attachments: Appendix A: Explanation of Limitation Act transition rules
Appendix B: Transition Matrix

Prepared and Reviewed by:
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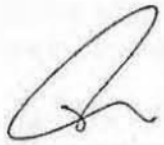
Date: July 6, 2012

Approved:
Nancy Carter
A/Assistant Deputy Minister
Date: July 30, 2012

Approved:



Richard J. M. Fyfe, Q.C.
Deputy Attorney General
Date: July 30, 2012

APPENDIX A – EXPLANATION OF LIMITATION ACT TRANSITION RULES

1. The transition rules under the new Limitation Act apply to claims that are based on an act or omission that took place before June 1, 2013 (the proposed effective date of the new *Act*). Claims that are statute-barred before the new *Act* comes into force will not be revived.

    - Pre-existing claims that are discovered before the new *Act* comes into force are subject to the limitation periods in the current *Limitation Act*.

    - Pre-existing claims that are discovered after the new *Act* comes into force are subject to the discovery provisions in the new *Act*. This means that the two-year basic limitation period runs from the date that a claim is discovered. There are two situations:

    a. If the claim was previously subject to the special six-year medical ultimate limitation period, the six year ultimate limitation period continues to apply. The ultimate limitation period continues to run from accrual of the cause of action. (This means that pre-existing claims discovered between June 1, 2013, and May 31, 2019, that are not statute-barred will be governed by a six-year ultimate limitation period = no change.)

    b. If the claim was previously subject to the 30-year ultimate limitation period, the new 15-year ultimate limitation period applies as if the act or omission on which the claim is based occurred on the later of;
        i. June 1, 2013 (the effective date of the new Act); or
        ii. The day the act or omission takes place under section 21(2) [the special act or omission dates for conversion, fraud or trust claims, contribution or indemnity claims, etc.].

            (This means that pre-existing claims discovered between June 1, 2013, and May 31, 2028, that are not statute-barred are governed by a 15-year ultimate limitation period that runs from June 1, 2013.)

2. s.13

3. An example of how the transition rules apply: a person went to their dentist looking for relief from a tooth-ache in 1995 and was told by their dentist that they needed their tooth removed and replaced with a false tooth. The person agreed and had the dental work done. They returned to the dentist in 1996 and had an x-ray. Unbeknownst to the person, the x-ray revealed damage to their gums that occurred immediately following the 1995 procedure. In 2024, (after the effective date of the new *Act*) the person went to a second dentist and learned that the procedure from 1995 was unnecessary and was the source of serious problems with their gums. The person decided to sue the first dentist for professional negligence. The transition rules would apply to this fact pattern as it involves a pre-existing

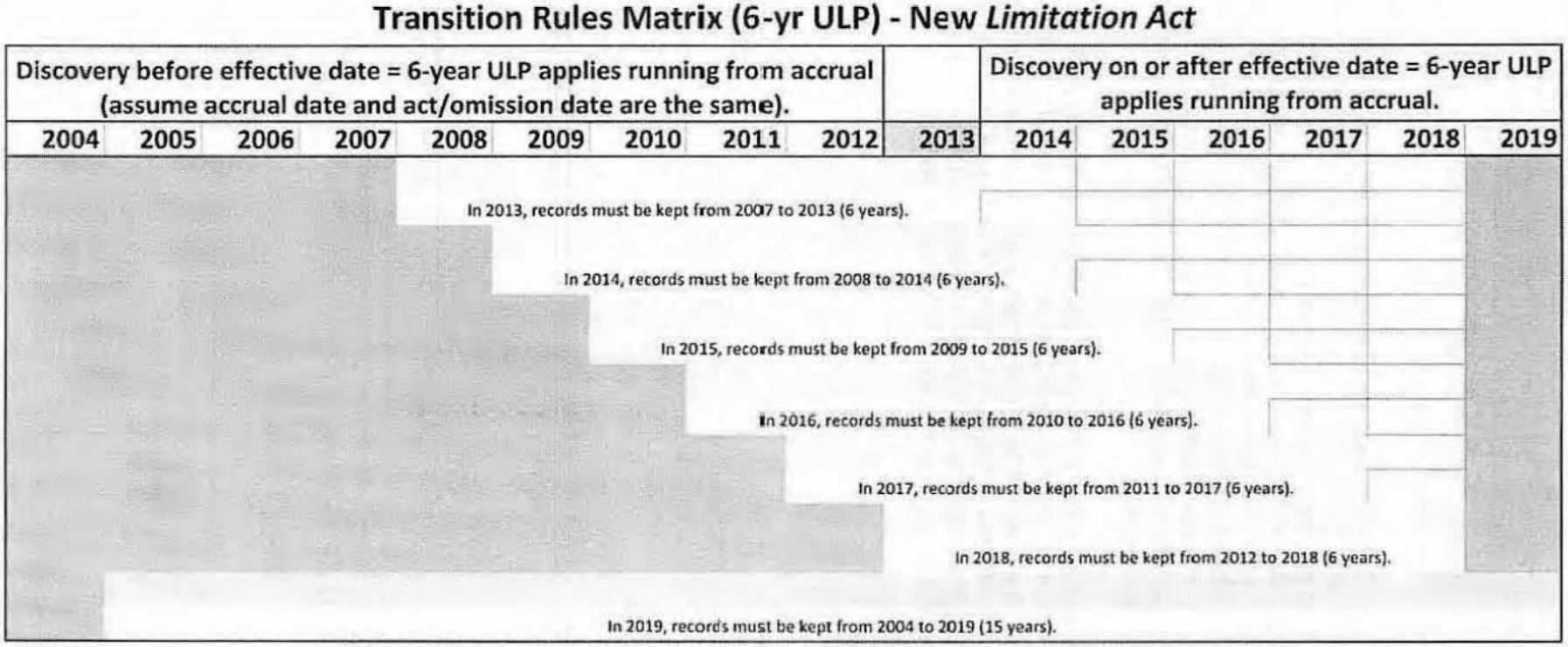
claim: the act or omission occurred in 1995, the 30-year ultimate limitation period began to run from the date of damage (also 1995) and was not yet statute-barred, and the discovery date was after the effective date of the new *Act* (2024). This means that the 15-year ultimate limitation period would run from June 1, 2013 (the effective date of the new *Act*). The person would have from 2024 to 2026 to start a lawsuit against the first dentist.

4. An example of how the transition rules could potentially apply to record retention: assuming the first dentist kept a record of the 1995 visit and procedure, the record would be stored for 30 years by the dentist (following the policy of retaining records for the duration of the ultimate limitation period) and destroyed in 2025. Due to the transition rules, the dentist would not be able to destroy this record until 2027, as a person could potentially discover the problem just days before expiry of the 30-year ultimate limitation period and would then have a two-year basic limitation period to start the lawsuit against the dentist (the additional two years would be possible because the new 15-year ultimate limitation period runs from the effective date of the new *Act*).

5. As a result of the transition rules, professionals such as dentists will need to keep records created between 1983 and 1998 for at least 30 years (i.e., due to the intersection of the 30-year ultimate limitation period and the 15-year ultimate limitation period that runs from June 1, 2013, records created between 1983 and 1996 will need to be kept for 32 years, records created in 1997 will need to be kept for 31 years, and records created in 1998 will need to be kept for 30 years). (See Appendix B: Transition Matrix)

APPENDIX B

Transition Rules Matrix (6-yr ULP) - New *Limitation Act*



CLIFF No: 393916
DATE SENT TO ADM: July 3, 2012
REQUIRED DATE: July 18, 2012

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: BC Charge Assessment Review – Report by Gary McCuaig, Q.C.

PURPOSE OF NOTE:

FOR INFORMATION OF: AG and DAG

MEETING REQUIRED: Yes, if necessary

ISSUE: As part of the broader Justice Reform Initiative, Gary McCuaig, Q.C. was appointed to conduct a review of British Columbia's charge assessment process and provided a report and recommendations.

EXECUTIVE SUMMARY:

- The review of BC's charge assessment process considers:
  - the appropriateness of the charging standard;
  - whether the pre-charge assessment model in BC should change to a post-charge assessment model; and
  - whether changes would create efficiencies in the broader criminal justice system.
- The report's conclusion, based mostly on the opinions of system participants, is to retain the existing charging standard and assessment processes. The current regime has worked well for almost 30 years, and reverting to a post-charge system would negatively impact the efficiency and effectiveness of the system.
- The report also highlights aspects of the charge assessment process that would benefit from further examination and review.

BACKGROUND / DISCUSSION:

1. Court delays and increasing costs have been identified as issues affecting the justice system in BC. As part of the Justice Reform Initiative, a review of the pre-charge assessment process was conducted in order to determine where, if possible, changes to the process could be made to help increase the efficiency and effectiveness of the overall justice system.

2. BC is one of three provinces in which Crown prosecutors are the designated decision makers in whether or not to lay criminal charges. Other provinces use a post-charge assessment model, where the police lay charges and then Crown decides whether to proceed with the prosecution.

3. When considering whether or not to lay charges, BC's current charge assessment standard requires Crown Counsel to consider:
    - whether there is a substantial likelihood of conviction and, if so,
    - whether a prosecution is required in the public interest.

4. In making the decision to lay charges, Crown Counsel use a two-part test:
    - an evidentiary test that ensures there is sufficient evidence for a solid case of substance to present in court; and
    - a public interest test that considers the appropriate response to an offence in a particular community and whether the offence could be dealt with more appropriately outside the court system.

5. The review analyzed the history and merits of the criminal charge assessment regime in British Columbia, with a mandate to consider:
    - the appropriateness of using a "substantial likelihood of conviction" charging standard;[1]
    - retaining the pre-charge assessment model or adopting a post-charge model; and
    - what improvements to the assessment process would be appropriate.

6. To help inform his recommendations, Mr. McCuaig interviewed more than 90 experienced and informed observers of the system including judges, Crown counsel, defense lawyers, police officers, correctional officials, legal aid, government officials and others.

7. Given the limited timeframe for this review, Mr. McCuaig was unable to gather substantial statistical and quantitative data, and relied heavily on information and recommendations gathered from reports from previous justice system review inquiries[2], as well as his own inquiries.

8. Mr. McCuaig's report maintains that a change to the charging standard must be justified by a "real probability of positive change," but it concludes that there is no evidence that changing the standard would result in tangible benefits. Instead, the report identifies potential negative consequences:
    - changing a 30-year mindset of Crown prosecutors and officials may result in Crown having less confidence in their own decisions, creating further delays;
    - the potential of lowering the standard of evidence; and
    - reduced quality of police investigations and reports.

9. The report concludes that changes to the pre-charge assessment process would involve significant training and cost issues, would not improve the quality of justice, and would impact the efficiency and effectiveness of the system. The issue of court delays and increased costs can be alleviated by expending resources at the beginning of the process, allowing for alternative solutions to offences that may benefit from alternative resolutions.

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[1] Other provinces use standards of "reasonable prospect" or "reasonable likelihood," research suggests that "substantial" connotes a higher or stricter test than "reasonable."

[2] Access to Justice: Report of the Justice Reform Committee, prepared by Ted Hughes, Q.C. (1987); Discretion to Prosecute Inquiry, prepared by Stephen Owen, Q.C.(1990); Special Prosecutor Review, prepared by Stephen Owen, Q.C. (2010); The Frank Paul Inquiry, prepared by William Davies, Q.C. (2011).

10. The report further concludes that as complexity in prosecutions increases, the provincial government's ability to change the system becomes more difficult, and truly effective improvements to the trial management process can come only from the judiciary.

11. In addition to maintaining the status quo for the charge assessment process, other recommendations include:
    - amend the current charge assessment guidelines by including the appointment of a Special Prosecutor for situations where police have appealed Crown Counsel's decision to the Assistant Deputy Attorney General, no agreement is reached, and police proceed to lay an Information (charge);
    - whenever possible ensure that local Crown Counsel, who are sensitive to local issues and have significant trial experience, are responsible for the assessment function;
    - investigate ways to reduce the amount of police resources required to produce Reports to Crown Counsel (RTCC); and
    - consider ways to build strong police/Crown communication early in the process.

(Please see Appendix A for a full list of recommendations).

Prepared by:	Michele Saunders Research Officer 250 356 6518	**Reviewed by:**	Jamie Deitch Executive Director 250 387-2109

ATTACHMENT: Appendix A – McCuaig Report – Key Recommendations

Approved by: Nancy Carter
A/Assistant Deputy Minister
Date: July 4, 2012

Approved by:

Richard J.M. Fyfe, Q.C.
Deputy Attorney General
Date: July 19, 2012

APPENDIX A

McCUAIG REPORT - KEY RECOMMENDATIONS

1. ***The present charge assessment standard of "substantial likelihood" should be retained.*** There is no persuasive evidence that the current standard is too high, and because of this there is no justification for changing it.

2. ***BC's pre-charge assessment process should be retained in its existing form.*** The process is not much different than the post-charge assessment process used in other provinces. Previous inquiries and analysis of the system demonstrates improvements to the quality of reports and charges after its adoption. Reverting back to the old system would be costly in both human and monetary terms, and not make the system more efficient or improve the quality of justice.

3. ***There is no need for directives for improvements to the Assessment Process.*** The Charge Assessment Guidelines policy has been well developed and defined over the years and provides good guidance and flexibility for Crown Counsel in making a decision.

   a) ***Whenever possible, local Crown Counsel with significant trial experience should be responsible for the assessment function.*** Crime and public interest considerations vary from place to place and over time. Local Crown Counsel have developed relationships with police, and are sensitive to the needs of their communities; they are in the best position to perform the pre-charge assessment function. Crown Counsel with at least five years prosecutorial experience are better equipped in making the decision as they will have a good understanding of what happens in the court.

   b) ***No further guidelines are needed to address the timeliness and content of decisions, but it is recommended that the ministry investigate ways to enhance Crown/police communication early in the process.*** The report suggests that written guidelines that stipulate timeliness would be counter-productive in the decision-making process, and that communications with police and Crown needs to be flexible and sensitive to local conditions, reflecting geographical and cultural diversity.

   c) ***It is recommended that the guideline for police appeal procedures be formalized with an amendment to include the appointment of a Special Prosecutor in the situation where an appeal process has been exhausted and police lay an Information.*** The process for police appeal procedures was put into the guidelines but has never been fully invoked, but there is a need to formalize this process in order to demonstrate the authority for police to lay a charge.

   d) ***Where there is a no-charge decision, there should be no public reporting or comment in order to keep the name of a suspect confidential unless a charge is laid. When a no-charge decision is made but an explanation is required for public interest purposes, the prosecutor or the ministry should provide the explanation.*** Currently it is the responsibility of police to liaise with a victim and explain a no-charge decision they may not fully agree with or understand. It is logical to shift that responsibility to Crown, since it is a decision of Crown Counsel.

4. ***The ministry should review the issue of laying charges for public order and administrative offences in response to police concerns that Crown rejects too many of these charges, and consider ways in which to address those concerns.*** The competing concerns of Crown Counsel and Police in the laying of administrative and public order offences warrant further review. Police see these charges as important for offender management in their communities; Crown Counsel believes they are often minor and could be dealt with by way of alternative measures, or the RTCC does not fully consider the context of the conduct of the accused.

5. ***The ministry should review the issue of police resources required to produce a disclosure-ready file before a charge assessment will be done, and whether there are RTCC that could be assessed with a reduced investigative package.*** The RTCC, which provides an accurate and detailed statement of the available evidence, is an essential part of the assessment process. Preparation involves significant police resources; it is worth reviewing the issue to see if there are ways in which these reports could be assessed with a reduced investigative package, utilizing fewer police resources.

Additional recommendations outside of the parameters of the Terms of Reference:

Ministry:

- investigate ways that may reduce the number of Crown Counsel who handle a file in large offices and consider a pilot file ownership project;

- consider re-establishing a Crown Counsel project that dedicates a specific prosecutor to a specific local problem; work with police in considering a pilot project to assign a police officer to work in a Crown office with the Charge Assessment Crowns;

- continue to develop measures to gauge the workload of its staff and effects of additional federal crime measures and population growth to help alleviate the problem of severely overworked charge assessment Crown Counsel; and

- consider a new approach to public statements and media relations that will proactively better educate the public on how the justice system works and the roles and responsibilities of the Criminal Justice Branch and Crown Counsel.

Police:

- consider ways in which to improve the quality of police reports by investigating and the feasibility of computerizing and enhancing their report reviewing processes; and

- police consider enhanced training for officers on legal concepts and evidentiary requirements.

Legal Services Society:

- examine the feasibility of contracting with duty counsel on a longer term basis.

CLIFF No: 393962
DATE sent to DMO: June 29, 2012
Required Date: June 29, 2012

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC:

Update on the British Columbia Human Rights Tribunal ("HRT")

PURPOSE OF NOTE:

- FOR INFORMATION OF: Minister of Justice and Attorney General
- MEETING: YES - scheduled for July 5, 2012 with Bernd Walter, Chair of the HRT

ISSUE:

This is an update on the work of the Human Rights Tribunal and issues that might be raised by its Chair, Bernd Walter, on July 5, 2012.

BACKGROUND:

The HRT is an independent, quasi-judicial body created by BC's *Human Rights Code* (the Code). It is responsible for accepting, screening, mediating, and adjudicating human rights complaints. The Tribunal is also responsible for approving special programs and activities (such as employment equity programs) under the Code. The tribunal's caseload can be summarized as follows:

- Approximately 1,100–1,200 complaints are filed with the Tribunal each year.
- Employment-related complaints are the most frequently cited area of discrimination (55 per cent of complaints in 2010/11).
- Discrimination on the basis of physical disability complaints continues to be the most frequently cited ground of discrimination (23 per cent in 2010/11).
- The Tribunal released 314 decisions in 2010/11: 272 preliminary decisions, 38 final decisions, and 4 post-hearing decisions.
- The Tribunal's mediation services continue to be heavily used. In 2010/11, the Tribunal conducted approximately 400 settlement meetings, and the parties were able to resolve their disputes in over 82 per cent of all cases in which the Tribunal provided settlement assistance.
- In 2010/11, the Tribunal's Inquiry Officers responded to approximately 9,500 telephone inquiries from the public.
- The HRT's 2011/12 budget amounts to $3,054,000 and it employs 26 FTEs, including nine members. Over the past year, Mr. Walter has led a consultative process aimed at identifying stakeholders' interest in changes at the Tribunal. Certain stakeholders are concerned about delay at the Tribunal and Mr. Walter has been taking steps to accelerate the HRT's work pace.

POINTS MR. WALTER MAY RAISE:

Legislative amendments:

s.3

s.3

CONCLUSION:

s.3

PREPARED BY:

David Merner, Executive Director, Dispute Resolution Office (250) 387-6888

APPROVED BY:

Nancy Carter
A/Assistant Deputy Minister
Justice Services Branch

Dated: June 29, 2012

Richard J. M. Fyfe, Q.C.
Deputy Attorney General

Dated: July 4, 2012

CLIFF No: 394375
(x-ref: AG draft 394059)
DATE SENT TO ADM: July 16, 2012
REQUIRED DATE: ASAP

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: West Coast Legal Education and Action Fund, request for meeting to discuss their report, "Troubling Assessments: Custody and Access Reports and their Equality Implications"

PURPOSE OF NOTE:

FOR INFORMATION OF: The Attorney General

MEETING REQUIRED: No. Meeting will be scheduled with JSB.

ISSUE: West Coast LEAF has requested a meeting to discuss their concerns and recommendations for improving court-ordered custody and access reports. Some recommendations have funding implications for government and must be considered in that context, while other recommendations require careful analysis and external consultation before government could make an informed response. One option would be to thank West Coast LEAF for its work and advise that government will take its recommendations under consideration as work is done to implement the *Family Law Act*. As the organization has requested a meeting with the Minister before publicly launching the report in mid-July 2012, the Minister might direct senior officials in Justice Services Branch to meet with West Coast LEAF.

EXECUTIVE SUMMARY:

- West Coast LEAF investigated the preparation, use and impacts of custody and access reports, focusing on the experience of immigrant, non-English speaking, and low-income women. Their research culminated in a report, containing LEAF's 21 recommendations to ensure custody and access reports are unbiased and contribute to fair resolutions that are best for children and their families.
- A summary of the recommendations, as well as comments prepared by the Justice Services Branch is appended.
- West Coast LEAF consulted with Family Justice Services while researching the report, and we provided them with detailed information about our policies, practices and training curriculum. The report speaks positively about family justice counsellors' training and family violence screening practices, and relates the positive experience of an abused woman ("Reena") whose court-ordered report was prepared by a family justice counsellor.
- Recommendations relevant to the ministry:
    - Five recommendations propose standardized training and guidelines for preparing custody and access reports. These would apply across several professional disciplines, including social workers, counsellors, and psychologists;

- Increase legal aid so parents have access to legal representation in these matters, including preparing rebuttal reports;
- Fund family justice counsellors sufficiently to ensure timely access to assessments;
- Amend court rules to automatically seal assessments;
- Amend *Family Law Act* to require persons conducting an assessment to consider whether family violence issues are present.

- Recommendations the ministry cannot comment on:
  - Seven recommendations concern how and when judges should order reports and how they should use the information within a report when making a decision.
  - Four recommendations are concerned with the practices of lawyers, psychologists and counsellors.

BACKGROUND / DISCUSSION:

- Pursuant to s.15 of the existing *Family Relations Act* and s.211 of the forthcoming *Family Law Act*, both the Provincial and the Supreme Courts may appoint a person to assess the views and/or needs of a child in relation to a family law dispute, and the ability and willingness of a party to that dispute to satisfy the child's needs.
- The person appointed to conduct the assessment must be a family justice counsellor, social worker, or another person approved by the court (e.g. a psychologist).
- The report may assist the parties to resolve the issues between themselves. If they are unable to do so, it offers information to assist the judge in determining what parenting arrangements are in the child's best interests.
- Reports prepared by family justice counsellors, who are employees of MOJ's Family Justice Services division, are free of charge to the parties. Views of the Child reports focus on reporting the child's views to the court and do not make recommendations about what may be in the child's best interests. They are assigned in priority and currently take 3-4 months to complete. Full custody and access reports, involving interviews and observations with the parties and developing recommendations, currently take 1 year to complete, on average.
- Reports prepared by private practitioners are completed on a fee-for-service basis. While individual fees vary, the West Coast LEAF report suggests they typically cost at least $8000 and take three to six months to complete.

Prepared by: Shannan Knutson
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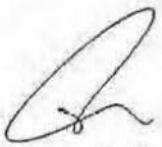
250-356-7521

Reviewed by: Irene Robertson
Provincial Director
250 387-1560

Approved by: Jay Chalke, QC
Assistant Deputy Minister

Date: 23 July 2012



Approved by: Richard J. M. Fyfe, Q.C.
Deputy Attorney General

Date: July 24, 2012

Appendix A: List of Recommendations contained within the Report, and comments prepared by Justice Services Branch

(pages 22-23 of the Report)

1. The BC government should implement a mandatory province-wide training regime for all professionals preparing custody and access reports. This standardized training regime should cover topics including the dynamics of family violence, particularly gendered power dynamics; cultural considerations; mental health issues; substance use; and the impacts on children of witnessing spousal abuse. The training should be developed in consultation with anti-violence experts, and refresher courses should be offered frequently to provide assessors with updates on new research and knowledge in these areas.
   Comment: Family justice counsellors who prepare custody and access reports do complete comprehensive training which does address the topics suggested in the report. However, it is beyond the scope of the ministry's mandate to implement training regimes for private practitioners who prepare court-ordered reports.

2. Government should develop binding and consistent standards and guidelines governing all assessors in their conduct of custody and access assessments and the preparation of the reports. The guidelines should advise assessors to avoid making recommendations on the parenting arrangement they deem best unless such recommendation is explicitly requested by the judge.
   Comment: It is not the goal or the intention of the *Family Law Act* to provide practice governance at that level. Standards or guidelines concerning custody and access reports are more appropriately addressed through policy decisions, procedures and practices standards internal to an organization or professional body.

3. The professional bodies governing assessors must ensure there are meaningful and accessible complaints procedures for parents who are subject to an evaluation they deem biased, inaccurate or otherwise problematic. Complaints should be investigated regardless of whether a court has critiqued the report.
   Comment: This comment may be more appropriately addressed by the BC Association of Clinical Counsellors, as it refers to that body's practice of investigating complaints about custody and access reports only if there is evidence that the court was critical of the report.

4. Judges should provide clear and specific directions to assessors regarding the scope of the assessment they wish to see prepared. Whenever possible, they should seek an evaluation of a limited number of specific and discrete issues, and instruct the assessor not to wade into other areas.
   Comment: The ministry cannot comment on recommendations directed towards the judiciary.

5. Judges should take care to maintain their exclusive role as the final decision maker and finder of fact. They should be cautious about accepting an assessor's recommendations without any corroborating evidence and avoid delegating their authority and responsibility to determine the arrangement that will best promote the child's best interests.
   Comment: The ministry cannot comment on recommendations directed towards the judiciary.

6. Government should adequately fund legal aid so that low and middle-income parents have access to legal representation in these complex matters. Where a biased or otherwise problematic evaluation has been tendered by the other side, legal aid should cover the cost of preparing a rebuttal report.
   Comment: Increasing legal aid coverage has funding implications for government.

(page 26 of the Report)

7. Judges should carefully consider whether an evaluation is truly needed in the custody and access case before them. A report should only be ordered when it is clearly needed to assist the judge to determine the parenting arrangement that is in the best interests of the child, and where there is evidence an assessor could uncover that is unlikely to come before the judge in any other way.
   Comment: While the Ministry cannot comment on recommendations directed towards the judiciary, we would like to point out that the Request for Custody and/or Access Report form is completed by the court when a family justice counsellor is ordered to complete a custody and access report. The form specifically asks whether a Views of the Child or a full Custody and/or Access Report is being ordered, and also asks whether there are specific issues to be addressed in the report. The intention of the form is to narrow the scope of the assessment to the issues that are specifically before the court.

8. In addition to the factors set out in the Supreme Court Family Rules, judges should also consider the questions set out by the Honourable Donna Martinson, (above), when deciding whether to order a custody and access assessment.
   Comment: The ministry cannot comment on recommendations directed towards the judiciary.

(page 30 of the Report)

9. The BC government must fund family justice counsellors sufficiently to ensure that adequate staff and resources exist to prepare custody and access assessments in a timely way. Adequate legal aid and the needs of rural communities should be a priority.
   Comment: Expanding the Provincial Custody and Access Assessment Service to increase the capacity for custody and access assessments has funding implications for government.

10. Courts should be cautious about accepting findings and recommendations made by an expert retained and paid for privately by only one of the parties, and should pay particular attention to the possibility of bias in the resulting report.

    Comment: The ministry cannot comment on recommendations directed towards the judiciary.

(page 33 of the Report)

11. The problem is not that the psychological tests are used in custody and access evaluations, but rather, how they are used. Judges should think critically about the real issues before the court in each case and, if psychological testing is deemed necessary, direct the assessor as to what those outstanding issues are, so that only appropriate testing that sheds light on the relevant issues is conducted.

    Comment: The ministry cannot comment on recommendations directed towards the judiciary.

12. Psychologists should only use psychological tests in conjunction with other standard data-gathering techniques, such as interviews and observation. Psychological tests should not be used to diagnose mental health issues without any further inquiry.

    Comment: The ministry cannot comment on recommendations directed towards the practice of psychologist in BC. This comment may be more appropriately addressed by the College of Psychologists of British Columbia.

13. Lawyers should seek out information and training on the validity of the psychological tests used in custody and access evaluations in order to utilize the results of the tests effectively.

    Comment: The ministry cannot comment on recommendations directed towards the practice of lawyers in BC. This comment may be more appropriately addressed by the Law Society of British Columbia.

(page 36 of the Report)

14. Assessors must clearly explain to parents the limits of confidentiality between the parent and assessor before they undergo a custody and access assessment. Assessors should continue to remind parents about the limits of their confidentiality and the fact that they are not the parent's therapist or counsellor, if they perceived that the parent may be regarding them as such.

    Comment: While the ministry cannot comment on the practices of private practitioners, family justice counsellors do clearly explain the limits of confidentiality at the outset of the assessment process. A Client Acknowledgement Form explaining the policy and relevant legislative provisions around confidentiality and the collection of personal information is provided and reviewed with each party. The form includes information about requesting personal information as well as a contact name in the event the party has further questions about the use of their information. Family justice counsellors are clear that their relationship with the parties is not a therapeutic counselling relationship.

15. The BC government should amend the Supreme Court Family Rules to provide that section 15 reports be automatically sealed by the courts. Their unlawful disclosure by either party should be sanctioned through contempt of court proceedings.

    Comment: The report describes concerns that parties can provide written authorization for third parties to view the court file including the assessment, that some women reported not realizing that the assessment was going to be part of the court file, and that some parties were sharing damaging assessments with family and community. These concerns have more to do with guidelines for assessors in ensuring parties understand the purpose of the assessments, rather than with amending court rules. There are provisions in place to protect the privacy of family court files. Further consideration and consultation would be required to comment further on this point.

(page 43 of the Report)

16. The training and education for judges, lawyers, mediators and custody and access assessors recommended above must specifically focus on issues of domestic violence, and should be developed in consultation with experts on issues of violence against women. This focus is crucial to protecting women's rights to safety, security, and fairness in custody disputes with their abusive ex-spouses.

    Comment: The ministry is unable to comment on training and education for professionals who are not in the ministry's employ. As outlined in the report, family justice counsellors preparing custody and access reports do complete comprehensive training around family violence.

17. The standardized guidelines for preparation of section 15 reports, recommended above, must direct that every custody and access evaluation begin with an initial screening and risk assessment for issues of family violence. The Family Justice Counsellor's Risk Assessment Tool could serve as a useful model for the development of this screening.

    Comment: The *Family Law Act* does speak to the duty of family dispute resolution professionals to assess whether family violence is present. During the extensive consultation that was part of the family justice reform, there were no proposals made to expand this definition to include all professionals preparing custody and access assessments and consequently there was no dialogue with the professional bodies governing these professions. This is a suggestion that will be flagged for future family law reform projects.

18. The BC Government should amend section 211 of the *Family Law Act* (formerly section 15 of the *Family Relations Act*) to direct assessors to consider whether there may be issues of family violence in the cases they are evaluating. This would bring the section in line with the Act's directives to all other professionals involved in family law cases to consider issues of family violence and entrench this requirement more firmly in the law.

    Comment: Section 37 of the *Family Law Act* specifically includes the impact of family violence in the best interests of the child test. By requiring the best interests of the child to be the only consideration when making a decision concerning a child, the Act effectively directs assessors

to consider violence within the relationship. Because both the parties and the court are directly required to consider violence within the relationship, it follows that professionals preparing a custody and access report are also to consider family violence within the report. Family Justice Services is prepared to clarify this point within the section notes for s.211 of the FLA by adding a statement to the effect of "These assessments are prepared for the court and are to be governed by the best interest test as outlined in section 37".

(page 47 of the Report)

19. In addition to the recommendations made in the section above, training and education initiatives are needed for judges and lawyers that challenge the myth that women falsely allege sexual abuse of their children in order to gain an advantage in custody and access cases.

    Comment: This comment may be more appropriately responded to by the BC Law Society.

(page 51 of the Report)

20. Psychologists should not administer psychological tests that are available only in English to women who are not comfortable communicating in English.

    Comment: The ministry cannot comment on recommendations directed towards the practice of psychologists in BC. This comment may be more appropriately addressed by the College of Psychologists of British Columbia.

21. The standardized training for custody and access assessors, recommended above, should include modules on cultural sensitivity and awareness to help ensure that women's diversity and cultural norms are not perceived and reported negatively.

    Comment: While the ministry cannot comment on the private practitioners, the ministry is committed to ensuring publicly funded services reflect a support for gender and cultural diversity. Family justice counsellors receive training in cultural diversity and the assessment form used to screen for family violence was developed in consultation with women and immigrant serving organizations.

CLIFF No.: 394441
DATE SENT TO ADM: July 31, 2012
REQUIRED DATE: N/A

MINISTRY OF JUSTICE
JUSTICE SERVICES BRANCH
BRIEFING NOTE

TOPIC: *Making Justice Work* – Report from the Legal Services Society ("the Report")

PURPOSE OF NOTE:

FOR INFORMATION OF: Minister of Justice

MEETING REQUIRED: No

ISSUE: Legal Services Society (LSS) has submitted its Report and recommendations to the Minister of Justice as part of the Justice Reform Initiative.

EXECUTIVE SUMMARY:

- Overall, the Report supports a justice system that focuses on outcomes and supports many of the principles and reforms that are currently part of the ministry's vision. These include a focus on system performance measures, cost-benefit analysis, and early intervention and resolution of cases in the criminal, family and civil context.
- The Report clearly indicates that no new legal aid initiatives are possible at this time without additional funding.
- The Report identifies a number of enhancements to legal aid services that would require an initial investment of new funding, but the Report argues, would have the potential to create efficiencies and savings in the justice system.
- These recommended initiatives are consistent with the ministry's vision of the justice system, and warrant further exploration and consideration in the context of the broader justice reform initiative.

BACKGROUND:

Justice Reform Initiative

- As part of the Justice Reform Initiative, announced in February 2012, LSS was asked to consider and provide a report and recommendations on the following matters:
    - new legal aid service delivery models that assume no funding increase;
    - changes to the LSS tariffs to provide incentives for justice system efficiencies;

- the use of telecommunications and the Justice Centre; and
- ways in which to diversify the LSS revenue stream to expand non-governmental revenue in a manner that will permit funding stability.

- LSS submitted its final Report to the Minister on July 1, 2012. The ministry provided this report to Geoffrey Cowper to review and consider as part of his review of the justice system.

- This Report will be released publicly on August 29, 2012, along with the Cowper Report and McCuaig Report on the Charge Assessment Process.

DISCUSSION:

- Overall, the Report supports a justice system that focuses on outcomes and views outcomes as a fundamental metric of success, which is consistent with the ministry's current vision for the justice system.

- In civil matters, this means prevention, timely resolution as the goal, and litigation as a last resort. In the criminal context, this means recognizing an accused person's need for and right to representation, but also facilitating resolutions that benefit society as a whole by addressing underlying problems that lead to criminal behavior. It recognizes that some cases involve complex legal issues while many others involve simple matters, and the system should be geared to early resolution where possible.

- LSS clearly indicates in its Report that new legal aid initiatives are not possible at this time without additional funding. The society's current budget is required to provide necessary operations and present services, many of which are mandated and cannot be eliminated. Further, LSS has reduced its operating budget significantly over the past four years to redirect savings to client services, and thus significant internal savings are not available. The government recently increased funding to LSS by $2.1 million in order for the society to maintain current service levels for family and child protection matters.

- After reviewing alternate, non-governmental funding sources that could be directed to legal aid, LSS concluded that no potential funding source provided predictable, stable income of sufficient amount worth pursuing. Most options required another organization or the government to give up an existing revenue source. This conclusion is consistent with previous analysis conducted by Justice Services Branch.

- The Report identifies a number of enhancements to legal aid services that would require an initial investment of new funding, but the report argues, would have the potential to create efficiencies and savings in the justice system. LSS does not propose alternate funding sources for these enhancements, and thus it is expected that government would need to provide the additional resources.

- LSS includes analysis and estimates of potential savings for some of the proposed initiatives. These potential savings are based on multiple assumptions that would require further analysis.

- LSS suggests that savings generated by these enhancements could be measured and redirected to the society to offset some of the initial costs. Because most of the savings

would be in avoided future costs, tracking the inputs, outputs, and outcomes of piloted services or system changes would be critical in quantifying results.

- LSS prioritizes the following initiatives because it believes these initiatives are most likely to provide the greatest benefit in terms of outcomes for clients and savings to the justice system (see Appendix A for a complete list of proposed initiatives):

  - **Expanded Criminal Duty Counsel**:

    Specific lawyers would be assigned to the same court on a continuing basis. In addition to traditional duty counsel services, lawyers would retain conduct of non-complex files for a set time. During that time, lawyers would receive client instructions, obtain disclosure, and take steps to resolve the matter where appropriate. Where volumes warrant, duty counsel would be supported by a non-lawyer who provides administrative and client support. This type of duty counsel would work best in high-volume locations.

  - **Early Resolution Referrals (Criminal)**:

    In locations where volumes do not warrant expanded duty counsel, changes could be made to LSS tariffs and policies that would allow ad hoc duty counsel to retain conduct of non-complex matters similar to those covered by the proposed expanded model. LSS would permit duty counsel to obtain a short-term tariff referral to represent clients they meet while acting as duty counsel where the client seeks early resolution and counsel believes it is feasible.

  - **Early Resolution Tariff (Criminal)**:

    Justice participants would work together to develop a disposition conference or court devoted to early resolution. Incentives would be provided for accused persons to seek early resolution such as appropriate resolution proposals or access to treatment. LSS would add an item to its tariff for this purpose.

  - **Increased Use of Video Bail**:

    There are a number of ways that telephone or video technology can be used for bail hearings. Regardless of the variation, LSS could provide duty counsel under the current or any expanded model.

  - **Increase Family Law Services**:

    There should be an increase in family law services to address public need and to support recent changes to family legislation in BC. Given the scarcity of resources in family justice, LSS should collaborate with Family Justice Services Division in implementing new or expanded service options.

  - **Increase Use of Non-Lawyer Service Providers**:

    Legal Information Outreach Workers can help people navigate the justice system and provide information that may help reduce court delays. Paralegals can provide legal information and advice under the supervision of a lawyer. They can be used to assist both criminal and family duty counsel and to support efficiencies elsewhere in the justice system.

ANALYSIS AND RECOMMENDED POSITION:

- The report embraces the principles, reforms and changes that are currently part of the ministry's vision for the justice system, including focus on system performance measures, cost-benefit analysis, and early intervention and resolution of cases in the criminal, family and civil context.

- The reform initiatives recommended in the report are consistent with the ministry's vision of the justice system, and warrant further exploration and consideration in the context of the broader justice reform initiative.

Prepared by: Jillian Hazel
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ATTACHMENT: APPENDIX A: Complete List of LSS Proposed Initiatives

Reviewed by: Wendy Jackson
Acting Executive Director, CJLAPD
250.356.2735

Approved by: Nancy Carter
Acting Assistant Deputy Minister
Date: July 31, 2012

Approved by:

Richard J. M. Fyfe, Q.C.
Deputy Attorney General
Date: August 2, 2012

APPENDIX A: Complete List of LSS Proposed Initiatives

Criminal Law Initiatives:

- **Expanded Criminal Duty Counsel**: Specific lawyers would be assigned to the same court on a continuing basis. In addition to traditional duty counsel services, lawyers would retain conduct of non-complex files for a set time. During that time, they would receive instructions, obtain disclosure, and take steps to resolve the matter where appropriate. Where volumes warrant, duty counsel would be supported by a non-lawyer who provides administrative and client support. This type of duty counsel would work best in high-volume locations.

- **Early Resolution Referrals**: In locations where volumes do not warrant expanded duty counsel, changes could be made to LSS tariffs and policies that would allow ad hoc duty counsel to retain conduct of non-complex matters similar to those covered by the proposed expanded model. LSS would permit duty counsel to obtain a short-term tariff referral to represent clients they meet while acting as duty counsel where the client seeks early resolution and counsel believes it is feasible.

- **Disposition Court and Early Resolution Tariff**: Justice participants would work together to develop a disposition conference or court devoted to early resolution. Incentives would be provided for accused persons to seek early resolution such as appropriate resolution proposals or access to treatment. LSS would add an item to its tariff for this purpose.

Family Law Initiatives:

- **Increase Family and Child Protection Duty Counsel**: Expansion of services should take into account the spectrum of problems presented by family law clients and the range of services needed to resolve those problems. It requires an integrated approach to problem solving that involves a number of different services. The proposed reforms involve three elements: Element 1: increase the availability of existing services by providing more duty counsel and more community-based advice services. Element 2: secure a permanent presence for lead duty counsel in courthouses. Element 3: make these services more outcome-focused by providing assistance for related and underlying problems.

- **Unbundled Family Law Services**: Introduce a new referral for a limited number of hours that would allow a lawyer to assist unrepresented litigants with non-emergency, but significant, family matters. Priority would be given to matters involving custody, access, and property issues that are too complex for duty counsel services and too complex or out of scope for family justice counselors. Unbundled services typically cover advocacy and advice relating to mediation and collaborative services, review and assistance with document preparation, and advice and coaching for unrepresented litigants, but not court attendance.

- **Support for Mediation Services**: LSS would develop a new mediation referral payable to qualified mediators for a set number of hours. The referral could include legal advice from either a tariff lawyer or family duty counsel before and after mediation. It would serve people with non-emergency, non-high-conflict cases involving custody, access, and

property division that are out of scope of family justice counselors or where family justice counselors are not available.

Other New Services and Tariff Changes:

- **Use of Non-Lawyer Service Providers**: Legal Information Outreach Workers can help people navigate the justice system and provide information that may help reduce court delays. Paralegals can provide legal information and advice under the supervision of a lawyer. They can be used to assist both criminal and family duty counsel and to support efficiencies elsewhere in the justice system.

- **Poverty Law Advice Services**: Legal services would be provided to help people with low incomes resolve poverty law issues such as those related to welfare, disability benefits, housing, pension income, debt and unemployment insurance. Services could be provided through cost-effective telephone advice programs staffed by lawyers, paralegals, advocates, and LIOWs. Other delivery models could include online chat services, social media, video conferencing, and in-person self-help centres, Justice Access Centres, Aboriginal centres, and social service agencies.

- **Aboriginal Services**: Aboriginal people need culturally sensitive services that are attuned to their particular justice system needs. Delivering these services is often difficult because many Aboriginal people live in small, isolated communities. LSS would:

    - Hire more Aboriginal Community Legal Workers.
    - Provide enhanced duty counsel services in remote locations.
    - Collaborate in the development and support of problem-solving and restorative justice criminal courts and provide trained and culturally sensitive expanded duty counsel at these courts.
    - Engage in developing and supporting Aboriginal mediated settlements in child protection matters.
    - Partner with Aboriginal service providers to provide legal advice services.
    - Pilot an Aboriginal helpline to provide poverty law services, referrals to other agencies, and facilitate applications for legal aid for Aboriginal people.
    - Continue to fund and expand Gladue report-writing services.

- **Specialized Courts**: The report specifically suggests the benefits of a Domestic Violence Court and an Aboriginal Court. If more problem-solving courts were established in BC, LSS could provide specialized duty counsel services under the current or the expanded model to support those courts.

Video or Telephone Bail Hearings through the Burnaby Justice Centre

- **Video and Telephone Bail**: There are a number of ways that telephone or video technology can be used for bail hearings. Regardless of the variation, LSS could provide duty counsel under the current or any expanded model.

Pages 179 through 187 redacted for the following reasons:
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S. 14

Cliff: 482294
Date: July 11, 2012

MINISTRY OF JUSTICE
Office of the Superintendent of Motor Vehicles
BRIEFING NOTE

PREPARED FOR: HONOURABLE SHIRLEY BOND
MINISTER OF JUSTICE AND ATTORNEY GENERAL
FOR INFORMATION

ISSUE:

Speaking points for the Friday, July 13, 2012 meeting with Kevin Prosser regarding several road safety issues and suggestions.

BACKGROUND:

Kevin Prosser has requested a meeting with Minister Bond on Friday, July 13th to discuss his concerns regarding unsafe city streets due to poor public driving behaviours.

Mr. Prosser has put forth several suggestions to improve road safety, including: doubling traffic fines, increasing police enforcement, promoting zero tolerance for speeding, and creating a traffic only court system to deal with increased fines.

SPEAKING POINTS:

Doubling Traffic Fines

-
- s.13, s.17

Increased Police Enforcement (24/7 Highway Patrols)

- Police traffic units already conduct targeted enforcement to address specific unsafe behaviours (for example, setting up CounterAttack Road Blocks on holidays when impaired driving is more prevalent) or to promote compliance of a new law, such as distracted driving.
- 24/7 highway patrols would require an enormous increase to police budgets, which is not feasible in the current fiscal environment.

- Statistically, collisions are not spread out evenly over a 24 hour period. Concentrating police resources during times of day that are known to be high collision periods is a better use of resources.

- Time permitting, local municipalities do patrol local highways within their area (resource permitting).

Zero tolerance on traffic speed zones

- Speed is one of the leading causes of death. Speed increases the risk of vehicle collisions and comes with a high price. Crashes causing injuries take a huge toll on human trauma and human life.

- Higher speeds, and a significant speed differential (i.e. driving significantly faster than surrounding traffic) create high risks.

- In September 2010, Government enacted legislation to allow police to impound the vehicles of excessive speeders. An excessive speeder will have their vehicle impounded for 7 days for a first offence, increasing to 30 and 60 days for second and subsequent offences, and will be required to pay the towing and storage costs. This is in addition to the fines and penalty points associated with excessive speeding.

- Sanctioning for very minor variances over the speed limit is not generally supported by the public.

Traffic-only court system

- The current Traffic Court system largely deals with *Motor Vehicle Act* disputes, but also handles municipal bylaw tickets and violation tickets under other statutes (for example, *Liquor Control and Licensing Act* tickets).

- Traffic Court, however, is overburdened, with significant backlogs. Currently, it takes 7 to 12 months to resolve a dispute. These lengthy delays undermine the deterrence effect of tickets.

- In May 2012, Government introduced and passed legislation that will create an administrative dispute model for handling traffic violation disputes. Drivers who wish to dispute a traffic violation will do so to an independent tribunal, whose only mandate is to hear these traffic disputes.

- An administrative system will: improve public safety (police and the courts will have more time to deal with higher priority public safety and judicial matters); lead to better access to justice for citizens (disputes will be resolved in 60 to 90 days instead of 7 to 12 months); and improve citizen services (the new dispute process will result in fewer disruptions to work and family life).

Prepared by:
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OSMV
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Approved by:
Steve Martin
Superintendent
OSMV
250 387-3437

Cliff: 482529
Date: July 24, 2012

MINISTRY OF JUSTICE
Office of the Superintendent of Motor Vehicles
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE:

A recent BC Supreme Court decision has confirmed that motor assisted cycles (i.e. electric bicycles) are not considered street legal if the pedals have been removed. The BC Supreme Court Justice did not direct government to change how motor assisted cycles are regulated, but recommended that the regulations be reviewed.

BACKGROUND:

- A "motor assisted cycle" (MAC), or electric bicycle, is a two- or three-wheeled cycle with a seat, pedals, and an electric motor up to 500 watts. Bicycle-style pedals must be attached to the MAC such that the cycle can be propelled by human power; however, the MAC may travel at a maximum speed of 32 km/hr without the aid of pedalling.

- There are essentially two styles of MAC: standard bicycles with an attached electric motor and scooter-style MACs that more closely resemble limited speed motorcycles (LSMs). (Please see the Attachment for pictures of the different MAC styles).

- The provincial Motor Assisted Cycle Regulation was enacted in 2002, when most MACs resembled standard bicycles with attached electric motors. Since then, MACs that resemble LSMs or scooters have become increasingly popular.

Federal regulation of MACs

- Transport Canada is responsible for setting the standards for MACs. The federal Motor Vehicle Safety Regulation defines MACs (or "power assisted cycles"), but otherwise the MVSR does not apply to them. BC and all other Canadian jurisdictions have adopted regulations aligned with the federal standards. (Please see the Attachment for more details on provincial and federal regulations of MACs).

BC Supreme Court Decision:

- On two separate occasions in spring 2011, a Mr. Rei received violation tickets for operating a motor vehicle without a driver's licence and operating a motor vehicle

without insurance when he was observed riding a scooter-style MAC that had the pedals removed.

  - Mr. Rei's tickets were upheld in Provincial Court and he appealed the convictions to the BC Supreme Court.
  - The BC Supreme Court decision (*R v. Rei*, 2012) was released on July 12, 2012.

- The BC Supreme Court decision (*R. vs Rei*, 2012) ruled that MACs must be equipped with pedals to be considered street legal. Without pedals, motor assisted cycles essentially become a type of non-conforming motorcycle that cannot legally be operated on public roads. The decision noted that "human propulsion" is "an essential component of a MAC".

- Furthermore, the BC Supreme Court ruled that the "driving with no insurance" and "driving without a driver's licence" tickets issued by police to Mr. Rei are valid because "the dividing line between cycles that should be registered and insured and their operation confined to licensed drivers, and those that do not, has to be marked in some way."

  - MAC operators currently have two options: to ride the MAC with pedals, or to remove the pedals and only operate the MAC on private roads.

- The BC Supreme Court Justice stated that the MAC Regulation is clear, and did not order the BC Government to make any changes. However, the Justice suggested that:

  - "...given the possible validity of safety concerns relating to pedal placement, the increasing numbers of scooters of various kinds travelling public roads in B.C. communities and the fact there appears to be some uncertainty surrounding the legal definition of MACs, a review could benefit the public, and the operators of MACs in particular."

- MACs are specifically excluded from the federal definition and standards required for motorcycles, and therefore do **not** display a National Safety Mark.

- The Insurance Corporation of British Columbia (ICBC) does not register, licence or insure motorcycles that do not display the National Safety Mark. Motorcycles that do not display the National Safety Mark will not pass a BC vehicle inspection.

DISCUSSION:

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s.13

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- s.13

- OSMV will consult with Ministry of Transportation and Infrastructure, enforcement, and ICBC.

Prepared by:
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Senior Policy Advisor
OSMV
250-387-1752

Approved by:
Steve Martin
Superintendent
OSMV
250-387-3437

Attachment

Attachments:

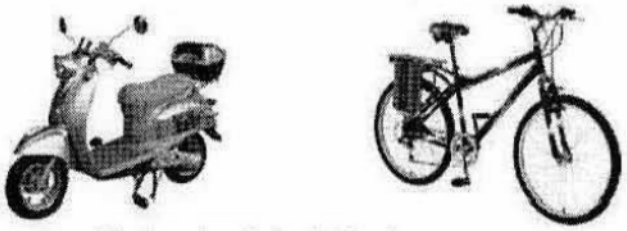
Provincial Regulations re: Motor Assisted Cycles

- The power, speed, and basic safety requirements that a MAC must adhere to are established in the *Motor Vehicle Act* Motor Assisted Cycle Regulation. The MAC regulation was established in 2002.

- BC provides for MACs to be treated like bicycles rather than motorcycles; registration, licensing and insurance requirements do not apply and a driver's licence is not required for on road use. There are no substantive safety standards for MACs, other than bicycle helmet requirements, because they are manufactured to approximate conventional bicycle use.

- The rights and duties of a bicyclist apply when using MACs on roads. There is an additional requirement that MACs can only be operated by someone 16 years of age or older.

- Pictured below, a "scooter style" MAC, and a traditional MAC:



Federal Regulations re: Motor Assisted Cycles

- Motor Assisted Cycles (MACs) are defined in the federal Motor Vehicle Safety Regulations (MVSR) as "power assisted bicycles."

- MACs or power assisted bicycles are specifically excluded from the federal definition and standards required for motorcycles, and will not display the National Safety Mark indicating it meets vehicle standards for on road use. To qualify as a "power assisted bicycle" it must be equipped with pedals and capable of being propelled by muscular power.

- Limited speed motorcycles (LSMs) are one of four federal motorcycle classes set out in Canada's MVSR. The MVSR specify safety standards that are required in order to import to Canada or sell a motorcycle in Canada. Motorcycles that meet these federal standards will display the federal National Safety Mark.

- ICBC does not register, licence or insure motorcycles that do not display the National Safety Mark. Motorcycles that do not display the Nations Safety Mark will not pass a BC vehicle inspection.

- Removing the pedals from a MAC might make it appear to look like a LSM, but it will **not** be compliant with these federal safety standards.

Cliff: 483084
Date: July 30, 2012

MINISTRY OF JUSTICE
Office of the Superintendent of Motor Vehicles
INFORMATION BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE:

New data on the number of drivers referred to DriveABLE in 2011 shows a considerable increase from the 2010 data publicly reported.

BACKGROUND:

2010 data about the volume of drivers referred by the Office of the Superintendent of Motor Vehicles (OSMV) for a DriveABLE cognitive assessment showed that approximately 1,500 drivers per year were being referred and assessed.

2011 data now shows that approximately 2,700 drivers a year are being referred, and approximately 2,400 are being assessed.

Comparing the 2010 and 2011 data for the number of drivers who were referred by the OSMV and who took a DriveABLE assessment, the number jumps from approximately 1,500 in 2010 to 2,400 in 2011 – a 60% increase (approximately 900 additional drivers).

Several factors can explain the sharp increase in DriveABLE assessment volumes:

- Under-reporting of 2010 assessment volumes due to challenges with reporting systems and available data;
- An increase in the number of communities where DriveABLE assessments were available;
- An increase in education and guidance for doctors about driver medical fitness reporting and cognitive assessment tools; and,
- An increase in the overall number of Driver Medical Examination Reports completed by the OSMV (an estimated 10,000 more DMERs than in 2010).

The percentage of drivers being referred for a DriveABLE assessment remains fewer than 2% of all drivers who are having OSMV-requested Driver Medical Examination. (1.9% of the 140,000 DMERs)

DISCUSSION:

OSMV proposes updating all its public information (website, fact sheet) and messages to reflect the latest available data on DriveABLE volumes.

Publishing the reconciled 2011 data will also enable OSMV to provide additional regional data and evidence based justifications for future service delivery model decisions.

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OSMV
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Approved by:
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OSMV
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Cliff: 481355
Date: July 5, 2012

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
POLICING AND SECURITY PROGRAMS BRANCH
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE: 2012-2015 Performance Plan for RCMP in British Columbia

BACKGROUND:

- s.12

- Under the new Provincial Police Services Agreement (PPSA) there are significantly expanded opportunities for the Province to play a larger role in oversight.
- Working with the RCMP, the Province has conveyed the provincial priorities and participated in a joint planning exercise with the RCMP. Through this process, meaningful and articulated performance measures for provincial priorities have been developed that would enable us to demonstrate more effective oversight and accountability in the management of the PPSA.

DISCUSSION:

s.12, s.15, s.16

s.12, s.15, s.16

Prepared by:
Perry Clark, Executive Director,
Policing, Security & Law Enforcement
Infrastructure & Finance, Policing &
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Approved by:
Clayton Pecknold
Assistant Deputy Minister
and Director of Police Services
Policing and Security Programs Branch
250 387-1100

Attachment

Royal Canadian Mounted Police
Commanding Officer

Gendarmerie royale du Canada
Commandant divisionnaire

June 8, 2012

Clayton Pecknold
Assistant Deputy Minister and Director of Police Services
PO Box 9285
STN PROV GOVT
Victoria, BC V8W 9J7

Dear Sir:

Re: RCMP "E" Division Commanding Officer's Performance Plan

Please find attached a copy of the Performance Plan for RCMP in British Columbia.

This year we are using a new approach to Divisional planning developed within "E" Division. Our intent is to streamline the process, make it far more relevant to operational needs, and be even more accountable to our clients, partners, the public, and our employees. Each quarter I will receive a report from my senior management team indicating the status of their major work initiatives as well as performance outcomes and targets.

I look forward to presenting you with a copy to ensure your continued awareness of our progress.

Yours sincerely,

Craig J. Callens, Deputy Commissioner
Commanding Officer "E" Division

657 W. 37th Avenue
Vancouver, BC V5Z 1K6

Canada

Pages 200 through 208 redacted for the following reasons:
- -
S. 16

Cliff: 483464
Date: August 9, 2012

MINISTRY OF JUSTICE
POLICING AND SECURITY PROGRAMS BRANCH
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE: **Summary of the 'RCMP Respectful Workplace Action Plan'**
Plan received from Craig J. Callens, Deputy Commissioner
Commanding Officer, RCMP "E" Division

SUMMARY:

- RCMP "E" Division launched a 'Respectful Workplace Action Plan' (Plan) in late June 2012. The Plan identifies new strategies and builds on existing initiatives to develop a respectful workplace program for the BC RCMP.

- The Plan took four months to develop and incorporates information from an internal review of existing systems, programs, reports, internal consultations, and best practices in other organizations. It is funded by the federal government.

- Inspector Carol Bradley is the Team Leader and will undertake further research and identify best practices to develop the Respect Workplace Program and implement policy and structural change. This will include awareness, education and training, and new approaches to leadership training and accountability. The Plan will take one year to phase in.

- The Plan has 11 objectives:
  - Identify Team Leader
  - Build Understanding of Current Structure
  - Build Confidence and Trust
  - Accountability
  - Effective and Ethical Leadership
  - Develop Confidential Reporting
  - Timely Resolution of Conflict
  - Education on Respectful Workplace Program
  - Identify Best Practices
  - Full Integration of Respectful Workplace Program
  - Monitoring

The Plan will be implemented in three phases:

- **Phase One** (immediate to 3 months):
  - During this phase, the team will be built and begin to review the efforts that have already taken place, review best practices (internal and external), identify and prioritize specific initiatives and implement initiatives that can be accomplished quickly.

  - Phase one includes the development of a Performance Awareness Reporting system to support early intervention, awareness and prevention strategies for Members by monitoring multiple indicators such as exposure to traumatic events, public complaints, use of force and other factors. Supervisors will be notified if one of their Members exceeds the system's thresholds.

  - Phase one also includes the creation of an Integrated Resource Management Team to address workplace absences, and enhanced Harassment Awareness and Investigations training to develop a group of individuals who may be used as subject matter experts and harassment complaint investigators.

- **Phase Two** (months 3 to 8):
  - During this phase the team will work on those initiatives that need more time and development to implement.

- **Phase Three** (months 8 to 12):
  - During this phase, work will be focused on implementing the structures and processes necessary to sustain changes made to date.

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Recommended by:
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Approved by:
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Assistant Deputy Minister
and Director of Police Services
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Attachments

Royal Canadian Mounted Police / Gendarmerie royale du Canada
Commanding Officer / Commandant divisionnaire

June 26, 2012

As part of my commitment to our communities and partners. I want to share with you highlights of the Respectful Workplace Action Plan. a plan that has been developed to support RCMP employees in British Columbia. It is a plan we are announcing to our employees this week. and one that I fully endorse.

It is a plan with decisive actions to address employee perceptions and realities. The Respectful Workplace Action Plan is designed to identify new strategies and build on existing initiatives, both in British Columbia. and across the country.

Over the past few months. an internal review was conducted on existing systems, programs, and reports, and targeted consultations were held with employees. Those discussions and efforts by our Human Resources Branch in British Columbia have created a comprehensive plan that positions us for success as we move forward.

The plan contains a number of objectives and initiatives that have been prioritized, with the goal of sustainability. While there are a number of areas within the RCMP that will be engaged and part of the plan. I have appointed a Team Leader, Inspector Carol Bradley. to oversee and implement the Action Plan.

Throughout the implementation. which will be in three phases. we will be assessing and monitoring our progress. To check our efforts against progress, we have initiated a survey of our employees. Participation to date has been outstanding. and we will be well positioned to evaluate our progress.

Remaining connected with our communities and our employees are key to our success. and you are an important group that we need to ensure has timely and relevant information.

I commit to providing you updates as we move forward, and welcome any comments or questions.

Craig J. Callens, Deputy Commissioner
Commanding Officer, "E" Division

657 West 37th Avenue
Vancouver, BC V5Z 1K6

Canada

Page 125 to/à Page 131

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Cliff: 481998
Date: July 9, 2012

MINISTRY OF PUBLIC SAFETY AND SOLICITOR GENERAL
POLICING AND SECURITY PROGRAMS BRANCH
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General

s.16

ISSUE: The District of Squamish is disputing the requirement to pay E-Comm dispatch costs as of June 1, 2010

BACKGROUND:

- In 2007, former Solicitor General John Les apparently made an informal agreement with a former Mayor and former Chief Administrative Officer (CAO) of Squamish that the Province would pay Squamish's E-Comm costs in return for Squamish becoming a full contributing member in the RCMP's Lower Mainland District (LMD) integrated teams. There is no written documentation confirming this arrangement, however, Squamish's E-Comm costs have been paid out of the provincial force budget since fiscal year 2007/08.

- Historically, Squamish maintained and paid for an Operational Communications Centre (OCC) within its RCMP detachment. The operating costs of the OCC were high and it was determined that it would be significantly cheaper to use E-Comm instead.

- Around this same time, the RCMP was moving to regionally integrated teams as a means of providing specialized police services within the Lower Mainland District. Integrated Homicide Investigation Team (IHIT) and Emergency Response Team (ERT) became regional teams that served LMD municipalities and these municipalities shared the costs via a formula developed by the CAOs and agreed to at the LMD Mayor's Forum. The RCMP wanted Squamish to participate as well, however the municipality was reluctant. As integration and regionalization of specialized services is a major part of the Province's vision for policing in BC, it appears the former Solicitor General agreed to pay Squamish's E-Comm costs in order to solidify Squamish's participation in these teams.

- In October 2007, Squamish migrated to E-Comm and the costs were paid by the RCMP out of the provincial force budget. Squamish joined the LMD integrated teams, however, initially they refused to pay all of their integrated team costs because they maintained that their portion of the total team costs was unfair. At the June 2008 CAO/Principal Policing Contacts meeting, the former CAO of Squamish requested that the municipalities review the funding formula to distribute the costs more equitably. There was no interest on the part of the other municipalities in doing this.

- Subsequently, Squamish began paying their integrated team costs as per the municipally developed funding formula, however, they paid 70% of the total invoices in keeping with their disagreement that they exceeded 15,000 population in the 2006 census (the population issue has now been resolved and as of April 1, 2012 Squamish is paying all policing costs at 90%).

- Following up on a meeting at the UBCM Convention in October 2009, former Solicitor General Kash Heed served notice to Squamish in a March 2010 letter that we would cease paying Squamish's E-Comm costs effective June 1, 2010. This was predicated on Squamish's refusal to pay their integrated team costs at the appropriate cost-share ratio (90%). This letter advised that Squamish must pay their E-Comm costs or re-establish their OCC. The Province advised the RCMP to begin billing Squamish for E-Comm costs (instead of paying them out of the provincial force budget) starting June 1, 2010, and was subsequently advised that E-Comm costs were included in Squamish's quarterly RCMP invoices.

- In a letter dated October 2010, Squamish's legal counsel questioned the Province's legal ability to direct that they pay for E-Comm services, suggesting this may be contrary to an existing contract they have with E-Comm. Ministry staff investigated this claim and discovered that Squamish has a contract with E-Comm for 9-1-1 services, but not for police dispatch. Squamish's police dispatch is covered by a contract between E-Comm and the RCMP. E-Comm staff advised that they cannot bill Squamish directly for police dispatch unless there is a contract between Squamish and E-Comm for this service; however, they advised that the RCMP could bill Squamish for these services. As a result, the RCMP have continued to bill Squamish for their E-Comm costs as part of the quarterly RCMP invoices.

- In late 2010, the RCMP advised Ministry staff that Squamish was paying the E-Comm costs (albeit at 70% as per the separate dispute regarding population). However, on September 20, 2011, the RCMP advised Ministry staff that contrary to information they had provided previously, Squamish was not billed for E-Comm until the 2010/11 year-end reconciliation invoice (issued in July 2011) which was not payable until September 26, 2011. On September 16, 2011, Squamish advised the RCMP that they are not responsible for E-Comm police dispatch costs because an agreement is in place whereby the Province covers these costs. They requested that the RCMP remove these costs from their invoices.

s.16

DISCUSSION:

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s.16

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s.13, s.16

s.13, s.14, s.16

Honourable Shirley Bond
Minister of Justice
and Attorney General

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MINISTRY OF JUSTICE
POLICING AND SECURITY PROGRAMS BRANCH
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE: Release of Canadian Centre for Justice Statistics Juristat, Police-Reported Crime Statistics in Canada, 2011.

BACKGROUND:

- The Canadian Centre for Justice Statistics (CCJS) releases its report on *Police-Reported Crime Statistics in Canada, 2011* on July 24, 2012.

- This report is based on information collected annually through the incident-based Uniform Crime Reporting (UCR) Survey which includes data on all incidents known to, or substantiated by, police services in Canada. As one incident can involve multiple offences, the UCR Survey reports counts based on the most serious offence in the incident.

- A crime rate measures the volume of crime and is calculated by summing all criminal incidents (excluding traffic offences as well as other provincial and federal statute offences) reported to the police and dividing by the population. A crime rate counts all offences equally and is expressed as a rate per 100,000 population. Youth crime rates are based upon counts of individuals aged 12 to 17 years accused of crime rather than the number of incidents.

- The crime severity index (CSI) measures the seriousness of crime by assigning a weight to each offence derived from average sentences handed down by criminal courts. The more serious the average sentence, the higher the weight for that offence. All offences, including traffic offences as well as other provincial and federal statute offences, are included in the CSI. The CSI is calculated by summing the weighted offences and dividing by the population, with a base year of 2006 and an index of "100".

- Many factors can influence police-reported crime statistics. These may include, changes in demographics, social and economic factors, public reporting practices to police, technological advancements, legislative amendments, local police service policies and practices, and social perceptions and attitudes towards certain crimes. Differences across policing jurisdictions may also affect police reported crime statistics.

- This annual report examines overall trends in the volume and severity of crime at the national, provincial/territorial and census metropolitan area (CMA) levels. It examines changes in the number and rate of offences reported by police for certain violent offences (homicide, robbery, sexual offences) and non-violent offences (break and enter and motor vehicle theft), as well as trends in the CSI and the volume and severity of youth crime.

DISCUSSION:

- *Crime Trends in Canada*

    - The police-reported crime rate in Canada continued to decrease in 2011, the eighth consecutive decrease (down 6% from the previous year) and the lowest rate since 1972. There were approximately 110,000 fewer crimes in 2011 than in 2010. Canada's CSI decreased by 6% to 77.6 in 2011, the lowest level since the index was first available in 1998.

    - This decline was primarily driven by the decrease in property crime rates as all types of property offences decreased, as well as most violent and other offence types. Increases were reported in the rates of child pornography (+40%) and sexual violations against children (+3%) likely due to proactive police investigations, criminal harassment (+1%) and homicide (+7%).

    - Drug offences (+3%) and *Criminal Code* traffic offences (+1%) also increased slightly, with Canada's rate of impaired driving increasing by 2% from the previous year.

- *Violent Crime in Canada*

    - Overall, violent crimes accounted for just over one in five offences (21%). Canada's violent CSI decreased by 4% to 85.3 in 2011, the fifth consecutive annual decrease. Canada's violent crime rate decreased by 4%, about 14,800 fewer violent offences than in 2010.

    - Most types of violent offences decreased in 2011, with the exception of homicides, sexual violations against children, and criminal harassment. There were 598 homicides in Canada, the first increase in six years (up 7%), while the rate of attempted murder decreased by 3%. The rates of common assault (level 1) and serious assault (levels 2 and 3) decreased by 2% and 4% respectively and assaults against police officers decreased by 26%. The rate of sexual assaults decreased 3% and the rate of robbery decrease by 3% from the previous year. Forcible confinement/kidnapping and abduction also decreased by 13% and 11% respectively.

- *Non-violent Crime in Canada*

  - Most crimes reported to police were non-violent. In 2011, Canada's non-violent CSI decreased by 7% to 74.7 from the previous year. All types of property offences decreased in 2011 for an overall 8% decrease in the rate of property offences in Canada.

  - The rates of break and enter and motor vehicle theft continued to decrease since their peak in the 1990s, with a 9% and 12% decrease respectively. Possession of stolen property decreased by 30%, theft over $5,000 decreased by 4%, theft under $5,000 decreased by 7%, mischief decreased by 8%, and arson decreased by 16% from 2010.

  - Most types of other offences also decreased in 2011, with the exception of child pornography (+40%), for an overall 2% decrease in the rate of other offences in Canada. The rate of counterfeiting decreased by 25%, prostitution decreased by 19%, disturbing the peace decreased by 3% and administration of justice offences decreased by 1% from 2010.

- *Youth Crime in Canada*

  - The rate and severity of youth crime in Canada continued to decrease in 2011, both down 10% from 2010. The youth CSI in 2011 was 82.6. The youth crime rate for violent offences decreased by 5%, for property offences decreased by 14%, and for other offences decreased by 8% from 2010.

  - The rate of youth accused of some of the most serious violent offences also decreased in 2011 including homicide (-16%), serious assault (-4%) and robbery (-4%).

- ***Crime Trends in British Columbia and Other Provinces and Territories***

  - The overall CSI and crime rate for most provinces and territories decreased in 2011, with the exception of Prince Edward Island whose crime rate remained stable and CSI increased by 1%, Northwest Territories whose crime rate increased by 3% and CSI remained stable, and Yukon whose crime rate remained stable.

  - As in previous years, the western provinces reported higher crime rates and crime severity indexes in comparison to the eastern provinces. British Columbia's overall crime rate decreased 7% to 7,892 incidents per 100,000 in 2011; its lowest crime rate in over 30 years. British Columbia's overall CSI (95.1) was third highest of the provinces, after Saskatchewan (144.8) and Manitoba (117.5).

  - Of the CMAs in Canada, Regina (124.5) continued to report the highest CSI in the Canada, followed by Saskatoon (118.7), Thunder Bay (107.3) and Winnipeg (107.2). Kelowna (97.4) had the fifth highest CSI of the CMAs in

Canada, Vancouver (94.5) was sixth highest, and Abbotsford-Mission (87.9) was tenth highest, all falling above the national average. Victoria (71.3) fell below the national average.

- All of British Columbia's CMAs experienced decreases in the overall crime rate in 2011, although they all remained above the national average. Kelowna decreased by 12% (the third highest crime rate of the CMAs in Canada), Vancouver decreased by 5%, Abbotsford-Mission decreased by 9%, and Victoria decreased by 16% from the previous year.

- *Violent crime in BC*

  - Every province and territory showed a decrease in violent crime rate for 2011, except for Yukon and Northwest Territories which remained stable. The only provinces not to show a decrease in violent CSI in 2011 were Prince Edward Island and Quebec (both up 1%) and Nova Scotia and Manitoba which both remained stable.

  - In 2011, British Columbia's violent crime rate decreased 7% to 1,460 incidents per 100,000. British Columbia's violent CSI (94.6) was third highest of the provinces, after Manitoba (167.1) and Saskatchewan (141.5).

  - Of the CMAs in Canada, Vancouver (98.3) had the seventh highest violent CSI and Kelowna (86.0) had the tenth highest violent CSI, both above the national average, while Abbotsford-Mission (72.4) and Victoria (70.9) both fell below the national average.

  - British Columbia had the fifth highest rate of homicide (1.9 incidents per 100,000) of the provinces, falling just above the national average and up 4% from the previous year. Despite this increase, 2011 was British Columbia's second lowest homicide rate since 1964.

  - British Columbia had the third highest rates of robbery (98 incidents per 100,000) and serious assault (181 incidents per 100,000), both above the national average and down 10% and 9% respectively. British Columbia had the seventh highest rate of sexual assaults (59 incidents per 100,000) which was below the national average and down 7% from the previous year.

  - British Columbia tied with Prince Edward Island and Newfoundland and Labrador for the third highest rate of sexual violations against children (16 incidents per 100,000), after Saskatchewan and New Brunswick. This was above the national average and an increase of 10% from 2010.
  - *Non-violent Crime in BC*

- Every province and territory showed a decrease in non-violent CSI in 2011, with the exception of Northwest Territories which increased by 1% and Prince Edward Island which remained stable. Most provinces and territories also had a decrease in property crime rates with the exception of Prince Edward Island, Yukon and Northwest Territories which increased by 1%, 2% and 3% respectively.

- In 2011, British Columbia's property crime rate decreased 8% to 4,699 incidents per 100,000. British Columbia's non-violent CSI (95.2) was third highest of the provinces, after Saskatchewan (146.0) and Manitoba (98.5).

- Of the CMAs, Kelowna (101.8) had the third highest non-violent CSI, Abbotsford-Mission (93.9) had the seventh highest and Vancouver (93.1) had the eighth highest non-violent CSI, all above the national average, while Victoria (71.4) fell below the national average.

- British Columbia had the third highest rate of break and enter (650 incidents per 100,000) of the provinces, falling above the national average and down 6% from 2010. British Columbia had the fourth highest rate of motor vehicle theft (288 incidents per 100,000), falling above the national average and down 18% from 2010. Victoria tied with Sherbrooke for the largest decrease in motor vehicle thefts of the CMAs in Canada in 2011, down 38% from previous year.

- British Columbia had the third highest rate of other offences, down 2% to 1,733 incidents per 100,000 in 2011. British Columbia had the largest increase (+15%) and the fourth highest rate of impaired driving (412 incidents per 100,000) of the provinces, falling above the national average.

- British Columbia continued to have the highest rate of drug offences among the provinces, including the highest rate of cannabis offences, which increased by 1% to 424 incidents per 100,000 in 2011. It also had the second highest rate of cocaine offences (98 incidents per 100,000) and the second highest rate of other drugs (68 incidents per 100,000), both above the national average and down 8% and up 5% respectively.

- *Youth Crime in BC*

  - There were decreases in the rate and severity of youth crime in every province and territory in Canada in 2011. In 2011, British Columbia had the third lowest youth crime rate (4,623 incidents per 100,000), down 15%. British Columbia had the lowest youth CSI (60.5) of the provinces, down 16%, and Saskatchewan had the highest youth CSI (217.0).

- British Columbia's violent and non-violent youth CSIs also fell below the national average. British Columbia had the lowest youth violent crime rate (1,217 incidents per 100,000), down 6%, and third lowest youth property crime rate (2,315 incidents per 100,000), down 18%, of the provinces in Canada.

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MINISTRY OF JUSTICE
POLICING AND SECURITY PROGRAMS BRANCH
POLICE SERVICES DIVISION
BRIEFING NOTE

PREPARED FOR: Honourable Shirley Bond, Minister of Justice and Attorney General
FOR INFORMATION

ISSUE: BC Government Feedback on Health Canada's Marihuana Medical Access Regulations Consultation Document

BACKGROUND:

- Health Canada's Marihuana Medical Access Regulations (MMAR) grant access to marijuana for individuals who suffer from grave and debilitating illnesses. Currently under the MMAR there are three types of licences: authorization to possess, personal-use production, and designated person production licence.

- As a result of concerns raised by various public safety, health, and municipal government stakeholders; in June of 2011, the federal Minister of Health announced changes to MMAR. The most significant change outlined in the consultation documents was a move from individual production licenses to commercial production, with existing individual production licenses to be gradually phased out.

- On February 14, 2012, representatives from the BC Ministries of Justice; Health; Social Development; Agriculture; and Community, Sport and Cultural Development met with Health Canada officials to discuss the proposed MMAR changes. At this meeting, Health Canada indicated that they would endeavour to further consult the BC Government regarding the proposed changes; however, to date, no further consultation has taken place.

- It is anticipated that Health Canada will post their proposed changes to the MMAR in the *Canada Gazette*, Part I, during the fall of 2012 and Canadians will have an opportunity to comment.

- In attempt to provide further feedback from the Government of BC to Health Canada, Ministry of Health staff have requested that the participating BC ministries provide feedback on the original consultation document and on the draft response provided by the Ministry of Health. Feedback is requested to be returned to the Ministry of Health by August 20, 2012.

DISCUSSION:

- Staff from Policing and Security Programs Branch (PSPB) have reviewed the consultation document and the response by the Ministry of Health and are recommending inclusion of the following topics for consideration by Health Canada:

s.13, s.16

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- s.13, s.16

- Please see the attached consultation document to review Health Canada's proposal (in black text); Ministry of Health's feedback (in blue text); and PSPB comments as per above (in red text).

NEXT STEPS:

- Ministry staff will continue to work with other ministries, notably Ministry of Health, to ensure BC's concerns are consider/addressed by Health Canada.

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Pages 232 through 248 redacted for the following reasons:
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s.13, s.16