

# MEMORANDUM OF UNDERSTANDING

BETWEEN

THE MINISTER OF JUSTICE AND ATTORNEY GENERAL OF BRITISH COLUMBIA

-AND-

THE CHIEF JUSTICE OF BRITISH COLUMBIA

-AND-

THE CHIEF JUSTICE OF THE SUPREME COURT OF BRITISH COLUMBIA

-AND-

THE CHIEF JUDGE OF THE PROVINCIAL COURT OF BRITISH COLUMBIA

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## 1. PREAMBLE

- 1.1. The Attorney and the Chief Justices acknowledge their joint responsibility for the administration of justice in the Province of British Columbia, with each playing a vital role in the administration of each of the Courts.
- 1.2. The Attorney and the Chief Justices are committed to developing and maintaining an accessible, modern, and effective justice system in the Province of British Columbia that delivers timely, impartial, and open justice.
- 1.3. The Chief Justices recognise that the Attorney is accountable to the Legislative Assembly of British Columbia for the expenditure of public resources required for the administration of justice and, in particular, those resources that are used to operate each of the Courts.
- 1.4. The Attorney recognises that the Chief Justices are responsible for efficient and effective Judicial Administration and that each of the Courts must be given sufficient resources to allow them to carry out their functions under the *Constitution Act, 1867* (U.K.), 30 & 31 Vict, c. 3, reprinted in R.S.C. 1985 App. II, No. 5, and their Empowering Legislation.

- 1.5. The Attorney recognises that the Courts are an independent branch of government and that the constitutional principle of Judicial Independence must be respected to maintain the rule of law and to ensure public confidence in the administration of justice.
- 1.6. The Attorney and the Chief Justices recognise that Court Administration should be pursued collaboratively to ensure that resources are used as efficiently and effectively as possible.

## 2. **PURPOSE**

- 2.1. The purpose of this Memorandum of Understanding is to describe the roles and responsibilities of the Attorney and the Chief Justices in the administration of the Courts.
- 2.2. This Memorandum of Understanding does not create, purport to create, or detract from any law or legal rights or responsibilities that exist or may exist in the future between the Attorney and the Chief Justices. It is not intended as a justiciable document.

## 3. **DEFINITIONS**

- 3.1. **“Attorney”** means the Minister of Justice and Attorney General of British Columbia, or either role, as applicable.
- 3.2. **“Business Intelligence”** means the collection, storage, disclosure, and/or use of data, the goal of which is to study or otherwise influence the productivity or effectiveness of a process and includes strategic planning, analytics, performance measurement, and performance planning.
- 3.3. **“Chief Administrator of Court Services”** means the Assistant Deputy Minister of Court Services in the Ministry of Justice of British Columbia.
- 3.4. **“Chief Justice(s)”** means the Chief Justice of British Columbia, the Chief Justice of the Supreme Court of British Columbia, and the Chief Judge of the Provincial Court of British Columbia, or any of them, when used in singular form.
- 3.5. **“Court(s)”** means the Court of Appeal for British Columbia, the Supreme Court of British Columbia, and the Provincial Court of British Columbia, or any of them, when used in singular form.

- 3.6. “Court Administration”** means the management and direction of matters necessary for the operation of the Courts or other matters assigned to the Attorney by law. Court Administration specifically excludes Judicial Administration.
- 3.7. “Court Administration Record(s)”** means a record or records relating to Court Administration. Court Administration Record(s) includes information in aggregate and/or electronic form, but does not include a Court Record or Judicial Administration Record.
- 3.8. “Court Record(s)”** means anything on or by which information, in whole or part, is stored that relates to proceedings before the Courts and includes the information itself. Court Record(s) includes information in aggregate and/or electronic form, but does not include a Court Administration Record or Judicial Administration Record.
- 3.9. “Court Staff”** means an employee or employees appointed under the *Public Service Act*, R.S.B.C. 1996, c. 385, who provide services to the Courts, but excludes those managed by an Office of the Chief Justice.
- 3.10. “Deputy Attorney”** means the Deputy Attorney General of the Ministry of Justice of British Columbia.
- 3.11. “Empowering Legislation”** means, as applicable, the *Court of Appeal Act*, R.S.B.C. 1996, c. 77, the *Supreme Court Act*, R.S.B.C. 1996, c. 443, the *Provincial Court Act*, R.S.B.C. 1996, c. 379, or any other act or regulation of the Legislative Assembly of British Columbia or Parliament of Canada that enables the Courts to exercise their powers or grants jurisdiction to any of the Courts.
- 3.12. “Judicial Administration”** means the management and direction of matters related to judicial functions, and includes, at a minimum, matters connected to the preparation, management, and adjudication of proceedings in the Courts and all other matters assigned to the judiciary by law or through this Memorandum of Understanding. Judicial Administration specifically excludes Court Administration.
- 3.13. “Judicial Administration Record(s)”** means a record or records relating to Judicial Administration, and includes, as defined in the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165, a record or records containing information relating to a judge, master, or justice of the peace. For greater certainty, it includes a record or records relating to a registrar, judicial justice, or judicial case manager. Judicial Administration Record(s) includes information in aggregate

and/or electronic form, but does not include a Court Record or Court Administration Record.

- 3.14. “Judicial Independence”** includes the judicial independence of an individual judge, justice or other court officer exercising a judicial function, and/or the administrative and institutional independence of a Court.
- 3.15. “Office of the Chief Justice”** means, for each of the Courts, the Chief Justice and legal and administrative personnel under his or her direction whose function relates to Judicial Administration of that Court. The Office of the Chief Justice excludes the Deputy District Registrar(s) of the Supreme Court and Deputy Registrar(s) of the Court of Appeal, but includes all other registrars, executive directors, law or legal officers, public information officers, judicial law interns or clerks, Court scheduling staff, and any other personnel whose function relates to Judicial Administration.

#### **4. CONSTITUTIONAL AND LEGISLATIVE AUTHORITY**

##### **4.1. *Constitutional Principles***

- 4.1.1.** Section 96 of the *Constitution Act, 1867* provides that “The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.”
- 4.1.2.** Subsection 92(14) of the *Constitution Act, 1867* provides for the administration of justice in the Provinces, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.
- 4.1.3.** Subsection 11(d) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11, section 96, and the preamble of the *Constitution Act, 1867* have been recognised by the Supreme Court of Canada as affirming the principle of Judicial Independence in Canada.

##### **4.2. *The Attorney General Act***

- 4.2.1.** Section 2 of the *Attorney General Act*, R.S.B.C. 1996, c. 22, provides for the duties and powers of the Attorney in respect of the administration of justice in the Province of British Columbia.

### **4.3. *The Court of Appeal Act***

- 4.3.1.** Section 2 of the *Court of Appeal Act* provides for the continuation of the Court of Appeal for British Columbia.
- 4.3.2.** Section 32 of the *Court of Appeal Act* provides for the appointment of certain persons under the *Public Service Act* and provides that “Subject to the direction of the Chief Justice in matters of judicial administration and to the direction of the Attorney General in other matters, the chief administrator of court services for the Court of Appeal must direct and supervise facilities, registries and administrative services for the Court of Appeal.”

### **4.4. *The Supreme Court Act***

- 4.4.1.** Section 2 of the *Supreme Court Act* provides for the continuation of the Supreme Court of British Columbia.
- 4.4.2.** Subsection 2(3) of the *Supreme Court Act* provides that the Chief Justice of the Supreme Court has responsibility for the administration of the judges of the Supreme Court of British Columbia.
- 4.4.3.** Subsection 10(1) of the *Supreme Court Act* provides that “The Attorney General is responsible for the provision, operation and maintenance of court facilities, registries and administrative services.”
- 4.4.4.** Subsections 10(2) and 10(4) of the *Supreme Court Act* provide for the appointment and responsibilities of the chief administrator of court services with respect to the Supreme Court of British Columbia.
- 4.4.5.** Subsection 10(3) of the *Supreme Court Act* provides that “Subject to the direction of the Attorney General, and to the direction of the Chief Justice in matters of judicial administration and the use of court room facilities, the chief administrator of court services must direct and supervise registries and administrative services for the court.”

#### **4.5. *The Provincial Court Act***

- 4.5.1.** Section 2 of the *Provincial Court Act* provides for the continuation of the Provincial Court of British Columbia.
- 4.5.2.** Subsection 41(1) of the *Provincial Court Act* provides that “The Attorney General is responsible for the provision, operation and maintenance of court facilities and services.”
- 4.5.3.** Subsection 41(2) of the *Provincial Court Act* provides that “Subject to the direction of the Attorney General, and to the direction of the chief judge in matters of judicial administration, the chief administrator of court services must direct and supervise facilities, registries and administrative services for the court.”
- 4.5.4.** Subsection 41(3) of the *Provincial Court Act* provides that “The Attorney General may appoint, under the *Public Service Act*, persons the Attorney General considers necessary to carry out the purposes of this Act.”
- 4.5.5.** Subsection 41(3.1) of the *Provincial Court Act* provides that “The chief administrator of court services, for the purposes of carrying out his or her duties under this Act, may disclose to the chief judge information regarding the conduct of persons appointed under subsection (3) in the performance of their duties under this Act.”
- 4.5.6.** Subsection 41(4) of the *Provincial Court Act* provides that “The Attorney General may make regulations respecting the operation and maintenance of court facilities and services.”

#### **4.6. *The Justice Reform and Transparency Act***

- 4.6.1.** Subsections 10(1), 10(2), and 10(3) of the *Justice Reform and Transparency Act*, S.B.C. 2013, c. 7, provides that the Attorney and the Chief Justices may enter into a memorandum of understanding governing any matter relating to the administration of their respective Courts.
- 4.6.2.** Subsection 10(4) of the *Justice Reform and Transparency Act* provides that the memorandum of understanding may address the respective roles and responsibilities of the parties in the administration of the courts and may

specify how those parties are to share information, promote effective court administration, and report to the public.

- 4.6.3.** Subsection 10(5) of the *Justice Reform and Transparency Act* provides that the Attorney may publish, in a manner that can reasonably be expected to bring to the attention of the public, all or part of the memorandum of understanding, except to the extent the memorandum of understanding otherwise provides.

## **5. ADMINISTRATION OF THE COURTS OF BRITISH COLUMBIA**

### **5.1. *The Role of the Chief Justices***

- 5.1.1.** Each Chief Justice has sole responsibility to manage and direct Judicial Administration in his or her Court, including the following specific areas:

- 5.1.1.1.** the education and management (and for the Provincial Court, conduct and discipline) of justices, judges, masters, judicial justices, judicial case managers, and registrars;
- 5.1.1.2.** the scheduling and assignment of justices, judges, masters, judicial justices, judicial case managers, and registrars as well as managing court sittings and courtrooms;
- 5.1.1.3.** the supervision and control of Court Staff when carrying out functions related to Judicial Administration;
- 5.1.1.4.** the supervision and control of Sheriffs, as officers of the Court, when carrying out functions related to Judicial Administration;
- 5.1.1.5.** the independent management, budgeting, appointment, and staffing of an Office of the Chief Justice;
- 5.1.1.6.** the supervision and control of Court Records and Judicial Administration Records;
- 5.1.1.7.** the supervision and control of information technology related to Judicial Administration;

- 5.1.1.8. the supervision and control over the use of Court facilities, including courtrooms, courthouses, and other facilities when those uses relate to Judicial Administration or, for greater certainty, have the potential to affect the dignity and decorum of the Court(s);
- 5.1.1.9. the issuance of practice directives and other notices governing matters of practice and procedure, decorum, and matters relating to Judicial Administration;
- 5.1.1.10. the design and implementation of public and media relations strategies, including public education initiatives that relate to Judicial Administration;
- 5.1.1.11. the design, implementation, and reporting to the public of Business Intelligence relating to Judicial Administration; and
- 5.1.1.12. other matters assigned to the judiciary by law.

## **5.2. *The Role of the Attorney***

- 5.2.1. The Attorney has sole responsibility to manage and direct Court Administration in the Courts, including the following specific areas:
  - 5.2.1.1. the establishment of Court registries;
  - 5.2.1.2. the provision, operation, and maintenance of Court facilities, registries, and administrative services;
  - 5.2.1.3. the appointment, management, reclassification, and termination of Court Staff;
  - 5.2.1.4. the supervision and control of Court Staff when those staff are carrying out functions related to Court Administration;
  - 5.2.1.5. subject to subsection 5.1.1.6 of this Memorandum of Understanding, the management and storage, including archiving, of Court Records, Court Administration Records, and those Judicial Administration Records that the Chief Justice(s) request the Attorney to manage, store, and/or archive.



- 5.2.1.6. the security and safety of any person within a Court facility or a facility where a function relating to Judicial Administration is occurring, including emergency planning;
- 5.2.1.7. the administration of the Sheriffs, as outlined in the *Sheriff Act*, R.S.B.C. 1996, c. 425;
- 5.2.1.8. the design and implementation of public and media relations strategies relating to Court Administration;
- 5.2.1.9. the design, implementation, and reporting to the public of Business Intelligence relating to Court Administration; and
- 5.2.1.10. other matters assigned to the Attorney by law.

## 6. COLLABORATION AND CONSULTATION

### 6.1. *General Acknowledgement*

- 6.1.1. Given the division of roles and responsibilities described in section 5 of this Memorandum of Understanding, the Chief Justices and the Attorney agree that collaboration and consultation on matters of Judicial Administration and Court Administration are necessary to develop and maintain an accessible, modern, and effective justice system.
- 6.1.2. The Chief Justices acknowledge that the Attorney should be consulted in a timely, transparent, and accountable way on any programs or initiatives developed by an Office of the Chief Justice or delegates thereof that may affect Court Administration.
- 6.1.3. The Attorney acknowledges that the Chief Justices should be consulted in a timely, transparent, and accountable way on any programs or initiatives developed by the Attorney or delegates thereof that may affect Judicial Administration.

## **6.2. Provision of Resources**

- 6.2.1.** The Attorney acknowledges responsibility to provide sufficient resources to each of the Courts to allow them to carry out their functions under the *Constitution Act, 1867* and their Empowering Legislation.
- 6.2.2.** The Attorney and the Chief Justices acknowledge that public funds must be used efficiently and effectively to fund the operation of the Courts.
- 6.2.3.** The Attorney and the Chief Justices acknowledge that the preservation of a fair, independent, and impartial Court system is a priority in the allocation of public funds.
- 6.2.4.** As part of the Attorney's commitment to provide sufficient resources to the Courts, the Attorney agrees to consult directly with the Chief Justice(s), as appropriate, but at a minimum, semi-annually, on the resource needs of their Court or the Courts generally, with particular regard to the following:
  - 6.2.4.1.** the general workload of the Court(s) and adjustments to the complement of each of the Courts;
  - 6.2.4.2.** changes to the law, both federal and provincial, including to Empowering Legislation, that may affect the workload of the Court(s);
  - 6.2.4.3.** changes to the demographics of British Columbia, including population growth and composition, that may affect the workload of the Court(s);
  - 6.2.4.4.** the presence of self-represented litigants and access to the Court(s) generally;
  - 6.2.4.5.** the use of technology and the modernisation of Court facilities, registries, and administrative services;
  - 6.2.4.6.** the needs of each Office of the Chief Justice, including those with respect to budgeting, strategic planning, and personnel; and

- 6.2.4.7.** any further issues that are identified by the Attorney or the Chief Justice(s) and consented to, in writing, by the Attorney and the Chief Justice(s).
- 6.2.5.** When the Attorney identifies and assesses resource needs related to Court Administration, the Attorney will develop proposals to address those resource needs and provide reasonable time for consultation with the Chief Justice(s) prior to the approval of a proposal.
- 6.2.6.** The Chief Justices recognise that, for meaningful decisions to be made about providing sufficient resources to the Courts, information concerning the resource needs of the Courts and Judicial Administration must be provided to the Attorney.
- 6.2.7.** With specific respect to subsection 6.2.4.1 of this Memorandum of Understanding, when the issue of judicial complement is to be addressed by the Attorney, each Chief Justice agrees to deliver information to the Attorney concerning the workload of his or her Court, trends in that workload, and the capacity of the existing judicial complement in his or her Court to address that workload.

### **6.3. *Budgeting***

- 6.3.1.** Every year, each Office of the Chief Justice shall prepare a yearly budget of expenditures for his or her Court for the following fiscal year, and an estimate of expenditures for the following two fiscal years, for inclusion in the budget of the Ministry of Justice and approval by the Treasury Board of British Columbia.
- 6.3.2.** The yearly budgets of expenditures shall be submitted to the Deputy Attorney in sufficient time to be reviewed and finalised by the Deputy Attorney.
- 6.3.3.** The Attorney and the Chief Justices agree that no changes to the operating budget of the Court(s) for the following year shall be made without reasonable consultation with Office(s) of the Chief Justice before the end of each fiscal year.

**6.4. Facilities**

**6.4.1.** Where new courthouse facilities or significant alterations to existing facilities impacting operations or decorum are planned, at an early stage and before any undertaking or public commitment is made respecting a proposed project, the Attorney shall provide timely notice and detailed descriptions of the proposed project to, and consult with, the Chief Justice(s).

**6.4.2.** As part of that consultation process, the Attorney and the Chief Justices recognise that the following standards shall be considered: the dignity of the Court(s), the importance of the rule of law, the open court principle, and access to justice, Judicial Independence, the need to modernise the Court(s), and the effective and efficient use of public resources.

**7. BUSINESS INTELLIGENCE**

**7.1.** At the direction of a Chief Justice, each of the Courts may explore implementing a process for the use of Business Intelligence as it relates to Judicial Administration or, with the cooperation of the Attorney, Court Administration.

**7.2.** The Attorney agrees to consult with the Chief Justices on the development or use of Business Intelligence relating to Court Administration.

**7.3.** The Attorney shall not conduct any Business Intelligence activity that affects, or has the potential to affect, Judicial Administration or that impairs, or has the potential to impair, Judicial Independence.

**8. ANNUAL REPORTS**

**8.1.** The Chief Justice of British Columbia and the Chief Justice of the Supreme Court of British Columbia shall cause to be published an annual report prior to April 1 for his or her Court for the previous year that shall include a report on Judicial Administration in that Court.

**8.2.** The Chief Judge of the Provincial Court shall cause to be published an annual report prior to July 1 for his or her Court for the previous year that shall include a report on Judicial Administration in that Court.

**8.3.** The publication of annual reports that conform to these requirements shall commence in calendar year 2014.

## **9. INFORMATION TECHNOLOGY**

- 9.1.** The Attorney and Chief Justices acknowledge the need to maintain a judicial technology environment with comprehensive security and privacy specifications for Judicial Administration, having due consideration to the principles outlined in the Canadian Judicial Council's *Blueprint for the Security of Judicial Information*, published from time-to-time.
- 9.2.** The Attorney recognises that, to ensure the integrity and security of information generated by the judiciary and Judicial Administration Records, a separate judicial information technology network and infrastructure is necessary for Judicial Administration of the Courts.

## **10. COURT RECORDS AND INFORMATION**

### **10.1. *Access to and Use of Records***

- 10.1.1.** As outlined in subsections 5.1 and 5.2 of this Memorandum of Understanding, there is a shared responsibility for Court Records.
- 10.1.2.** The Chief Justice of the Court to which the Court Record relates is responsible for developing policies on access to and use of Court Records and Judicial Administration Records.
- 10.1.3.** Access to and use of Court Administration Records is governed by the *Freedom of Information and Protection of Privacy Act*.
- 10.1.4.** The Chief Administrator of Court Services is responsible for developing policies and procedures for managing, auditing, and ensuring that access to Court Records conforms to the policies developed by the Chief Justice in the Court to which the Court Records relate.

### **10.2. *Combining of Records***

- 10.2.1.** The Attorney and the Chief Justices recognise that, in practice, Court Records, Judicial Administration Records, and Court Administration Records, or any of them, may merge, particularly when in aggregate and/or electronic form.

- 10.2.2.** When Court Records or Judicial Administration Records form part of Court Administration Records, authorisation from the Chief Justice(s) must be obtained for the use and/or disclosure by the Attorney, unless such use and disclosure is already permitted by policies developed by the Chief Justice in the Court to which the Court Records or Judicial Administration Records relate.
- 10.2.3.** At the request of the Attorney, the Chief Justice(s) to which the Court Record or Judicial Administration Record relates may prepare a schedule of certain types or categories of Court Records and Judicial Administration Records where permission for specified use(s) and/or disclosure shall be granted as a matter of course or on terms and conditions set by the Chief Justice(s).

**10.3. *Support to the Courts***

- 10.3.1.** Through the Chief Administrator of Court Services, the Attorney agrees to the continued provision of sufficient staff, including Court Staff, and sufficient resources to manage, store, and archive Court Records for each of the Courts.
- 10.3.2.** Nothing in this Memorandum of Understanding affects the *Protocol Agreement on the use of Court Technology in Electronic Form* signed by the Chief Justices and the Chief Administrator of Court Services on 29 October 2002, nor does it affect any existing protocol or agreement between the Court(s) and the Ministry of Justice and/or Ministry of the Attorney General of British Columbia.

**11. APPROVAL, TERMINATION, AND RENEWAL**

- 11.1.** This Memorandum of Understanding takes effect on the date of its signature by the Attorney and the Chief Justices.
- 11.2.** This Memorandum of Understanding:
  - 11.2.1.** is subject to amendment with the agreement in writing of all parties to this Memorandum of Understanding at any time;

- 11.2.2.** is subject to review at any time by the Attorney or the Chief Justice(s) on receipt of a written request from a party to this Memorandum of Understanding;
- 11.2.3.** may be terminated by the Attorney or any Chief Justice(s) as it relates to his or her Court at any time on thirty (30) days written notice;
- 11.2.4.** shall be reviewed upon the appointment of a new person to the office of the Attorney or Chief Justice and, unless that new person repudiates in writing this Memorandum of Understanding within ninety (90) days of that appointment, this Memorandum of Understanding remains in effect; and
- 11.2.5.** if a Chief Justice elects to terminate or a new Chief Justice elects to repudiate this Memorandum of Understanding under subsections 11.2.3 or 11.2.4 respectively, this Memorandum of Understanding shall continue in effect between the remaining Chief Justice(s) and the Attorney.

THIS MEMORANDUM OF UNDERSTANDING effective this 3rd day of April, 2013.

"Shirley Bond"

*The Honourable Shirley Bond*  
**Minister of Justice and Attorney General**  
**Province of British Columbia**

"Lance S.G. Finch, CJBC"

*The Honourable Lance S.G. Finch*  
**Chief Justice of British Columbia**

"Robert J. Bauman, CJSC"

*The Honourable Robert J. Bauman*  
**Chief Justice of the Supreme Court of**  
**British Columbia**

"Thomas J. Crabtree, CJPC"

*The Honourable Thomas J. Crabtree*  
**Chief Judge of the Provincial Court of**  
**British Columbia**