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s.13 ; s.16

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s.16

Cliff: 619984
Date Prepared: August 23, 2021

MINISTRY OF ATTORNEY GENERAL
Residential Tenancy Branch
INFORMATION BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, QC
Attorney General

ISSUE:
2022 annual allowable rent increase announcement for September 1, 2021.

SUMMARY:
- The annual allowable rent increase is set out in the Residential Tenancy Regulation and Manufactured Home Park Regulation as the July 12-month average of the British Columbia Consumer Price Index (CPI).
- The 2022 allowable rent increase amount will be 1.5 per cent.
- For manufactured home park tenancies, the 2022 maximum increase will be 1.5 per cent plus a proportional amount for the change in local government levies and regulated utility fees.
- This will be the first rent increase since March 2020.

BACKGROUND:
- Statistics Canada publishes the CPI rate monthly. The July amount is normally published the last week of August.
- Based on this amount, the Residential Tenancy Branch (RTB) updates the annual allowable rent increase amount every year in early September.
- Rent can only be increased once annually, and landlords must provide notice to the tenant 3 full months before an increase takes effect.
- Due to COVID 19 there was a rent freeze from March 30, 2020 to December 31, 2021.
- Starting September 30, 2021 landlords will be able to give tenants a notice of rent increase that will take effect January 2022.

DISCUSSION:
- The timing of a rent increase usually depends on when a tenancy agreement was signed or the time the rent was last increased. This results in tenants across the province receiving rent increases throughout the year.
- Due to the COVID-19 rent freeze, landlords have gone more than a year without increasing rent. This will mean that tenants who have been in the same rental unit since before March 2020 will all be able to receive a rent increase in January.

s.13

- The RTB is working to update all web and other public content to correspond with any public release through GCPE September 1, 2021.

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Cliff: 619761
Date Prepared: August 18, 2021

MINISTRY OF ATTORNEY GENERAL
BC HOUSING
INFORMATION BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, QC
Attorney General and
Minister Responsible for Housing

ISSUE:

Extreme Heat in Social Housing

SUMMARY:

- This year's experience of the heat dome in June triggered a review of BC Housing's existing work to address the risks related to extreme heat and wildfire smoke. As a result, BC Housing ramped up efforts to be better prepared for the rest of the summer and into the future.
- Most social housing in B.C. was built on historical weather patterns, which were cooler than they are now. As such, most social housing units are at significant risk of overheating.
- BC Housing continues to address the risks, as well as work with non-profit housing providers and tenants in directly managed housing to ensure they are safe.

BACKGROUND:

BC Housing tracks the number of deaths in directly managed housing but not in buildings managed by the non-profit housing providers. In directly managed housing in the Lower Mainland, BC Housing observed an increase in the number of deaths from 6 deaths between June and July 2020, to 16 deaths from June and July 2021.

While this is a notable increase, it reflects a pattern observed overall across British Columbia. For example, the number of coroner responded deaths between June 25 and July 1, 2021, more than tripled compared to 2020. BC Housing does not know the causes of coroner responded deaths, nor do we know the causes of deaths in directly managed housing. However, it is possible and likely that some of these deaths were heat related. BC Coroners Service can address more specific questions regarding causes of deaths.

DISCUSSION:

Supporting the Non-Profit Housing Sector

BC Housing has been communicating the health and mortality risks of extreme heat to non-profit housing providers over the last few years through webinars, workshops, articles in newsletters, BC Housing's website and social media. This communication continued over the summer prior to and during the extreme heat events and was often conducted in collaboration with medical health officers and included information on how to recognize the symptoms of extreme heat-related illnesses and how to mitigate the risks. This communication also encouraged the non-profits to develop an extreme heat response plan that would include tenant education and health checks during an event.

BC Housing has provided extensive communication to non-profit housing providers on how to ensure their tenants are safe during extreme heat events. This includes conducting resident wellness checks, providing tenants with information about how to stay cool, providing cold drinks to tenants, and ensuring tenants visit hospitals or cooling centres when necessary.

In cases where BC Housing became aware that deaths occurred during an extreme heat event, staff followed up with the non-profit to ensure that all reasonable steps were being taken and whether more assistance was required.

In addition to an emergency response to extreme heat, BC Housing has taken actions to start including the risk of overheating in buildings in our building standards and major retrofits. For example, in one specific case, a large renovation project is underway at the building and the project team is exploring feasibility of adding cooling to the site.

Non-profits are encouraged to purchase extreme heat supplies and source those locally if they can, and BC Housing reimburses these costs. BC Housing has also procured extreme heat supplies to be made available to non-profits if they choose to request these items from BC Housing. These include fans, bottled water, portable air conditioning units for use in common rooms, portable air purifiers for use in common rooms, and misting fans.

Recently, BC Housing has also held a sector meeting with BC Non-Profit Housing Association, Aboriginal Housing Management Association, and Health Sciences Association of BC to discuss how better to support the sector.

Addressing Risks Related to Extreme Heat and Wildfire Smoke

As mentioned earlier, BC Housing cannot determine causes of death. BC Housing does, however, know that people who are most at risk of heat-related illnesses and death include people living in poverty, as well as those who tend to be in groups that have suffered historical and ongoing systemic discrimination, such as people with disabilities, racialized communities, Indigenous peoples, and women.

As such, BC Housing is taking steps to address these risks, including establishing a BC Housing Extreme Heat and Wildfire Smoke Emergency Operations Centre (EH EOC) to coordinate the response. The EH EOC has created a communications process to ensure appropriate steps are taken when a heat or air quality advisory or warning is issued by Environment and Climate Change Canada.

In addition, the following are past initiatives that have been taken, as well as immediate and longer-term initiatives that are planned.

Past Initiatives

In the last few years, BC Housing has taken the following steps to address this risk.

1. Developed an Extreme Heat and Wildfire Smoke Response Plan that was implemented in the Lower Mainland during the June 2021 heatwave. This included the creation of cooling rooms in our directly managed sites, communication with tenants, and wellness checks on the most vulnerable tenants.
2. Created a central repository of resources for the non-profit sector available on BC Housing's website: https://www.bchousing.org/projects-partners/extreme-heat
3. Responding to requests from the non-profit sector to provide fans and water during the heatwave.
4. Updated the BC Housing's Design Guidelines and Construction Standards to include passive design recommendations, and to require mechanical cooling in certain spaces and circumstances, including in residential suites in the South Interior region.

Steps taken in July 2021

1. Created the Extreme Heat and Wildfire Smoke Emergency Operations Centre, an internal central coordination cross-branch response team.
2. Initiated the development of an Extreme Heat and Wildfire Smoke Response Plan for BC Housing staff with the goal of supporting the non-profit housing providers.
3. Implementing a requirement for use of the future climate files in energy modelling which will require most projects to have passive and/or active cooling measures.
4. Initiated a review of all projects currently in various stages of development to assess their current cooling strategies and based on findings, determine how to enhance cooling in the project as necessary.
5. Preparing recommendations on incorporating cooling measures as a requirement into new construction and building upgrades and retrofits paying particular attention to passive elements.
6. Conducting industry consultation in order to update BC Housing's Design Guidelines and Construction Standards to require an adequate HEPA or MERV 13+ filtration during poor air quality due to wildfire smoke events.

7. Initiating the processes that will result in all renovation and development projects submitted for Executive Committee approval including a section to detail considerations made to address overheating and indoor air quality.
8. Providing monthly progress reports to the Executive Committee and quarterly reports to the Board.

Longer-Term Next Steps

BC Housing is also implementing the following before next summer:

1. Review and update BC Housing's Design Guidelines and Construction Standards and the Extreme Heat and Wildfire Smoke Response Plan from an equity point of view.
2. Require synergistic passive cooling measures for all projects, including trees, shade, connection to parks, etc.
3. Initiate an assessment of the risks of overheating and poor air quality for the entire non-market housing continuum.
4. Assess the need for cooling and air filtration systems for existing buildings and all new buildings.

B.C.'s Draft Climate Preparedness and Adaptation Strategy (CPAS)

The provincial draft CPAS: https://www2.gov.bc.ca/assets/gov/environment/climate-change/adaptation/cpas_2021.pdf
includes the following item (related to extreme heat) for which BC Housing is identified as the lead:

- *"Improve the provincial response to extreme heat and wildfire smoke for unhoused and housing insecure populations"*

BC Housing is currently working with the Climate Action Secretariat, non-profit housing partners and health partners on delivering this proposed action. s.12
s.12

INDIGENOUS PEOPLES CONSIDERATIONS:

Recognizing over representation of Indigenous peoples within the homeless population and in housing that is neither adequate nor affordable, BC Housing works in partnership with Indigenous communities and organizations to help create more affordable housing and to increase self-reliance in the Indigenous housing sector. Indigenous peoples are also more likely to be affected by climate change impacts such as heat and more intense and larger wildfires.

GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:

BC Housing applies a Gender Based Analysis Plus lens to all programming. This lens examines community impacts of resource development on diverse groups of people including women, men, girls, boys and gender diverse individuals.

OTHER MINISTRIES IMPACTED/CONSULTED:

N/A

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MINISTRY OF ATTORNEY GENERAL
OFFICE OF THE SUPERINTENDENT OF PROFESSIONAL GOVERNANCE
INFORMATION BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:
Professional Governance Act amendments confirmed for the Spring 2022 legislative agenda.

SUMMARY:
Office of the Superintendent of Professional Governance (OSPG) will be putting forward proposed changes to the PGA to:

- Maintain consistency with the *Health Professions Act* (HPA) as it implements updates.
- Identify/adjust consequential amendments stemming from the PGA and bring them into force.
- Continue to evaluate operational experience gained by the OSPG and regulatory bodies.
- Consider broader changes to various statutes referencing registered professionals based on further implementation of the Professional Reliance Review and outcomes of the Professional Governance Advisory Committee meetings.

Pursuing amendments will, in the medium term, provide an opportunity to address funding challenges the office faces by introducing authority for a funding levy to partially offset operating costs.

A cabinet submission is being prepared for October 18, 2021 cabinet date followed by an RFL for December 6, 2021.

BACKGROUND:
The PGA received Royal Assent on November 27, 2018 and set the general parameters for professional governance in British Columbia, including the establishment of the OSPG within the Ministry of Attorney General (MAG). The PGA currently includes five regulatory bodies – The Applied Science Technologists and Technicians of British Columbia, the Association of British Columbia Forest Professionals, British Columbia Institute of Agrologists, the College of Applied Biology, and Engineers and Geoscientists British Columbia. The Architectural Institute of British Columbia is the next regulatory body to come under the PGA, and they are slated to make the transition in 2022 at which point their current statute, the *Architects Act*, will be repealed.

Over the past few years, the OSPG has worked collaboratively with the regulatory bodies to develop policies and regulations and helped them transition to the PGA. Implementation was substantially complete in the fall of 2020, and the PGA came fully into force on February 5, 2021 when the statutes of each regulatory body was repealed, and the OSPG and the regulatory bodies moved to full operation entirely under the PGA and their new associated bylaws.

With the increase in prospective regulatory bodies seeking designation and the transition to operational status of the OPSG, there is now a pressure for OSPG to be fully funded for its operations, as currently there is inadequate budget and staff to carry out the full responsibilities and mandate found in the PGA. The OSPG has maintained function with the same budget after the implementation of the PGA, despite implementing its audit and compliance role which significantly increased the amount of work to be conducted by the OSPG.

During the development of the PGA, government considered a method for funding the OSPG through the regulatory bodies under its oversight umbrella. Consultation with regulatory bodies on the matter revealed two major issues that were present at the time, and which resulted in the funding mechanism not being included in the PGA:

- Would create a two-tiered system in the province whereby some professions are required to pay for government oversight and others, such as lawyers, accountants and health professions do not. This was argued to be discriminatory and would create a constitutional concern that could result in legal action.

- The professions that had right to title authority but not reserved practice (biologists, agrologists and technology professionals) argued the financial burden associated with the cost of OSPG would significantly reduce membership, increasing the number of people practicing without any professional accountability, and consequently reduce their ability to protect the public interest.

These concerns have diminished with both the imminent introduction of reserved practices for biologists and agrologists (anticipated Fall 2021) and a cost recovery authority proposed to collect a levy from all health regulatory colleges as part of the amendments to the HPA. The HPA is currently in a review with a RFL package in progress and on the legislative agenda for Spring 2022, similar to the PGA.

DISCUSSION:
The Ministry of Attorney General has put proposed that amendments to the PGA to coincide with the amendments for the HPA. Collaboration between the Ministry of Health and MAG at the staff level is already underway but it will be important that both Ministries closely collaborate and shared drafts of materials and draft legislation along the way.

Monitoring and review of the PGA by all parties with operational experience is important to ensure that the intended purpose is achieved, and that the PGA and OSPG continues

to maintain effectiveness. It is equally important to consider the development of similar legislation, like the HPA, to determine required updates to the PGA. As is the case with many new pieces of legislation, especially ground-breaking ones such as the PGA, there will need to be amendments, or amendments should at least be considered in some detail when potential arises.

The OSPG is also expecting to receive several applications for designation by various professions in the coming years which may result in an increase in the number of regulatory bodies operating under the PGA. This makes it vital to maintain the PGA and ensure that it functions effectively.

The OSPG, in collaboration with regulatory bodies and stakeholders have identified the following key areas for current consideration:

s.12; s.13

2. **Identify/adjust consequential amendments stemming from the PGA and bring them into force:**
   - Maintaining consistency in provincial statutes is required when new legislation is produced, especially when longstanding statutes are repealed and replaced.
   - Amendments to the PGA will allow the correction of consequential amendments that could not be brought into force due to unintentional impacts. Examples include:
     - Amending the definitions in the *Interpretation Act* for “professional engineer”, “civil engineer”, and “mining engineer”, to replace the reference to the *Engineers and Geoscientists Act* with a reference to the PGA.

- Changes to the consequential amendments set out in the PGA for the *Business Practices and Consumer Protection Act* (to avoid unintentional implications to the licensing scheme under that act), and to the *Water Sustainability Act* (to remove a reference to sections of the PGA that are not being brought into force)

3. **Continue evaluating operational experience gained by the OSPG and regulatory bodies:**
   - With the implementation of new legislation there often exists growing pains that result in amendments to either regulation or the statute itself. For example, regulatory bodies have identified aspects of the PGA that could be amended based on their practical experience in drafting and operationalizing their bylaws. OSPG has also identified areas through the development of regulations.

   - Specific examples include, but are not limited to:
     - Allowing for a lay councillor term to continue while a reappointment is in progress or until a replacement fills the position
     - Adding clarity that reserving professional practices does not impact Indigenous traditional knowledge practices
     - Adding clarity that firm regulation applies to firms engaged in the practice of a profession for internal services as well as those offering services externally
     - Clarifying Superintendent's authority in respect of individual registrants

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INDIGENOUS PEOPLES CONSIDERATIONS:

- The OSPG have considered impacts on indigenous people in many aspects, especially as it relates with the introduction of new reserved practices within applied biology and agrology. Although there have been no constitutional impacts identified as a result of the PGA or associated regulations, the inclusion of a legislative change to bring clarity to this view remains a possibility.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Other ministries have been consulted in the development of select regulations under the PGA, but to date there has been no consultation with other ministries related to the RFL. The OSPG believes it paramount to the success of the RFL to further develop our relationship with the Ministry of Health and gain further insight to the underlying aspects of the HPA RFL that is also before the legislature in the Spring.

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Withheld pursuant to/removed as

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Cliff: 619652
x- ref: 617129
Date Prepared: August 13, 2021
Date Decision Required: August 26, 2021

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:
Potential prompt payment legislation

DECISIONS REQUIRED:
Whether to consult on potential Prompt Payment Legislation in partnership with the BC Construction Association or independently through usual methods.

SUMMARY:

- A variety of BC trades associations continue to lobby strongly for BC to adopt prompt payment legislation as quickly as possible. Their view is that BC is "falling behind" other provinces.
    - Staff remain in contact with the BC Construction Association and other sub-trade associations. These organizations have offered to help coordinate consultations with the construction industry.

- The Canadian Home Builders' Association of BC has contacted the ministry to state their members' opposition to prompt payment legislation. A specific rationale for opposition was not stated; however, there were general statements that it is their belief that prompt payment legislation may negatively impact the home construction industry. Members of this organization are likely to oppose prompt payment legislation or want their members to be exempt from its application.

BACKGROUND:

- Four provinces (AB, SK, ON, NS) and the federal government have passed prompt payment legislation.

- Prompt payment legislation is unlikely to provide its assumed benefits unless it is supported by an efficient and workable non-court dispute resolution body.

- Ontario is the only province that has prompt payment legislation in force. It only applies to contracts entered into after October 1, 2019.

    - Ontario provides limited evidence of an existing effective dispute resolution mechanism in Canada.

  - Ministry of Attorney General staff remain concerned that Ontario's Dispute Adjudication for Construction Contracts tribunal ("ODACC") is not seeing significant use.

  - The last update ministry staff received from ODACC was February 8, 2021. From October 2019 to the end of January 2021 there were 60 disputes initiated with ODACC, an average of approximately 3.75 disputes a month.

  - To date, staff have not received a clear indication that this lack of use is because sub-trades in Ontario are now being paid on time in response to prompt payment legislation.

- Staff have received some anecdotal views on perceived issues with ODACC, including that the fixed fee model for adjudicators may mean that lawyers and other professions may be unwilling to adjudicate lower value disputes. In addition, there are some concerns with the training given to adjudicators.

- Generally, disputes that go to adjudication do not simply involve allegations of a failure to pay on time. Usually, the head contractor or developers will allege that the sub-contractor failed to perform service to a required specification and claim a right of set-off or otherwise claim a contractual reason for not paying.

- Staff from Public Services and Procurement Canada have contacted ministry staff to inquire about interest in BC utilizing the federal prompt payment adjudication body, once their legislation has been brought into force and the adjudication body has been established.

  - The ability to utilize an existing dispute resolution tribunal would reduce the operational risk associated with introducing prompt payment legislation, result in economies of scale and create a consistent experience for businesses that operate in multiple jurisdictions.

  - It would be preferrable to assess the response to the rollout of the Federal legislation and utilization of the Federal tribunal before committing to utilizing the Federal dispute resolution body.

  - The latest update from the Federal government is that their regulations will not be in force until October and then they will be issuing a Request for Proposals from adjudication providers. The current goal is for federal prompt payment legislation to be brought into force in the first part of 2022.

DISCUSSION:

Trades are already entitled to payment by virtue of the law of contract. Prompt payment legislation may standardize and limit contractual terms, but the primary benefit of prompt payment legislation is supposed to be recourse to a faster and less expensive (non-court) dispute resolution body.

Ministry of Attorney General staff remain concerned that Ontario's Dispute Adjudication for Construction Contracts tribunal (ODACC) is not seeing significant use.

To date, staff have not received a clear information that this lack of use is because:

- sub-trades in Ontario are now being paid on time in response to prompt payment legislation, or;
- despite the new legislation giving parties a right to prompt payment, construction businesses are reluctant to use ODACC even when payment is delayed, due to a desire to maintain business relationships or because taking a dispute to the tribunal is still viewed as too costly, time consuming or otherwise inconvenient.

Staff have requested trade associations contact their counterparts in Ontario and request signed letters clearly stating that Ontario's prompt payment legislation has resulted in improved payment times. To date staff have only been provided with letters from Ontario sub-trade associations that are generally supportive of the prompt payment legislation. However, the letters do not contain unequivocal statements that payment times have improved.

The Federal government believe their legislation and differences in how their dispute resolution body will be structured (service provider qualifications, etc.) addresses certain issues identified with ODACC in Ontario. Ministry staff agree that the ability to utilize an existing dispute resolution tribunal would reduce the operational risk associated with introducing prompt payment legislation, result in economies of scale and create a consistent experience for land developers and other construction businesses that operate in multiple jurisdictions. Ideally staff would prefer to observe the Federal dispute resolution body in action before committing to the adoption of similar legislation. If the Federal adjudication body sees similarly low use it may again suggest that a legislated obligation to pay promptly will have limited benefit.

Consultation on the potential for legislation will serve a number of purposes:

1. Reassure the construction industry that government is taking their concerns around prompt payment seriously.

2. Provide an opportunity to government to explain concerns and why it is taking time moving forward with legislation.

3. Allow staff to assess industry response to the potential of adopting the Federal model.

4. Provide a meaningful opportunity for staff to learn about unique BC issues that will need to be considered if/when developing the legislation.

Because the need for, and benefits, of consultation are clear, it is necessary to decide how best to consult. The BC Construction Association has offered to help organize a consultation with industry. The BC Construction Association describes itself as the largest and most diverse construction association in the province, serving over 10,000 employers of all labour affiliations through a network of four Regional Construction Associations.

INDIGENOUS PEOPLES CONSIDERATIONS:

- This issue does not have unique implications for Indigenous Peoples in British Columbia. However, Treaty First Nations and other indigenous governing bodies may develop land which could be impacted by prompt payment legislation and Indigenous peoples may operate trade businesses that would benefit from a legislative requirement to be paid promptly.

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- If direction is received to move forward with legislation, it will be necessary to consult with Treaty First Nations to determine which nations, if any, wish to have prompt payment legislation apply to construction on TFN land.

OPTIONS:

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OTHER MINISTRIES IMPACTED/CONSULTED:

- Ministry of Finance will be impacted because government, as a developer, will be required to pay within the prompt payment timelines; however, this is not anticipated to be an issue as government is recognized as paying promptly unless there are well founded issues in dispute.

- The Ministry of Finance is also represented on the Deputy Minister's Industry Infrastructure Forum (DMIIF), which has raised the issue of prompt payment.

DATE:

August 16, 2021

Richard J. M. Fyfe, QC
Deputy Attorney General and
Deputy Minister Responsible for Housing

RECOMMENDED OPTION APPROVED

DATE:

David Eby, Q.C.
Attorney General and
Minister Responsible for Housing

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Attachment(s)

Attachment A – 617129 – Draft letter to Atchison

ATTACHMENT A - DRAFT

Mr. Chris Atchison
Email: chris.atchison@bccassn.com

Dear Chris Atchison:

Thank you for your letter of May 14, 2021, where you submit a letter co-signed by 33 industry organizations in support of prompt payment legislation in British Columbia.

I understand that, in accordance with previous correspondence, you have been in contact with ministry staff since May.

I am advised that staff have advised you of their continued concerns with the roll-out of prompt payment legislation in Ontario and they have also informed you that the federal government has reached out to propose that British Columbia utilize a prompt payment adjudication body that is soon to established by the Federal government. Staff have recommended to me that the ministry consult with the British Columbia construction industry and it is my understanding that you have offered to facilitate such a consultation.

I am writing to advise of my support for this proposed consultation. It is my hope that the consultation will provide an opportunity for ministry staff to explain, in general terms, their concerns with moving forward too quickly on prompt payment legislation. I am also hopeful that this consultation will provide an opportunity for industry members to give staff information about British Columbia specific issues that will need to be taken into consideration when developing prompt payment legislation.

I appreciate your continued interest and hope that my support for consultation demonstrates government's continued commitment to pursue prompt payment legislation in a measured and thoughtful manner.

Yours truly,

(draft do not sign)

David Eby, QC
Attorney General and
Minister Responsible for Housing

CLIFF number: 617129

Cliff: 619457
Date Prepared: August 04, 2021
Date Decision Required: September 04, 2021

MINISTRY OF ATTORNEY GENERAL
INFORMATION SYSTEMS BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of Richard J. M. Fyfe, QC
Deputy Attorney General and Deputy Minister Responsible for Housing

ISSUE:
Request to remove the British Columbia International Commercial Arbitration Centre from coverage under the *Freedom of Information and Protection of Privacy Act* (FOIPPA)

DECISION REQUIRED/ RECOMMENDATION:
It is recommended that the Deputy Attorney General sign the attached Request for Amendment form (**Attachment 1**), to request that the Minister responsible for FOIPPA remove the British Columbia International Commercial Arbitration Centre (BCICAC) from Schedule 2 of that Act.

SUMMARY:

- Schedule 2 of FOIPPA lists broader public sector entities that are designated as Public Bodies and are therefore subject to the requirements of that Act.

- From time to time, the Ministry of Citizens' Services (CITZ) makes amendments to the Schedule, including removing entities from the Schedule that no longer meet the legislated criteria for designation as Public Bodies.

- The British Columbia International Commercial Arbitration Centre (now called the Vancouver International Arbitration Centre [VanIAC]) is currently a designated Public Body in the Schedule.

- However, the nature of this entity and its relationship to government have changed significantly and Legal Services Branch (LSB) has advised that it no longer meets the criteria set out in the Act for designation as a Public Body.

BACKGROUND:
CITZ has requested that the Ministry of Attorney General review the designation of the BCICAC and consider whether it should be removed from the Schedule or renamed in the Schedule to reflect its current name (Vancouver International Arbitration Centre).

The Minister responsible for FOIPPA may, by Ministerial Regulation, remove an entity from the Schedule if the entity no longer meets the following criteria:

1. Any member of its board is appointed by the Lieutenant Governor in Council or a minister,

2. A controlling interest in the share capital is owned by the government of British Columbia or any of its agencies, or

3. The organization performs functions under an enactment.

When it was established in 1986, the BCICAC received funding from the governments of Canada and British Columbia. BCICAC bylaws permitted the appointment of a representative from the B.C. Ministry of Attorney General to its board of trustees.

Furthermore, the *Arbitration Act* created a statutory default whereby BCICAC's Rules of Arbitration ("Rules") applied to arbitration disputes, unless parties agreed to opt out. BCICAC was granted statutory authority to make an arbitral appointment, absent party agreement.

DISCUSSION:
There have been several changes to the relationship between the BCICAC and the Ministry of Attorney General:

- The Attorney General no longer makes appointments to the board of trustees.
- The Government of British Columbia ceased funding the BCICAC in 2003.
- In 2020, the *Arbitration Act,* was repealed and replaced and the statutory default reference to the Rules was eliminated.
- The BCICAC was renamed VanIAC in 2020.
- Under the new *Arbitration Act,* VanIAC still has authority to make an arbitral appointment if the parties fail to agree on an arbitrator. However, parties may agree that an entity other than VanIAC make the arbitral appointment.

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INDIGENOUS PEOPLES CONSIDERATIONS:
This decision does not have any identified implications for Indigenous people in B.C.

OPTIONS:
Option 1 (Recommended): Sign the attached Request for Amendment form, to request that the Minister responsible for FOIPPA remove the British Columbia International Commercial Arbitration Centre (BCICAC) from Schedule 2 to that Act.

Implications:

- VanIAC will no longer be subject to the requirements of FOIPPA.
- The change will more appropriately reflect the present relationship between the B.C. government and VanIAC.
- Private and confidential arbitration information will no longer be subject to release under FOIPPA.
- VanIAC will be covered by PIPA, the private and not-for-profit sector privacy legislation.

Option 2: s.13
s.13

OTHER MINISTRIES IMPACTED/CONSULTED:
CITZ has been consulted as the ministry responsible for FOIPPA.

OPTION __1__ APPROVED

I agree with recommended option 1 however please ensure that VANIAC is notified prior to proceeding.

DATE:

August 10, 2021

Richard J. M. Fyfe, QC
Deputy Attorney General and
Deputy Minister Responsible for Housing

Prepared by:
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Approved by:
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Attachment: Request for Amendment Form

Request to amend Schedule 2 or Schedule 3 of the Freedom of Information and Protection of Privacy Act

PART 1
Information about the Ministry requesting a change to Schedule 2 or Schedule 3

Ministry	Ministry Contact (Name and Phone Number)
Attorney General and Responsible for Housing	Karine Bordua 250-889-6771

Requests to remove an existing body from either schedule

	Name of the body as it currently appears in the Schedule	Legislated criteria met for this deletion (please select an option from the drop-down menu)	1-3 sentence rationale for deletion (including the name of an act, the OIC number, or other information that provides evidence that the body should be removed)
1	B.C. International Commercial Arbitration Centre	no longer meets the criteria established	When it was established in 1986, the BCICAC received funding from the governments of Canada and British Columbia. BCICAC bylaws permitted the appointment of a representative from the B.C. Ministry of Attorney General to its board of trustees. Furthermore, the Arbitration Act created a statutory default whereby BCICAC's Rules of Arbitration ("Rules") applied to arbitration disputes, unless parties agreed to opt out. BCICAC was granted statutory authority to make an arbitral appointment, absent party agreement. There have been several changes in the relationship between the BCICAC and government: •The Attorney General no longer makes appointments to the board of trustees. •The Government of British Columbia ceased funding the BCICAC in 2003. •n 2020, the Arbitration Act, was repealed and replaced and the statutory default reference to the Rules was eliminated. •The BCICAC was renamed VanIAC in 2020. •Under the Arbitration Act, VanIAC still has authority to make an arbitral appointment if the parties fail to agree on an arbitrator. However, parties may agree that an entity other than VanIAC make the arbitral appointment.

Authorization

I, Richard J. M. Fyfe, QC, Deputy Minister, authorize the above request to amend Schedules 2 and/or 3 of the *Freedom of Information and Protection of Privacy Act.*
I confirm that the information provided on this form is accurate and complete, including the full legal names of any entities being added or changed.

I understand that any entity that has been added under Part 2 or Part 3 of this form will be a "public body" for the purposes of FOIPPA and that the designated head will be required to carry out the powers, duties, and functions of a designated head of a public body under FOIPPA.

I confirm that, where an entity has been identified for removal from the schedules under Part 5 of this form, appropriate action has been taken to retain or transfer any records that are required to be retained or transferred under any applicable legislation, and that any government information in the custody or under the control of that entity has been appropriately held, transferred, archived, or disposed of accordance with the *Information Management Act* . (For assistance with records subject to the *Information Management Act* , contact GRS@gov.bc.ca).

Signature _____ Date _____

Please email your completed form to IMPOLICY@gov.bc.ca

MINISTRY OF ATTORNEY GENERAL
OFFICE OF THE SUPERINTENDENT OF PROFESSIONAL GOVERNANCE
INFORMATION BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, QC
Attorney General and Minister Responsible for Housing

ISSUE:

The Superintendent of the Professional Governance (OSPG) intends to commence an investigation of the regulation and governance of the British Columbia Society of Landscape Architects (BCSLA) to consider whether to designate landscape architects under the *Professional Governance Act* (PGA).

SUMMARY:

- BCSLA sent a letter to the OSPG in 2020, expressing their interest in beginning the process to become a designated regulatory body under the PGA and sent a formal application to be designated to the superintendent on July 7, 2021.

- BCSLA wants to become designated to ensure that the role of landscape architects on consultant teams is well-aligned with the knowledge, skills, and abilities of other professionals on those teams.

- OSPG staff consulted with BCSLA in 2020 about shifting to a professional governance model. There was strong support in the industry for professional governance of landscape architects under the PGA.

- With the PGA now in force, the superintendent has the authority to conduct investigations of professions or organizations to determine if they should be designated under the PGA.

- Initiating an investigation requires a decision of the superintendent and a notice in the BC Gazette and on the OSPG website.

BACKGROUND:

- BCSLA has been self governing since 1968. The current number of licensed landscape architects is about 750. There are nine landscape architect regulatory organizations in Canada. Alberta, B.C., and Ontario are the only Canadian jurisdictions that provide title rights and protection for landscape architecture.

- Landscape architects are currently under the *Architects (Landscape) Act*, which is under the purview of the Ministry of Advanced Education and Skills Training.

- The profession of landscape architecture currently is not a reserved practice, yet this is a goal BCSLA seeks through designation under the PGA.

- Section 12(1) of the *Architects (Landscape) Act* grants use of the reserved title of “Landscape Architect” to an individual who is a member in good standing of BCSLA.

- BCSLA holds members to a code of professional conduct, has a required continuing education policy, and a complaints and discipline process.

- The scope of practice for landscape architects includes reconnaissance, research, consultation, evaluation, planning, design, and administration of contracts pertaining to projects involving outdoor spaces.

- To become registered, a landscape architect must complete a written exam prepared and scored by the Council for Landscape Architecture Examinations Board, and pass an oral exam administered by BCSLA Board of Examiners. In Canada, landscape architects are evaluated based on the same exams as American landscape architects, which are administered through an independent body: The Council for Landscape Architecture Registration Board (CLARB).

- Most landscape architects hold an accredited degree in landscape architecture. The Canadian Society of Landscape Architects (CSLA) Landscape Architecture Accreditation Council accredits bachelor and master programs in six universities across the country.

- Without recognition in the BC Building Code, landscape architects are often not permitted to take professional responsibility for their work.

Professional Governance Act

- In the PGA, a profession's governing body has the authority to manage itself within the regulatory framework and set requirements for persons to enter the profession, standards of competence and conduct, continuing education and competence, a process for complaints, and investigation and discipline procedures.

- The PGA also enables regulatory bodies to establish protected titles as well as reserved or protected areas of practice for their professions.

- The PGA provides the authority for the superintendent to designate new professions. To do so, the superintendent would conduct an investigation to determine if designation under the PGA is appropriate and in the public interest. Professional associations can submit an application requesting designation to the superintendent or the superintendent can decide to undertake an investigation of a profession. If the superintendent has decided to undertake an investigation of that profession, notice of the investigation must be provided in the Gazette and on the OSPG website.

DISCUSSION:

- Landscape development may be designed and constructed by unregulated individuals and companies without demonstrated education and experience and capabilities, and their activities can threaten natural systems, and public safety and welfare.

- There are existing intersections in practices between landscape architects and

other natural resource/built environment professionals, which can create an ongoing risk of gaps and issues without coordination, resulting in impacts to the public interest and the environment.

- BCSLA's authority only applies to regulatory requirements prescribed in law, not matters typically included in occupational codes of ethics. This impacts the effectiveness of the current regulatory model and environmental/public protection.

- An investigation by the superintendent would consider the best model for regulation of landscape architects and determine whether designation or amalgamation under the PGA is recommended. The recommendation would then go to the Minister and for consideration by the LGIC. It is anticipated that the investigation and resulting report would be completed in 2022.

- The OSPG went through a process to assess BCSLA on their eligibility for designation. On that basis, the superintendent gave approval to go forward with an investigation.

INDIGENOUS PEOPLES CONSIDERATIONS:

- The *Architects (Landscape) Act* is a provincial law of general application respecting public health and safety. Areas that require landscape architectural services may be in First Nation communities. Any investigation that will be undertaken by OSPG will identify areas of interest and a path for engagement with Indigenous authorities.

OTHER MINISTRIES IMPACTED/CONSULTED:

- The Ministry of Advanced Education and Skills Training was advised of BCLA's application. Consultation as part of the investigation will occur with BCSLA and the Ministry of Advanced Education and Skills Training. Other interested parties will be considered once the investigation is underway. This will also be raised at the next meeting of the Professional Governance Advisory Committee (tentative for fall 2021), which consists of representatives from all Ministries with professionals designated under the PGA, all of the currently designated regulatory bodies, and other interested parties.

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Date Prepared: July 29, 2021

MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
INFORMATION BRIEFING NOTE

PURPOSE: For INFORMATION for David Eby, QC
Attorney General, Minister Responsible for Housing

ISSUE:

Summary of meeting between staff from Family Justice Services Division and Family Policy Legislation and Transformation Division and representatives from several anti-violence organizations.

SUMMARY:

- Several anti-violence organizations continue to fundamentally disagree with the early resolution and case management model, arguing that the court process should be the presumptive process with an opt in to participate in CDR.

- Due to this fundamental philosophical difference, the ministry and the organizations made limited progress in addressing the organizations' concerns during the July 26th meeting. Ministry staff are concerned the dialogue will be similarly challenged at the next meeting.

BACKGROUND:

- A group of anti-violence organizations sent a letter dated April 28, 2021 to the Attorney General outlining several concerns with the early resolution and case management model introduced in the Provincial Court Family Rules.

- On June 16, 2021 the Attorney General and ministry staff attended a 30-minute meeting with representatives from these organizations to discuss their concerns. It was decided at the end of the meeting that JSB staff and the organizations would participate in a follow-up meeting to further discuss the concerns and recommendations.

- The follow-up meeting took place July 26, 2021. It was attended by the YWCA Metro Vancouver, Battered Women Services Society, BC Society of Transition Houses, and the Cridge Transition House for Women. Representatives from ATIRA Women's Resource Centre, Dixon Transition House and Surrey Women's Centre were not in attendance.

- A second follow up meeting is scheduled for September 22, 2021.

DISCUSSION:

- JSB circulated a discussion document to the meeting participants in advance of the meeting. The document set out the concerns and three calls to action that the organizations described in their April 2021 letter.

- It was clear from the April 2021 letter and the discussion on June 16, 2021 that there were a number of misconceptions about the early resolution and case management model. For each concern, information was provided to: clarify the specific requirements in the model, explain the intentions and policy rationale underpinning the model, and describe work currently underway that is relevant to some of the concerns (i.e. FJSD's updating of the assessment tool and FJC training, ongoing evaluation of the early resolution and case management model and interest in studying outcomes of participation in the model for families experiencing family violence).

- JSB also proposed discussing two potential policy initiatives that would support women experiencing family violence who are navigating the family justice system (i.e. providing unrepresented parties experiencing family violence with legal counsel for cross examination in family law cases, and development of a family court navigator role). There was not time to discuss these initiatives on July 26th and the anti-violence organizations suggested our philosophical differences needed to be resolved before this dialogue can occur.

- The organizations stated their belief that government has dug in its feet and is committed to expanding the early resolution model to additional registries without listening to their concerns or specifically evaluating the outcomes experienced by women impacted by family violence. They claim that women are inappropriately being forced to participate in mediation either because screening processes are ineffective and are not identifying family violence issues, or because power imbalances and coercive control are not being recognized as family violence and are not being screened out. FJSD offered to discuss how screening is happening and where there may be opportunity to improve screening practices, however the organizations declined on the basis that we first need to agree mediation should always be voluntary.

- The organizations strongly believe women should never be required to participate in any out-of-court dispute resolution process. They argue parties should be able to opt in voluntarily, rather than being screened out or applying to be exempt. It is their experience that women do not know they can apply for an exemption and due to expectations that they cooperate women are pressured into agreements that are not in the best interests of them or their children.

- They also object to some of the language in the rules that suggests parties are seeking resolution (e.g. the Notice to Resolve). They argue the emphasis on

resolution puts an onus on women who have been abused to attempt to "resolve" their family law issues with their abuser.

- The Ministry representatives did emphasize the following:
    - This is a co-designed model that was developed with the Provincial Court who strongly support having families access family justice services before coming to court.
    - Many of their objections such as the language "Notice to Resolve" and "Consensual Dispute Resolution" were the subject of consultation in the form of a discussion paper issued by the Ministry and the Court.
    - The model provides families with a full range of services including assessment and referrals. Many women coming to the family justice system have not had contact with antiviolence organizations and FJSD often refers families to those services.
    - The model is premised on effective screening being done to screen out cases where there is family violence from the requirement to participate in consensual dispute resolution. There is no screening done by the court and judges often use the court setting to pursue mediation and agreement.

- The position of these organizations that the model should be a presumptive court based model is contrary to the recommendations of the National Action Committee on Access to Justice in Civil and Family Matters which were based on decades of reports and recommendations about the family justice system. The final report of the Family Justice Working Group recommended requiring participation in one non-judicial session of CDR, with appropriate safeguards to ensure the safety, security and well-being of the parties. The working group recognized that participation in CDR on a voluntary basis remained low; without requiring participation, CDR was generally considered an add-on to a fundamentally adversarial framework.

- Not all anti-violence organizations share this view. We have heard from other organizations that support the model and agree it is benefitting families in BC.

- Adjusting the model to "opt in" to the early resolution requirements is a step backwards, a return to a court-based presumptive model. It is contrary not only to multiple family justice reform recommendations, but also goes against the objectives of the *Family Law Act* which states that resolution out of court is preferred. Similarly, the amended *Divorce Act* states that families shall try to resolve matters using a family dispute resolution process where appropriate to do so. This approach has been followed in other Canadian jurisdictions as well.
- There are topics that could be productively discussed at the September 22, 2021 meeting, such as:
    - information on volumes of clients screened out of traditional mediation yet still receiving valuable services from early assessment process

- Quantitative and qualitative information on referrals to family violence service providers
- How screening and assessment practices and training might be improved to more effectively identify parties with family violence issues;
- How to best support families when family violence is identified, including the cross-examination and family justice navigator initiatives;
- How to evaluate outcomes of participating in the early resolution and case management model for families with family violence issues.

However, if the organizations will not move beyond discussing a return to a court-based presumptive model, it will be difficult to move beyond the philosophical differences.

NEXT STEPS:

- FJSD is arranging to speak individually with some of the organizations to obtain more information about specific complaints and to understand specific cases where issues have arisen before the September 22nd meeting.

- FJSD and FPLT will meet with the organizations again on September 22, 2021.

- Associate Chief Judge Wishart has indicated she will attend the meeting to emphasize the court's support for the model and to listen to their concerns.

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Cliff: 619575
Date Prepared: July 29, 2021
Date Decision Required: August 16, 2021

MINISTRY OF ATTORNEY GENERAL
CORPORATE MANAGEMENT SERVICES BRANCH
DECISION BRIEFING NOTE

PURPOSE: For DECISION of Richard J.M. Fyfe, QC
Deputy Attorney General and Deputy Minister Responsible for Housing

ISSUE:
Direct Appointment of Judicial Staff was approved in March 2009 by the DAG and the Head of the BC Public Service Agency. The list of positions requires updating, executive approval and signatures.

DECISION REQUIRED/ RECOMMENDATION:
Affix signature to the revised list dated June 2021, and forward to the Head of the Agency for approval and signature.

SUMMARY:
- The original premise of Direct Appointment of Judicial Staff remains valid.
- Certain position titles have become outdated and require revision.
- The Head of the Agency is relatively new to their position and a Decision Note was requested by their staff as part of a briefing package.

BACKGROUND:
- Supreme Court, Court of Appeal and Provincial Courts have continued to function under the original Protocol.
- Staff from these courts have reviewed and updated the list of positions for direct appointment.
- Original and revised lists are attached for comparison, with differences highlighted.
- The original Protocol document is attached. The language concisely addresses the issue and there are no suggested changes to the process.
- This issue was circulated previously by email. On contacting the Agency, a more formal process was requested to collect all the information into one package

DISCUSSION:
- The direct appointment of judicial staff remains a necessary function for independence from the executive branch. The original Protocol document describes that rationale and the process to retain independence.
- Concurrence from the Agency is required due to the Direct Appointment function found in the Public Service Act.

INDIGENOUS PEOPLES CONSIDERATIONS:
- This internal staffing process issue has no impact on the indigenous peoples of BC.

OPTIONS:

- No action – leave process as is
- Sign Decision Note and amended list. HR staff will complete follow-up action with the PSA **(Recommended).**

OTHER MINISTRIES IMPACTED/CONSULTED:

- Hiring Strategy office of the BC Public Service Agency.

RECOMMENDED OPTION APPROVED

DATE:

_____ _____

Richard J.M. Fyfe, QC Deputy Attorney General
and Deputy Minister Responsible for Housing

Prepared by:
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Corporate Management Services Branch
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Approved by:
Kayla McKeown
Executive Director, Strategic Human Resources
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Attachments:

1. Original protocol agreement signed March 2009;
2. Original appendix listing staff positions for direct appointments;
3. Revised list with highlighted differences; and
4. Updated appendix of senior judiciary staff **which requires the two signatures**.

referenced in this note.

PROTOCOL

APPOINTMENT OF SENIOR JUDICIAL ADMINISTRATIVE STAFF

Issue

The 1994 protocol for appointment of senior administrative staff reporting to the Chief Justice of the British Columbia Court of Appeal, the Chief Justice of the British Columbia Supreme Court and the Chief Judge of the British Columbia Provincial Court requires updating to reflect current policy and organization structures. Attached is an appendix listing the current positions for which this protocol applies.

Background

The named senior administrative positions have a special position of trust and confidentiality which is essential to the efficient operation of the courts and to the independence of the Judiciary. It is critical that the Judiciary control the selection of the individuals who occupy these positions. It is also critical that the best possible candidates be appointed in a manner consistent with the merit principle.

These aims have been achieved since 1994, by utilizing the direct appointment provision of the *Public Service Act* and a protocol document. Prior to that, appointments were made via Order in Council or the normal competitive process. A legal opinion indicated at that time that the use of Orders in Council to appoint to these positions was not appropriate. In addition, subjecting senior judicial staffing decisions to the review process associated with normal *Public Service Act* appointments is inconsistent with judicial independence.

Agreement

To resolve the issues noted above, the following has been agreed upon:

1. Appointments to positions listed in the appendix are to be based on the principle of merit.
2. Following a selection process, and prior to finalizing an offer of employment, the applicable level of the Judiciary will submit to the Deputy Attorney General such documentation as may be required to recommend an appointment.

3. The Deputy Attorney General, based on a review of the above documentation, will recommend to the Head of the BC Public Service Agency the name of the successful candidate and the position to which it is proposed he/she be appointed.
4. Based on the recommendations of the Deputy Attorney General, the Head of the BC Public Service Agency will appoint the successful candidate in accordance with Section 10 (b) (iii) of the *Public Service Act* and will advise the Deputy Attorney General of the appointment.
5. The Deputy Attorney General will arrange, through the BC Public Service Agency, a formal letter of offer to the successful candidate.

Signatures:

Deputy Attorney General — Date: MAR 24 2009

Head of the BC Public Service Agency — Date: Mar 25/2009

APPENDIX
Senior Judiciary Staff

Superior Judiciary

- Executive Director and Senior Counsel, Judicial Administration
- The Registrar of the Court of Appeal of British Columbia
- Associate Registrar of the Court of Appeal of British Columbia
- Law Officers to the Chief Justice of British Columbia
- Executive Coordinator to the Chief Justice of British Columbia*
- Executive Assistant to the Chief Justice of British Columbia
- Senior Executive Secretary to the Chief Justice of British Columbia
- The Registrar of the Supreme Court of British Columbia
- The District Registrars of the Supreme Court of British Columbia
- Law Officers to the Chief Justice of the Supreme Court of British Columbia
- Director, Supreme Court Scheduling
- Executive Coordinator to the Chief Justice of the Supreme Court of British Columbia*
- Executive Assistant to the Chief Justice of the Supreme Court of British Columbia
- Executive Coordinator to the Associate Chief Justice of the Supreme Court of British Columbia*
- Executive Assistant to the Associate Chief Justice of the Supreme Court of British Columbia

* currently under development

Provincial Judiciary

- Director of Judicial Administration
- Law Officer
- Executive Assistant

APPENDIX to Protocol Agreement March 25, 2009
Updated July 29, 2021
Senior Judiciary Staff

Superior Courts Judiciary

- Executive Director and Senior Counsel, Judicial Administration
- Registrar of the Court of Appeal of British Columbia
- Associate Registrar of the Court of Appeal of British Columbia
- Legal Counsel to the Chief Justice of British Columbia
- Judicial Coordinator to the Chief Justice of British Columbia
- Executive Assistant to the Chief Justice of British Columbia
- Senior Executive Assistant to the Chief Justice of British Columbia
- Registrar of the Supreme Court of British Columbia
- District Registrars of the Supreme Court of British Columbia
- Legal Counsel to the Chief Justice of the Supreme Court of British Columbia
- Director, Supreme Court Scheduling
- Judicial Coordinator to the Chief Justice of the Supreme Court of British Columbia
- Executive Assistant to the Chief Justice of the Supreme Court of British Columbia
- Judicial Coordinator to the Associate Chief Justice of the Supreme Court of British Columbia
- Executive Assistant to the Associate Chief Justice of the Supreme Court of British Columbia

Provincial Judiciary

- Executive Director, Organizational Services
- Senior Legal Officer
- Law Officers
- Administrative Judicial Case Manager
- Manager of Judicial Resource Analysis and Management Information
- Manager, IT Services and Strategic Planning
- Manager, Support Services

Page 1 of 2

- Judicial Coordinator to the Chief Judge of the Provincial Court
- Judicial Coordinator to the Associate Chief Judges

_____ _____

Richard J.M. Fyfe, QC — Date
Deputy Attorney General

_____ _____

Bobbi Sadler — Date
Deputy Minister and Head of the Agency