



Canadian Association of Crown Counsel
Association Canadienne des juristes de l'État

1325-1505 rue Barrington Street
Halifax, Nova Scotia, B3J 3K5
Phone/tel: (902) – 424-7670
Email/courriel: info@cacc-acje.ca

The Honourable Niki Sharma, K.C., Attorney General
Ministry of Attorney General
PO Box 9044 Stn Prov Govt
Victoria, BC V8W 9E2

February 13, 2023

Dear Minister:

We are writing to express our significant concerns regarding Bill 5 – 2023, the *Public Service Labour Relations Amendment Act*, which was tabled in the Legislative Assembly of British Columbia on February 9, 2023.

The Canadian Association of Crown Counsel is the national Association which represents the collective interests of government civil lawyers and Crown prosecutors. It contributes to helping governments and the public understand issues involving government civil lawyers in the civil justice system and Crown prosecutors in the criminal justice system. It also addresses issues concerning their terms of employment and working conditions, and promotes and encourages their professional development. Members include representatives of Associations representing government civil lawyers and Crown prosecutors from nine provinces and from the federal government, approximately 8 470 lawyers in total, including the civil lawyers who work for the Government of British Columbia.

We are of the view that Bill 5 is both unconstitutional and draconian. First, it imposes a bargaining agent upon employees that is not of their choosing. Second, it circumvents the certification process that was ongoing before the British Columbia Labour Relations Board. Last, it completely strips legislative counsel of their right to collective bargaining.

We are advised that part of Government's rationale for opposing government civil lawyers' right to choose their own bargaining agent is that there is purportedly "*nothing unique about the role performed by counsel for the Legal Services Branch or the obligations imposed on them*" and that "*the job of lawyers in LSB is to take instructions from Government as opposed to Crown Prosecutors who are to be aloof from instructions of Government*".

This is a false premise. Government civil lawyers are the Guardians of the Rule of Law in western democracies. Their work is crucial to ensuring that governments implement policies and enact legislation which is in keeping with the rule of law. They are subject to particular ethical standards in regard to upholding the rule of law within governments

which are not typically seen as applying to lawyers in the private sector. They cannot blindly take instructions without regard for their unique role in our Constitutional democracy. Several prominent academics, including Elizabeth Sanderson¹, clearly explain the Constitutional underpinnings of government civil lawyer independence, including how their role as zealous advocate must be tempered by a broader understanding of their duty to the rule of law.

Furthermore, the exclusion of legislative counsel from the definition of “employee” completely disenfranchises an entire subset of lawyers of their right to bargain. No other Canadian jurisdiction does this. Any concerns you may have with providing essential services during a strike can be allayed by the negotiation of a reasonable essential services agreement.

A majority of the Associations of government civil lawyers and Crown prosecutors in Canada presently enjoy bargaining rights; the few that do not are well on their way to securing those rights, as the Charter demands. Of those Associations that presently bargain collectively, **ALL** are allowed to bargain under the banner of an agent of their choosing. BC Government civil lawyers deserve nothing less. We strongly urge you to reconsider your course of action in this matter.



/for

Rick Woodburn, President
Canadian Association of Crown Counsel

cc: The Honourable David Eby, K.C., Premier
The Honourable Katrine Conroy, Minister of Finance
The Honourable Harry Bains, Minister of Labour
Mr. Kevin Falcon, Leader of the Opposition
Mr. Mike De Jong, Shadow Minister for Attorney General
Mr. Peter Milobar, Shadow Minister for Finance
Mr. Greg Kylo, Shadow Minister for Labour and Skills Training
Ms. Sonia Furstenau, Leader of the Green Party
Mr. Gareth Morley, President, British Columbia Government Lawyers Association

¹ Elizabeth Sanderson, *Duties and Ethical Challenges of Government Lawyers* (Toronto: Lexis Nexis, 2018).