

**MINISTRY OF ATTORNEY GENERAL  
BC PROSECUTION SERVICE  
DECISION BRIEFING NOTE**

**PURPOSE:** For DECISION of Barbara Carmichael, KC  
A/ Deputy Attorney General

**ISSUE:** Due to operational requirements, a blanket exemption to the new government policy regarding flexible work and job postings is required.

**DECISION REQUIRED/ RECOMMENDATION:**

The BCPS requests the following blanket exemption:

1. The ability to post for specific locations throughout the Province for Crown Counsel and Legal Administrative Professionals (Legal Clerks, Legal Assistants, Senior Legal Analysts and Paralegals) positions where in-person attendance is required.

**SUMMARY:**

- The recently announced government policy regarding remote work requires Ministries to post competitions in all BC locations where they have an office. The policy restricts the ability to post vacancies on a location-specific basis; particularly in the Lower Mainland and Victoria, where Deputy Minister approval is required. This new policy presents challenges for the BCPS, which requires our employees to be on-site regularly in Crown Counsel offices and Courtrooms to attend and prepare for Court.

**BACKGROUND:**

- The BCPS has adapted to an electronic/virtual model, which has allowed for increased telework for our employees. However, the manner in which Court appearances take place is determined by the independent Judiciary, and BCPS and other justice system participants are legally obligated to comply.
- In-person Court appearances that take place, require Crown Counsel to be physically located in communities. For Legal Administrative Professionals, in-person work is required to assist Crown Counsel, to manage paper files and other documents, to assist with in-person witness preparation, and to ensure lay witnesses are reimbursed expenses.
- The future of how Courts will function is very difficult to predict, which results in a need for a cautious approach with our employees with respect to determining telework schedules and remote work arrangements.
- BCPS management recognizes the importance of adopting flexible work arrangements in order to retain and attract employees, and to maintain morale.

- Communications regarding increasing flexibility and encouraging input from employees will be taking place over the next few months.

### **DISCUSSION:**

The BCPS has worked with justice sector partners to significantly increase the capacity for remote work. The Service has moved quickly from being paper-based, to now largely relying on electronic means for essential functions such as disclosure. Many court appearances now take place remotely using MS Teams. Although driven by the pandemic, these innovations have largely been positive for our employees, and access to justice generally.

However, there are still in-person Court appearances that take place, requiring Crown Counsel to be physically located in communities. For Legal Administrative Professionals, in-person work is required to assist Crown Counsel, to manage paper files and other documents, to assist with in-person witness preparation, and to ensure lay witnesses are reimbursed for expenses. For these reasons, among others an exemption to the PSA policy regarding posting competitions in multiple locations to promote remote work is required.

### **INDIGENOUS PEOPLES CONSIDERATIONS:**

- By ensuring staffing levels are at adequate levels to support in-person hearings, access to justice can be maintained, including for Indigenous Courts.
- Northern-specific job postings allow for Crown who have greater access to remote first nations communities and circuit court locations.

### **GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

- Location-specific postings allow for the hiring of workers with ties and relationships to their communities, allowing for better judicial representation of the local public's interest.
- 52% of Crown and 88% of non-lawyer Professional Staff in the BCPS are female. The BCPS is actively engaged in addressing employment equity issues for current and future employees through its Sub-Committee on Equity, Diversity and Inclusion.

### **OPTIONS:**

- **Option 1 (RECOMMENDED):** Approve the blanket exemption to allow for postings restricted to certain locations.
- **Option 2:** Do not approve the blanket exemption.

**OTHER MINISTRIES IMPACTED/CONSULTED:**

- None

**RECOMMENDED OPTION APPROVED**



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Barbara Carmichael, KC  
A/ Deputy Attorney General

**DATE:**

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February 28, 2023

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**MINISTRY OF ATTORNEY GENERAL  
BC PROSECUTION SERVICE  
DECISION BRIEFING NOTE**

**PURPOSE:** For DECISION of Barbara Carmichael, KC  
A/ Deputy Attorney General

**ISSUE:**

The *Criminal Code* requires the Attorney General (AG) (which is defined to include the Solicitor General and their deputy) to designate peace officers (or police employees) to carry out various investigative functions. Currently, some designations are made by the Deputy Solicitor General, and some designations (are made by the Deputy Attorney General (DAG)).

**DECISION REQUIRED/ RECOMMENDATION:**

It is recommended that all police designations be made by the Deputy Solicitor General, not the DAG.

**SUMMARY:**

- The Solicitor General provides central oversight of policing in BC. The AG has no jurisdiction over policing.
- The Deputy Solicitor General has lawful authority to provide the consent of the AG under the *Criminal Code*.
- Currently, some police designations are authorized by the Deputy Solicitor General, while others (wiretap designations and qualified technician certificates for breath analysis instruments) are authorized by the DAG.
- Police independence is an important principle in our criminal justice system (*Smith v Ontario (AG)*, 2019 ONCA 651) and is best respected by transferring responsibility for AG designations of police officers to PSSG and the Deputy Solicitor General.

**BACKGROUND:**

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- The review found the current practice to be inconsistent with the fundamental principle of police independence and the separation of policing and prosecutions responsibilities between two separate ministries and ministers.
- The transfer of designations from the DAG would be consistent with federal government practice regarding wiretap designations:

The Minister of Public Safety and Emergency Preparedness may also designate “persons” who may intercept private communications under authorization. Such designations are held by Commanding Officers of the RCMP and persons acting under the authority of the Commanding Officers, as well as peace officers and selected civilian employees in municipal and provincial police services across

Canada (186(5) C.C.). Persons designated in writing for the purposes of section 185 C.C. are also able to apply for a renewal of authorization and an application for extension of notification. Requests to have persons designated by the Minister of Public Safety and Emergency Preparedness for the purpose of intercepting private communications should be made by the Chief of the police service to the Minister of Public Safety and Emergency ([www.publicsafety.gc.ca](http://www.publicsafety.gc.ca)).

- Transferring the authority for these designations to the Deputy Solicitor General would also ensure that all police designations are dealt with in a consistent manner.
- Transferring the authority for these designations to the Deputy Solicitor General will require some coordination with PSSG and police agencies. The BCPS could assist in managing this change.
- The DAG would retain authority to approve the designation of Crown Counsel as “wiretap agents” pursuant to 185(1) of the *Criminal Code*. Approximately one Crown Counsel is appointed as an agent each year.

### **DISCUSSION:**

The designation of police as a qualified technician to operate a breath analysis instrument is made pursuant to section 320.4(a) of the *Criminal Code*.

The designation of police to conduct wiretaps is made pursuant to section 186(5) (“regular designations”) and section 188(1)(b) (“special designations”). Special designations relate to applications that will be made before a specially appointed judge (section 188).

Approximately 100 qualified technician designations, 100 regular (police) wiretap designations, and five special (police) wiretap designations are made each year. The templates for each of these designations is attached to this note.

The Deputy Solicitor General has legal authority to make all of these designations. “Attorney General” is defined as the Attorney General or Solicitor General, including their lawful deputy (section 2).

Breath analysis reports and wiretaps are undertaken as part of police investigations. Investigations are conducted by the police, independently of the AG and the BCPS.

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The Solicitor General has superintending responsibility for policing in the province of British Columbia. The independence of the police, and of the BC Prosecution Service, is best served by having all policing matters handled within PSSG, including police designations pursuant to the *Criminal Code*.

### **INDIGENOUS PEOPLES CONSIDERATIONS:**

- We have considered this issue and there are no Indigenous people’s considerations applicable to this matter.

**GBA+ OR DIVERSITY AND INCLUSION IMPLICATIONS:**

- We have considered the issue and there are no barriers or systemic issues.

**OPTIONS:**

- **Option 1 (RECOMMENDED):** Transfer responsibility for the processing and approval of all police designations to PSSG and the Deputy Solicitor General.
- **Option 2:** Maintain the status quo, keeping responsibility for police wiretap and qualified technician designations with the DAG.

**OTHER MINISTRIES IMPACTED/CONSULTED:**

- PSSG. Consultation will be required.

**RECOMMENDED OPTION APPROVED**  
or **OPTION 1 APPROVED**

**DATE:**



February 13, 2023

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Barbara Carmichael KC  
A/ Deputy Attorney General

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