



MOORE EDGAR LYSTER LLP

May 5, 2023

Via E-mail

Via E-mail (Paul.Craven@gov.bc.ca)

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Via E-mail (Julie.Williams@gov.bc.ca)

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Via E-mail (dkingsbury@trustee.bc.ca)

Dana Kingsbury
Public Guardian, and Trustee
Public Guardian and Trustee of British Columbia
700-808 West Hastings Street
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Dear Mr. Craven, Ms. Williams and Ms. Kingsbury:

Re: Proposed Job Action Memorandum

We are in receipt of a Memorandum sent by you to all Civil Government Lawyers on May 3, 2023 in respect of what you referred to as a Proposed Job Action.

The BCGLA takes strong issue with the assertion that a withdrawal of services by BCGLA's members lacks legal authority. The *Supreme Court of Canada* has confirmed in *Saskatchewan Federation of Labour v. Saskatchewan* ("SFL") that s. 2(d) of the *Charter* protects the right of employees to participate in strike action for the purpose of negotiating the terms and conditions of their employment.

BCGLA members seek to negotiate their terms and conditions of employment through their longstanding and democratically-chosen bargaining agent, which the government seems intent on deliberately preventing.

However, regardless of the government's apparent disregard for the associational interests of its civil lawyers, the fact is that government lawyers across Canada are entitled to engage in collective bargaining through their own democratically-chosen bargaining agents -- rather than being thrust into a bargaining unit where lawyers would constitute a distinct minority without any shared community of interest with the majority, and rather than being represented by a bargaining agent that they have not chosen but which has been chosen for and imposed upon them.

It is our client's position that where the government itself has used its power to foreclose any meaningful process through which the BCGLA can collectively bargain as the democratically-selected bargaining agent on behalf of government civil lawyers, the *Charter* protects the right of those members to withdraw their labour in protest and in support of their right to engage in collective bargaining with their employer through their democratically-chosen bargaining agent. We would have hoped that this government in particular would recognize and respect the constitutional rights of its employees. Regrettably, it would seem that through not fault of their own, our client's attempt to pursue good faith negotiations which respect the right of BCGLA members to collectively bargain has broken down. As Justice Abella wrote in the *SFL* decision:

[...] a meaningful process of collective bargaining requires the ability of employees to participate in the collective withdrawal of services for the purpose of pursuing the terms and conditions of their employment through a collective agreement. Where good faith negotiations break down, the ability to engage in the collective withdrawal of services is a necessary component of the process through which workers can continue to participate meaningfully in the pursuit of their collective workplace goals. In this case, the suppression of the right to strike amounts to a substantial interference with the right to a meaningful process of collective bargaining.¹

The BCGLA takes great exception to the suggestion that any of its members would take steps which might imperil the professional obligations they owe to their client. The BCGLA and its members take their professional obligations very seriously. The BCGLA would not ask, and has not asked, its members to take any steps that would constitute a breach of the *BC Law Society Code of Professional Conduct*, and in fact intends to ensure that in any case where a member's professional obligations to their client require, they would not engage in any collective job action or political protest.

¹ *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4 at para. 75.

Finally, our client remains committed to reaching a just and principled resolution of this dispute, and as you know, has made proposals for a process to allow discussions to continue. All the government needs to do is defer any further consideration of *Bill 5* and constructively engage in a process to ensure that the *Charter* rights of BCGLA members are appropriately considered and respected.

Yours very truly,
Goldblatt Partners LLP



Steven M. Barrett
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Rick Edgar
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Encls. Memo to Government Lawyers

c.c. Kirsten Mercer (via E-mail kmercerc@goldblattpartners.com)
Gareth Morley (via E-mail Gareth.Morley@gov.bc.ca)
Daniel McBain (via E-mail danielmcbain@mooreedgarlyster.com)

Memorandum

Date: May 03, 2023

To: **Supervisory Legal Counsel and all Civil Government Lawyers**

From: Paul Craven, Assistant Deputy Minister, Justice Services Branch
Julie Williams, a/Assistant Deputy Minister, Legal Services Branch
Dana Kingsbury, Public Guardian, and Trustee

Re: **Proposed Job Action**

This Memorandum is issued regarding the May 02, 2023, reference by the BC Government Lawyers Association (BCGLA) about a resolution to take substantial job action by its members, if government proceeds or confirms intent to proceed to second reading of Bill 5. The continued reference to job action has created a situation that now requires us to communicate the Employer's expectations, direction, and position on the consequences for individuals who withdraw services. You should be aware that the PSA did previously provide information on employment and professional obligations to the BCGLA in writing on August 11, 2022 and February 07, 2023 in the hopes that their members would be properly informed.

The BCGLA has no legal standing as a bargaining agent to take legal job action under either the *Public Service Labour Relations Act* or the *Labour Relations Code*.

This information is provided to be transparent and forthcoming with relevant information. This will allow our employees to make informed personal decisions.

Expectations and Direction

In our view, the proposed job action would occur in the absence of any legal authority to take such action.

Civil government lawyers are bound by the Terms and Conditions for Excluded Management Employees and there are no terms that allow for the withdrawal of services through collective job action. All civil government lawyers have taken an Oath of Employment by which they have sworn/affirmed that they will abide by the Standards of Conduct and put the interests of the public and the public service above their own personal interest and avoid all conflicts of interest, whether real or perceived. Civil government lawyers also have professional obligations to their clients as dictated by the BC Law Society Code of Professional Conduct Section 3.7-1, regarding the withdrawal of services.

The Terms and Conditions of Employment, the Oath of Employment, the professional obligations of civil government lawyers to their clients, the absence of legal authority for civil government lawyers to take job action and the likely disruption to government work are all factors which in our view compel the conclusion and expectation that all civil government lawyers will report to work and perform their assigned tasks on a regular and continuous basis. The public interest requires this. Accordingly, it is the expectation of and direction by management that all civil government lawyers will continue with their assigned files and other work assignments and that it is completely unacceptable that any matter would be disrupted as a result only of job action taken by civil government lawyers. It is expected that civil lawyers will continue to work the hours necessary to fulfil their job responsibilities.

Indemnity Agreement

Civil government lawyers should also be aware of their status with respect to indemnity protection. Indemnity protection for civil government lawyers is that which is applicable to excluded management employees ([Terms and conditions for excluded employees and appointees - Province of British Columbia \(gov.bc.ca\)](http://www.gov.bc.ca)). It is the position of Government that any civil lawyer who is taking job action or withdrawing services is not acting within the course and scope of their employment. As a result, should any civil suits be initiated against a civil government lawyer as a result of anything done or omitted to be done when taking job action, there is no indemnity protection available to the civil government lawyer. Similarly, should any complaints be registered with the Law Society as a result of civil government lawyer's involvement in job action activities, Government takes the position that there is no indemnity protection for the provision of legal counsel or reimbursement of legal fees.

Disciplinary Action

We strongly encourage all civil government lawyers to abide by their employment and professional obligations, and we believe they have the resources and ability to make their own personal choice. We wish to be transparent in the consequences of participating in illegal job action.

To confirm, it is the responsibility of the civil government lawyer to continue to follow the direction to continue with their assigned files and other work assignments and to refuse to do so or participate in job action will constitute a breach of their employment contract and the employer reserves the right to take appropriate action. Such appropriate action would include:

- No work, no pay
- Disciplinary action up to and including dismissal from the public service.

These options are in no particular order and subject to the circumstances.

The current circumstances pose difficult challenges for us all. We continue to be hopeful of an outcome to the issues remaining in dispute between the civil government lawyers and Government so that the parties can move forward to focus on repairing the relationship at all the different levels where the parties interact. As stated previously, this information is provided to be transparent and forthcoming with relevant information. This will allow our employees to make informed personal decisions. We will continue to provide updates as information becomes available.