



February 15, 2023

Sent via email

Minister of Finance Katrine Conroy

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Room 153 Parliament Buildings
Victoria, BC V8V 1X4

Attorney General Niki Sharma, KC

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Room 232 Parliament Buildings
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RE: Bill 5 *Public Service Labour Relations Amendment Act, 2023*

Dear Ministers:

On behalf of the Canadian Bar Association, BC Branch (“CBABC”), and our more than 7,600 members across British Columbia, we are writing to express our deep concern about unilateral action in the face of an ongoing process regarding [Bill 5](#), *Public Service Labour Relations Amendment Act, 2023*, introduced on February 9, 2023. This action is a further example of the need for government to better understand the role of lawyers in government and in our society.

In November 2022, the BC Government Lawyers Association (“BCGLA”) sought to be certified as the bargaining agent for approximately 350 lawyers in government’s “legal counsel” and “legislative counsel” classifications. As you are aware, the application is currently pending before the Labour Relations Board, and the government just filed its response on February 6, 2023.¹

However, Bill 5 circumvents BCGLA’s LRB application for union certification and, if passed, compels most of BC government’s in-house lawyers into an existing bargaining unit of the government’s choosing, rather than being able to exercise the freedom to choose their association. Legislative counsel, who are included in the certification application, are notably absent from Bill 5, which potentially leaves them with no right to collective bargaining. If passed, Bill 5 comes into force on the date of Royal Assent and there appears to be no existing framework to address affected parties’ terms and conditions of employment. It is surprising that there are no transition provisions in the proposed amendments.

It is our understanding that the proposed legislation was tabled without consultation with BCGLA or legal counsel within government. The only communication from government appears to be an invitation to BCGLA’s President to meet, mere weeks ago, regarding an undisclosed policy ‘project’ that would affect BCGLA and its members. The ‘project’ meeting required signing a non-disclosure agreement, which, if signed, would not have allowed for wider engagement with the lawyers affected. When the President inquired about the NDA, government advised that the project would proceed without any further notice.² The short timeframe and limited communication is not the full and transparent discussion the development of this legislation warranted.

¹ [20230130-MEDIA-RELEASE-BCGLA-forced-legislation.pdf](#)

² [20230130-MEDIA-RELEASE-BCGLA-forced-legislation.pdf](#)



CBABC is also concerned about the government's assertion in debate and in the Labour Relations Board proceedings, that the role and obligations of the Legal Services Branch's counsel are "nothing unique", stating that "the job of lawyers in the LSB is to take instructions from Government as opposed to Crown Prosecutors who are to be aloof from instructions from Government".³

All articling students and lawyers in British Columbia's public service are instructed, from the moment that they are employed, of their duty to ensure that the government acts in accordance with the law, as guardians of the rule of law and the public interest. While government lawyers advise various clients within government and take instructions, they must provide advice in accordance with their duty. Unlike private practice lawyers, government lawyers cannot withdraw from the retainer if the client gives instructions contrary to the public interest or the rule of law. In this way, government lawyers are unique and when considering the terms of their employment, there are distinctions that could support these lawyers being part of a separate union and not one of general professionals.

We urge the province to reconsider proceeding with Bill 5 and instead allow BCGLA's application for certification process to proceed. Should such policy change be a priority, CBABC requests the government to engage with its employees with respect and with appropriate time allowed for fulsome discussion, before introducing legislation.

Sincerely,

Aleem S. Bharmal, KC
President
Canadian Bar Association, British Columbia Branch

cc Shannon Salter, Deputy Minister to the Premier, Head of the Public Service
Barbara Carmichael, KC, Acting Deputy Attorney General
Deb Godfrey, Deputy Minister of Finance, Head of the BC Public Service Agency
Kevin Falcon, Opposition Leader for BC Liberal Party
Michael de Jong, Shadow Minister for Attorney General

³ [*Microsoft Word - Legal Argument\(6007231.1\).docx \(bcgla.ca\)](#)