

The Honourable David Lametti, PC, QC, MP
Minister of Justice and Attorney General of Canada
Email: MCU@Justice.gc.ca

Dear Minister Lametti:

Thank you for your correspondence of May 12, 2020, following up on the April 30, 2020 meeting with Federal-Provincial-Territorial (FPT) Ministers of Justice.

As you know, in response to Covid-19 BC is looking at ways to improve our justice system both during the pandemic and after. To modernize and increase flexibility in the justice system, British Columbia is taking measures to identify and implement proposals that are within the jurisdictional and constitutional purview of the provincial government and leverage the capacity of the system to be agile, nimble, responsive and scalable. As part of this process, we will also be considering federal legislative reforms that may be required to improve efficiency and access to justice.

British Columbia has initiated two advisory groups to gain input on how British Columbia can sustain justice as well as evolve. The first group, the Justice COVID-19 Response Group, is comprised of over 40 legal education, profession, cultural, not-for-profit and other justice stakeholders in British Columbia. The group was established to formalize a structure for regular discussions that have been taking place between the courts, legal stakeholder groups and Ministry of Attorney General staff as they respond to urgent and arising issues in the court system.

The second group is the Attorney General Cross Jurisdictional Technical group. The purpose of this group is to recommend best practice technology and other measures that can reduce backlogs and deliver access to justice to British Columbians during and post-pandemic.

These two advisory groups will operate using a nimble, flexible and agile model that will bring ideas to analysis and action in real time. As British Columbia uses this expedient process to consider justice system reform, the Province will be pleased to share suggestions for amendments as these are identified.

The possible reforms that are expected to be discussed involve those that would assist in the resumption of court operations, as well as those that might assist in using alternatives to court processes. British Columbia also supports the work of the FPT Criminal Procedure Working Group considering amendments to the *Criminal Code* s.16

s.16

Additionally, British Columbia's Chief Judge wrote to the Deputy Attorney General on May 7, 2020, and identified where assistance is required to re-open the Provincial Court. The following legislative reforms were raised by the Chief Judge:

- *Criminal Code*:
 - s. 487.01 – legislative reform needed to expand the availability of the tele-warrant provision in the *Criminal Code* by removing the “impracticable to appear personally” requirement; and to expressly allow more judicial authorizations (e.g., production orders) to be issued via a telecommunication.
 - s. 650 – legislative reform needed to expressly allow an accused to appear for part or all of a trial, including sentencing, by audio or videoconference so that a virtual trial could be held.
 - s. 800 – legislative reform needed to expressly allow the defendant to appear by audioconference or videoconference so that a virtual trial could be held. (Sections 802(2) and 802.1 may also need to be amended to permit virtual summary conviction trials.)

The COVID-19 pandemic has shone a spotlight on the vulnerabilities within the Canadian justice system. Proposed reforms must not only address the justice system's needs during and immediately following the pandemic, but also provide a path forward to address longstanding challenges, improve access to justice and create efficiencies within the system.

As we continue to consider these issues, we may provide you with more detailed proposals for federal legislative reforms that will help British Columbia, and the rest of the country, to address current and persistent justice system challenges.

Yours truly,

David Eby, QC
Attorney General

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The Honourable David Lametti
Minister of Justice and Attorney General of Canada
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As you know, in response to Covid-19 BC is looking at ways to improve our justice system both during the pandemic and after. To modernize and increase flexibility in the justice system British Columbia is taking measures to identify and implement proposals that are within the jurisdictional and constitutional purview of the provincial government and leverage the capacity of the system to be agile, nimble, responsive and scalable. As part of this process, we will also be considering federal legislative reforms that may be required to improve efficiency and access to justice.

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The second group is the Attorney General Cross Jurisdictional Technical group. The purpose of this group is to assist the work of the Justice Response Group and government by recommending best practice technology and other measures that can reduce backlogs and deliver access to justice to British Columbians during and post-pandemic.

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Yours truly,

David Eby, QC
Attorney General



BRITISH COLUMBIA

January 22, 2021

The Honourable David Lametti, PC, QC, MP
Minister of Justice and Attorney General of Canada
House of Commons
284 Wellington Street
Ottawa ON K1A 0A6

Dear Honourable David Lametti:

I write in follow-up from the December 2020 meeting of the Federal-Provincial-Territorial (FPT) Ministers Responsible for Justice and Public Safety to convey my appreciation for the discussions, particularly those on law reform and measures to address COVID-19 pandemic-related pressures on the justice system.

To add to my letter of May 22, 2020, I wish to reiterate the importance of pursuing, on an expedited basis, essential *Criminal Code* amendments that would help to address the overrepresentation of Indigenous people in the justice system and the serious pressures we are experiencing as a result of the pandemic. Reforms are urgently required in the areas of sentencing; making remote and virtual appearances the default position; and modernizing the telewarrant process.

With regard to sentencing reform, we need action quickly to address mandatory minimum sentences, which are inconsistent with FPT Justice Ministers' efforts to reduce the overrepresentation of Indigenous people in the criminal justice system as they prevent a Judge or Justice from considering the specific nature of the offence and the offender in crafting an appropriate sentence. Mandatory minimum sentences additionally present significant challenges during the COVID-19 pandemic, as the circumstances of individuals demonstrably vulnerable to fatal COVID-19 infections because of age or immune-compromising illness cannot be considered in sentence design, potentially making a sentence grossly disproportionate to the nature of the crime that led to conviction.

Reform to the intermittent sentencing regime is also needed. There are situations where intermittent sentencing can be beneficial, for example, in keeping a sentenced Indigenous person connected to their community; however, it has significant limitations and poses challenges for offenders living in remote communities. During the COVID-19 pandemic, intermittent sentences have increased the risk of spreading the virus, as those serving intermittent sentences are moving from their communities to secure facilities, repeatedly during their sentence. Reforms should be aimed at addressing the availability of intermittent sentences and ensuring that they are imposed only in appropriate cases.

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Attorney General

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We have made tremendous advancements in using technology in the justice system since the start of the pandemic, particularly the use of video conferencing to facilitate remote appearances. I urge the federal government to move forward on reforms that will support the increased use of remote appearances, making remote and virtual appearances the default during the pandemic and post-pandemic, to increase justice efficiencies and access to justice.

With regard to telewarrants, there are two recent reports that underscore the need for reform in this area – the first from the Uniform Law Conference of Canada and the second from the Steering Committee on Justice Efficiencies and Access to the Criminal Justice System. Both reports recommend removing the impracticability of in-person attendance requirement and permitting greater use of technology for all search warrants and other judicial orders in the *Criminal Code* and other related statutes.

I appreciate your continued support for developing recommendations on criminal justice reform collaboratively through the Coordinating Committee of Senior Officials – Criminal Justice (CCSO). I understand that CCSO has completed its initial review and continues to work with your officials on these priority reforms. Further, I am also appreciative of your work in convening the national Action Committee group to address the concerns of the Courts and provincial Attorneys General across Canada in responding to COVID-19. This group has also produced a list of recommended reforms for your consideration, which British Columbia endorses.

I trust you share my view of the importance of pursuing these essential *Criminal Code* amendments on an expedited basis. I look forward to supporting you as you seek the earliest possible window to introduce the appropriate amendments in the House of Commons.

Thank you again for the productive discussions at the FPT meeting last month. I look forward to continuing to collaborate with you and our provincial and territorial colleagues to ensure the effective operation of the justice system during and after the pandemic.

Yours truly,

A handwritten signature in black ink, appearing to be 'DE', with a stylized flourish at the end.

David Eby, QC
Attorney General and
Minister Responsible for Housing

pc: The Honourable Bill Blair
The Honourable Cliff Cullen
The Honourable Doug Downey
The Honourable Jeannie Ehaloak
The Honourable Mike Farnworth
The Honourable Mark Furey
L'honorable Geneviève Guilbault
The Honourable Sylvia Jones
L'honorable Sonia Lebel
The Honourable Andrea Anderson-Mason
The Honourable Tracy-Anne McPhee
The Honourable Don Morgan
The Honourable Andrew Parsons
The Honourable Doug Schweitzer
The Honourable Todd Smith
The Honourable Christine Tell
The Honourable Bloyce Thompson
The Honourable Carl Urquhart
The Honourable Caroline Wawzonek