

AGREEMENT

BETWEEN:

GOVERNMENT OF THE PROVINCE OF BRITISH COLUMBIA
Represented by the BC Public Service Agency
(the “Employer”)

AND:

BRITISH COLUMBIA CROWN COUNSEL ASSOCIATION
(the “Association”)

WITH RESPECT TO
CROWN COUNSEL

AGREEMENT

INDEX

Definitions.....	1
Article 1: Term and Continuation.....	3
Article 2: Application.....	3
Article 3: Agreement Renewal and Right to Withdraw Services.....	3
Article 4: Management Rights.....	6
Article 5: Association Dues.....	6
Article 6: Disciplinary Action.....	6
Article 7: Personnel Files.....	7
Article 8: Association Activities.....	8
Article 9: Classification and Compensation.....	8
Article 10: Discrimination and Sexual Harassment	8
Article 11: Maternity, Parental and Adoption Leave.....	8
Article 12: Extension of Leaves.....	8
Article 13: Leave Allowance Repayment.....	9
Article 14: Additional Leave.....	9
Article 15: Earned Days Off.....	9
Article 16: Benefits Continuation.....	10
Article 17: Entitlements Upon Return to Work.....	10
Article 18: Preparation for Court.....	11
Article 19: Part-Time Crown Counsel.....	11
Article 20: Auxiliary Crown Counsel.....	11
Article 21: Transfer.....	12
Article 22: Job Posting.....	12

Article 23: Professional Fees	12
Article 24: Professional Requirements Allowance	13
Article 25: Education and Mental Health Committee	14
Article 26: Annual Conference	14
Article 27: Joint Standing Committee.....	14
Article 28: Indemnity	14
Article 29: Grievance and Arbitration	14
Article 30: Parking	18
Article 31: Recognition for Exceptional Responsibilities	18
Article 32: Downsizing	19
Article 33: Time off for Association Business	22
Article 34: Vehicle Safety.....	23
Article 35: Isolated Communities Fund.....	23
Article 36: Human Rights Code.....	23

SCHEDULE A

CLASSIFICATION AND COMPENSATION.....	25
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INFORMATION APPENDIX A

LETTER OF UNDERSTANDING # 1	
Re: Indemnity.....	32
LETTER OF UNDERSTANDING # 2	
Re: National Criminal Law Program and Other Legal Conferences.....	35
LETTER OF UNDERSTANDING # 3	
Re: Exclusions	37
LETTER OF UNDERSTANDING # 4	
Re: Supernumerary Employment Opportunities	38

LETTER OF UNDERSTANDING # 5	
Re: Professional Requirements Allowance – Health and Wellness.....	39
LETTER OF UNDERSTANDING # 6	
Re: Term Certain Regular Crown Counsel	40
LETTER OF UNDERSTANDING # 7	
Re: Diversity.....	42
LETTER OF UNDERSTANDING # 8	
Re: Meetings Pursuant to Article 6.....	43
LETTER OF UNDERSTANDING # 9	
Re: Professional Responsibilities	44
LETTER OF UNDERSTANDING # 10	
Re: Reporting to the Law Society or the Appropriate Judicial Authority	46
LETTER OF UNDERSTANDING # 11	
Re: Regarding the movement of Crown Counsel between offices in the Greater Vancouver Regional District (GVRD)	49
LETTER OF UNDERSTANDING # 12	
Re: Paid and Unpaid Suspensions	50

AGREEMENT

Definitions

"Ad hoc Crown Counsel" means a barrister and solicitor, from the private bar, who has entered into an agreement to perform services, on a day to day basis, as counsel for a specific file, issue or limited period of time.

"Association" means the British Columbia Crown Counsel Association.

"Auxiliary Crown Counsel" means any barrister and solicitor who is an employee under the Public Service Act and employed by the Criminal Justice Branch of the Ministry of Justice for work which is temporary and not of a continuous nature such as:

1. Work created to carry out special projects or to replace employees assigned to special projects.
2. Replacing employees on maternity leave, adoption leave, or other extended leaves.
3. Work necessary to meet operational requirements.

"Branch" means the Criminal Justice Branch of the Ministry of Justice.

"Contract Crown Counsel" means any barrister and solicitor admitted to the Law Society of British Columbia who has entered into an agreement either individually or through the medium of a personal law corporation with the Ministry of Justice to perform services as Crown Counsel on a part-time or full-time basis; but does not include independent contractors or ad hoc counsel.

"Crown Counsel" includes Regular Crown Counsel, Contract Crown Counsel and Auxiliary Crown Counsel.

"Employer" means the Government of British Columbia.

"Geographic Location" means that area within a radius of 32 kilometres of where Crown Counsel ordinarily performs his/her duties (25 kilometres within the Greater Vancouver Regional District).

"Regular Crown Counsel" means any barrister and solicitor, employed by the Criminal Justice Branch, who is an employee under the Public Service Act and is employed for work which is of a continuous full-time or continuous part-time nature.

"Term Certain Regular" is a Crown Counsel employed for a defined period who has been hired immediately following the completion of their articles with the Criminal Justice Branch under the Ministry of Justice Articling Program.

"Year of Call" is the calendar year in which the Crown Counsel is called to the bar. For example, Crown Counsel is in Year of Call 1, in the calendar year in which they are called. As of January 1 in each subsequent year, Crown Counsel move to the next Year of Call.

Article 1: Term and Continuation

This agreement shall be effective from April 1, 2007 and shall remain in force and be binding upon the parties until March 31, 2019 and thereafter until a new Agreement has been concluded in accordance with, and subject to the rights of the parties in Article 3.

Article 2: Application

This agreement applies to all Crown Counsel in British Columbia for whom the Association has been designated as the exclusive bargaining agent pursuant to the Crown Counsel Act.

Except as this agreement provides otherwise, the terms and conditions of employment and policies applicable to excluded management employees under the Public Service Act shall apply to Regular Crown Counsel. Notwithstanding the foregoing, there shall be no reduction to vacation leave entitlement or to the carry-over of vacation leave without the consent of the Association.

Except as this agreement provides otherwise, the terms of service for Contract Crown Counsel shall be those contained in his or her agreement with the Ministry of Justice to perform services as Crown Counsel, and those terms and conditions and policies provided to excluded management employees under the Public Service Act which are not inconsistent with his or her agreement, other than health and welfare benefits and pension, for which Contract Crown Counsel receive payment in lieu.

The Employer will not enter into, or continue, any employment or contractual relationship with Crown Counsel which conflicts with the terms of this agreement.

Article 3: Agreement Renewal and Right to Withdraw Services

- 1) No Withdrawal of Services During Term of Agreement
 - a) For the duration of the Agreement, as continued under Article 1 of the Agreement, the Association agrees it will not sponsor, support or condone any withdrawal of prosecutorial services by any of its members. The term "withdrawal of services" will be deemed to include a cessation of work, a refusal to work or to continue to work by Crown Counsel in combination or in concert or in accordance with a common understanding, or a slowdown or other concerted activity on the part of Crown Counsel that is designed to or does restrict or limit production or services.

2) Mid contract Negotiations Process

- a) During the term of this Agreement either party may provide the other party with notice of its intention to amend the terms of this agreement as follows:
 - i) Within 3 months of March 31, 2011, and
 - ii) Within 3 months of March 31, 2015.
- b) The Parties will, within 20 days after the receipt of such notice or such other period as is mutually agreed upon by the parties, meet and negotiate in good faith and make every reasonable effort to reach an agreement by the dates indicated in 2(a)(i) or (ii) above.
- c) Either party may notify the other of its intention to refer any matters still outstanding on the dates indicated in 2(a)(i) or (ii) above to a mutually agreeable arbitrator for final and binding resolution. Should the parties be unable to agree on an arbitrator within seven (7) days of such notification, the arbitrator will be appointed by the Chair of the Labour Relations Board.
- d) The arbitrator will first attempt to mediate a resolution and, if unsuccessful, will render a final and binding decision. The arbitrator will have the jurisdiction to make amendments to the collective agreement on outstanding matters that he or she may deem appropriate for inclusion in the collective agreement with the exception of the following matters:
 - i) Article 1 – Term and Continuation
 - ii) Article 3 – Agreement Renewal and Right to Withdraw Services
 - iii) Article 5 – Association Dues
 - iv) Article 9 – Classification and Compensation
 - v) Schedule A – Classification and Compensation

Collective Agreement Renewal Process

- 3) When either party gives notice of its intention to amend the Current Agreement within three months prior to its expiry, the parties will, within 20 days

after the receipt of such notice or such other period as is mutually agreed upon by the parties, meet and negotiate in good faith and make every reasonable effort to conclude a Renewal Agreement.

4) The Association can bring the Agreement to an end by commencing a withdrawal of services after expiration in accordance with this Article.

5) The Association will have the right to withdraw prosecutorial services following the expiry of the Agreement and the Government shall have the right to obtain essential services designations under the provisions of the Labour Relations Code.

6) The Association will not undertake a withdrawal of services unless:

a) It has provided a written notice to the Chief Spokesperson of the employer a minimum of 72 hours in advance of the withdrawal of services

b) Essential services levels have been agreed to by the parties or have been designated by the Labour Relations Board.

7) The Parties agree that the Labour Relations Board has the jurisdiction to designate, amend, vary or revoke essential service levels and determine matters relating to picketing by the Association under the provisions of the Labour Relations Code.

a) In the event the Labour Relations Board refuses to accept jurisdiction as contemplated in this Article, then the parties agree to appoint a mutually agreeable arbitrator to act in place of the Board and that the provisions of the Labour Relations Code as outlined above apply to the parties.

b) The Parties will agree on the arbitrator within 7 days from the day the Labour Relations Board advises that it refuses jurisdiction. Should the parties be unable to agree, the arbitrator will be appointed by the Chair of the Labour Relations Board. The arbitrator will render his or her decision on an expedited basis.

8) The Parties agree that clauses 5 through 8 of Article 3 shall survive the expiry of the Agreement.

Article 4: Management Rights

All the functions, rights, powers and authority which have not been specifically abridged, delegated or modified by this agreement are retained by the employer.

Article 5: Association Dues

Every Crown Counsel covered by this Agreement shall, as a condition of employment, **have deducted** from his/her bi-weekly salary, dues and fees of the Association. The Employer **will** deduct, on a bi-weekly basis from the compensation of each Crown Counsel, a sum equivalent to the dues of the Association, fixed in accordance with its constitution, and shall within one month forward to the Association the total amount of such dues or fees collected together with a list of those Crown Counsel for whom deductions were made and the amounts that were deducted.

The Employer will notify the Treasurer of the Association of the name and work location of all Crown Counsel appointed within thirty (30) days of their appointment.

Article 6: Disciplinary Action

- 1) No Crown Counsel shall be disciplined without the matter first being discussed with the affected Crown Counsel
- 2) A copy of any disciplinary letter will be provided to the affected Crown Counsel and to the Association.
- 3) Where a Crown Counsel is required to attend a meeting with the Employer which the Employer believes may result in disciplinary action or a letter of expectation the Crown Counsel and the Association will be notified in writing or by e-mail in advance of the time, place and purpose of the meeting. The Crown Counsel may elect to have an Association representative attend the meeting with him/her provided that the meeting will not be unduly delayed as a result; and, the notification from the Employer will advise the Crown Counsel of the right to so elect.
- 4) In this Agreement, disciplinary action means the imposition of one or more of the following:

- a. A written warning which is written on behalf of the Employer that will form part of the employee's employment record;
- b. a suspension without pay;
- c. dismissal for cause; and
- d. demotion to a lesser position for cause.

5) While it is acknowledged that letters of expectation are not disciplinary, letters of expectation shall be removed from the Crown Counsel's personnel file and not referred to for any purpose eighteen (18) months from the date issued, provided the Crown Counsel has worked those eighteen (18) months and there has been no further letter(s) of expectation or discipline in the eighteen (18) month period. If a letter has not been physically removed, it shall be deemed to have been removed.

6) A written warning shall be removed from the Crown Counsel's personnel file and not referred to for any purpose 30 (thirty) months from the date issued, provided the Crown Counsel has worked those 30 (thirty) months and there has been no further discipline in the 30 (thirty) month period. If the written warning has not been physically removed, it shall be deemed to have been removed.

Article: 7: Personnel Files

No third party complaints will form a part of the personnel file.

An employee shall be given a copy of any document placed on the employees' personnel file which might be the basis of disciplinary action. Should an employee dispute any such entry in their personnel file, they should be entitled to recourse through the grievance procedure set out in Article 29 and the eventual resolution thereof shall become part of their personnel file.

Upon written request to the Public Service Agency, a Crown Counsel's entire personnel file shall be made available to him or her for review and examination.

Article 8: Association Activities

The Employer, or any person acting on behalf of the Employer shall not discriminate or seek to discriminate against any person because of membership in, or activities on behalf of the Association.

The Employer shall maintain its current practice of granting paid time off to Association representatives, appointed by the Association to the Association's Bargaining Committee, to carry on negotiations with the Employer regarding the renewal of this Agreement.

The Employer recognizes that occasions may arise when a designated representative on the Association's Bargaining Committee is unable to attend at negotiations, and the Employer agrees to grant leave of absence with pay to an alternate representative on such occasions.

Article 9: Classification and Compensation

The classification and compensation for Crown Counsel is set out in Schedule A.

Article 10: **Discrimination and Sexual Harassment**

The Sexual Harassment Policy and Procedures of the Employer currently in place shall apply to all Crown Counsel.

Article 11: Maternity, Parental and Adoption Leave

Maternity, parental and adoption leave and leave allowances shall be the same as the leave and allowances applicable to excluded management employees under the Public Service Act.

Article 12: Extension of Leaves

Regular Crown Counsel entitled to adoptive, maternity and parental leave shall be entitled to an extended leave of up to an additional six (6) months when requested. A written request must be received by the Employer at least eight (8) weeks prior to the expiration of the leave taken pursuant to Article 11, except in situations where such notice could not be given due to health reasons and a doctor's certificate is presented. In addition, if eight (8) weeks' notice cannot be given due to other unforeseen circumstances, the Employer shall consider the request, and may or may not grant the leave.

Article 13: Leave Allowance Repayment

To be entitled to the leave allowances described above, the Regular Crown Counsel must sign an agreement that he or she will return to work and remain in the Employer's employ for a period of at least six (6) months after his or her return to work.

Should the Regular Crown Counsel fail to return to work and remain in the employ of the Employer for a period of six (6) months, the Regular Crown Counsel shall reimburse the Employer in full for allowance(s) received.

Regular Crown Counsel who are unable to complete the six (6) months return to work required above as a result of proceeding on a subsequent maternity, parental or adoption leave shall not have moneys recovered from them providing they return to work for a period of not less than six (6) months following the expiration of the subsequent maternity, parental or adoption leave.

Article 14: Additional Leave

Effective January 1, 1995, Regular Crown Counsel shall be entitled to additional leave without pay of five (5) days per calendar year. Such leave may be deferred and accumulated over the current year for a period not exceeding five (5) calendar years from the calendar year in which it was earned. Regular Crown Counsel who elect to take such leave must indicate, in writing to the Employer, his/her intention to do so no less than four (4) weeks prior to the taking of the additional leave. The scheduling of such time off shall be by mutual agreement.

Regular Crown Counsel who take additional leave pursuant to this Article may maintain coverage for medical, extended health, dental, group life and long term disability by paying the premium for such coverage.

Article 15: Earned Days Off

Crown Counsel shall be entitled to seven (7) earned days off (EDO) in each calendar year of this agreement. Crown Counsel who work part-time hours for the full calendar year shall be entitled to EDOs on a pro-rata basis. Crown Counsel who commence or end their employment part way through the calendar year, or who work only part of a calendar year, shall be entitled to a pro-rata amount of EDOs based on the number of months worked in the calendar year. EDOs may be deferred and accumulated over a period not exceeding five (5) calendar years from the calendar year in which they were earned. The scheduling of such time off shall be by mutual agreement. Crown Counsel may elect at any time to have banked EDOs paid out rather than taken. EDOs shall be at the salary in effect at the time taken or paid out.

In addition to the above, each Crown Counsel shall be entitled to one (1) additional EDO per calendar year (pro-rata rules as set out above apply), to be used in the calendar year that it is earned. This additional one (1) EDO cannot be deferred for use in a future calendar year, banked as part of any accumulated EDO's as contemplated above, or paid out if not taken in the calendar year that it is earned.

Article 16: Benefits Continuation

During maternity, parental, and adoptive leaves, and extension of such leaves where a medical certificate has been presented, taken by Regular Crown Counsel, as above, the Employer shall maintain coverage for medical, extended health, dental, group life and long term disability, and shall pay the Employer's share of these premiums.

Should Regular Crown Counsel fail to return to work and remain in the employ of the Employer for a period of six (6) months, Crown Counsel shall reimburse the Employer in full of the allowance(s) received.

Regular Crown Counsel who are unable to complete the (6) months return to work required above as a result of proceeding on a subsequent maternity, parental or adoption leave shall not have moneys recovered from them providing they return to work for a period of not less than six (6) months following the expiration of the subsequent maternity, parental or adoption leave.

Article 17: Entitlements Upon Return to Work

Vacation entitlements and vacation pay shall continue to accrue while Regular Crown Counsel is on maternity, adoption or parental leave providing that Regular Crown Counsel returns to work and remains in the Employer's employ for a period of not less than six (6) months.

Regular Crown Counsel who are unable to complete (6) months return to work required above as a result of proceeding on a subsequent maternity, parental or adoption leave shall be credited with their earned vacation entitlements and vacation pay providing the employee returns to work for a period of not less than six (6) months following the expiration of the subsequent maternity, parental or adoption leave.

Article 18: Preparation for Court

Crown Counsel shall be allocated adequate preparation time for Court, as required to discharge his or her professional responsibilities.

The principles set out in the Letter of Understanding Re: Professional Responsibilities, attached hereto in Information Appendix A as Letter of Understanding #12 Re: Professional Responsibilities shall apply to this Article and continue from Agreement to Agreement unless cancelled or amended by mutual agreement.

No grievance shall be filed by the Association at Step 3 under this Article, until the matter is referred to, and considered by, the Joint Standing Committee. The Joint Standing Committee shall meet within four weeks of the referral and the time to file under Step 3 shall be suspended until consideration has concluded.

Article 19: Part-Time Crown Counsel

Part-time Crown Counsel shall have equal access to all available Court and administrative assignments consistent with their qualifications, experience and flexibility of their hours of work.

Part-time Crown Counsel shall be entitled to the benefits of full time Crown Counsel prorated where applicable.

Article 20: Auxiliary Crown Counsel

- (a) The provisions of Articles 11-14, 16, 17, 23 and 24 do not apply to Auxiliary Crown Counsel.
- (b) The rates of compensation outlined in Schedule A of this Agreement shall apply to Auxiliary Crown Counsel.
- (c) Notwithstanding (a) above, Auxiliary Crown Counsel who have completed twelve (12) consecutive months of full-time work and who are employed for work which is of a continuous full-time nature, shall be eligible for coverage under Articles 11-14, 16, 17, 23 and 24. The provisions of Articles 23 and 24 will be prorated for the period of time subsequent to eligibility to regular employee status on a full-time or part-time basis. Law Society fees and professional development allowance will be prorated for the period of time

subsequent to eligibility. It is understood that "consecutive months" includes any period that an Auxiliary Crown is absent from work on an approved leave (e.g. vacation, maternity leave, etc). The service date for Auxiliary Crown Counsel who have been successful on a competition as set out in this Article shall be their original date of hire as an Auxiliary Crown Counsel.

- (d) The Employer agrees to meet every six months with representatives of the Association to review the circumstances of auxiliary Crown Counsel. Where a review of auxiliary positions indicates that work of an auxiliary Crown is work of a continuous nature, that position shall be posted.

Article 21: Transfer

It is agreed that Crown Counsel shall not be required to relocate from one Geographic Location to another without his or her consent.

Within the Greater Vancouver Regional District no Crown Counsel shall be transferred more than once in any 30 month period unless they consent to the transfer.

Article 22: Job Posting

All positions for Regular Crown Counsel positions, or long-term secondment opportunities (seven (7) months or longer duration) in the Branch will be circulated to each Crown Counsel's government e-mail account and advertised on the applicable government internet/intranet site containing job postings. In the event e-mail notification to Crown Counsel is inadvertently missed, the competition will continue uninterrupted and will not be invalidated as a result. Where the posting includes the creation of an eligibility list, the notice will indicate the offices to which the eligibility list will apply. Eligibility lists may be valid for up to twelve (12) months. The maximum duration of the validity of the eligibility list in any posting will be indicated on the notice.

Article 23: Professional Fees

The Employer shall pay the annual Law Society of British Columbia practice fee on behalf of Regular Crown Counsel. Counsel who are hired after January 1 shall have their practice fees reimbursed on a prorated basis.

Article 24: Professional Requirements Allowance

Effective April 1, 2015, each Regular Crown Counsel shall be granted an annual amount of **\$1,250.00** for use during the fiscal year for a Professional Requirements Allowance (PRA). **The amount will be pro-rated to reflect the start date of a Crown Counsel in the first year of employment.** The parties agree that all PRA expenditures must be consistent with the policy and guidelines approved by the Joint Standing Committee (Information Appendix B).

The parties agree that individual Crown Counsel can best determine their own individual specific needs for PRA use consistent with the above and their professional obligations.

Effective April 1, 2011, Crown Counsel are able to donate some or all of their PRA amounts to a collective PRA fund that will be administered by the Article 25 Education Committee, or to a pooled office-wide PRA fund that will be administered by the Crown Counsel in that office. All donated or pooled PRA amounts must be used for non-taxable purposes.

Upon receipt from Crown Counsel of a PRA Expense Reimbursement Request Form, the amount of PRA indicated will be paid with an appropriate holdback for tax purposes, unless the claim is accompanied by a receipt for an expenditure which is clearly exempt from being considered a taxable benefit. Where the Branch determines that the expenditure is not clearly exempt from being considered a taxable benefit under the Canada Revenue Agency rules, the amount indicated will be paid with a holdback for tax purposes. Final determination by the Branch is not subject to the grievance process.

If a Crown Counsel has unused Professional Requirements Allowance when they leave the employ of the Employer, that unused allowance is forfeited. The Employer will not seek reimbursement of any allowance used by a Crown Counsel if their employment ends prior to the end of the year in which it was allocated.

Each Regular Crown Counsel as of April 30 of each year shall be granted an additional \$100.00 for use during each fiscal year for professional development. The specific use to which this additional allocation will be put will be determined by the Article 25 Education Committee.

Nothing in this section prohibits the Branch from assigning Crown Counsel, with his/her consent, to attend courses or conferences which the Employer agrees to fund at an expense in excess of the allocation.

The Letter of Understanding Re: National Criminal Law Program, attached hereto, shall continue from Agreement to Agreement unless cancelled or amended by mutual agreement.

Article 25: Education **and Mental Health** Committee

The Employer agrees to establish a Joint Education **and Mental Health** Committee to determine the use of the additional professional development allocation established pursuant to Article 24. The Education **and Mental Health** Committee will consist of four people, at least two of whom will be appointed by the Association, or as otherwise agreed.

Article 26: Annual Conference

Representatives of the Branch and the Association shall organize an annual Crown Counsel professional development conference. The cost of the conference shall be borne by the Branch. Crown Counsel shall be given the necessary leave with pay to attend the annual conference.

Article 27: Joint Standing Committee

There shall be a Joint Standing Committee which shall meet at the call of either the Branch or the Association, but not less than quarterly, to discuss matters of mutual concern to the Association and the Branch.

Article 28: Indemnity

The Letter of Understanding Re: Indemnity attached hereto in Information Appendix A as Letter of Understanding # 1 Re: Indemnity, shall continue from Agreement to Agreement unless cancelled or amended by mutual agreement.

Article 29: Grievance and Arbitration

For the purpose of the Agreement "grievance" shall mean any difference or dispute arising between the parties to this Agreement concerning the interpretation, application, administration, operation, or alleged violation of this Agreement,

whether between the Employer and Crown Counsel or the Employer and the Association, and "grievor" shall mean either the individual Crown Counsel or the Association.

It is agreed that the following matters are not grievable under the terms of this Agreement

- (a) rejection on probation
- (b) individual appointments of Crown Counsel to Levels 3, and 4, other than refusal to appoint a Crown Counsel in year of call 12 or more to level 3, as provided in Schedule A.

Step One

The grievor may seek to settle the dispute informally with an excluded supervisor, either with or without a representative of the Association in attendance. Such informal settlement shall not be used as a precedent by either party. In the event that the dispute is not settled under this step, the Crown Counsel may proceed with a formal grievance under Step Two.

Step Two

The grievor may submit a grievance in writing, describing the nature of the complaint and a remedy required, to an excluded representative of the Employer, within 30 days after the date:

- (a) on which the grievor was notified orally or in writing of the action or circumstances giving rise to the grievance; or
- (b) on which the grievor first became aware of the action or circumstances giving rise to the grievance.

The Employer's representative shall provide a written response to the grievance within 14 days, to the Crown Counsel and to the Association.

Step Three

If the grievor has not received a reply to Step Two by the due date, or continues to be unsatisfied with the decision at Step Two and wishes to proceed further, the

Association shall submit the grievance to the Assistant Deputy Attorney General responsible for the Criminal Justice Branch within 14 days after the time for completion of Step Two. The Assistant Deputy Attorney General responsible for the Criminal Justice Branch shall provide a written response to the grievance within 14 days, to the Crown Counsel and to the Association.

Step Four - Arbitration

Failing satisfactory settlement at Step Three, the Association may, within 30 days after the time for completion of Step Three, inform the Employer of its intent to submit the dispute to arbitration for a final and binding decision.

Arbitration

Where a grievance has been referred to arbitration, the Association and the Employer shall, within 14 days, agree upon a single arbitrator who shall have the power to determine whether a matter is arbitrable within the terms of the Agreement and to settle the question to be arbitrated. Failing agreement on the appointment of the arbitrator, the appointment shall be made by the Chair of the Labour Relations Board of British Columbia.

The arbitrator may determine procedure, including all pre-hearing procedural matters, and shall give full opportunity to both parties to present evidence and make representations. The arbitrator shall make every effort to render a decision within 30 days of the conclusion of the hearing.

The decision of the arbitrator shall be final, binding and enforceable on both parties and on any employee(s) affected by it. The arbitrator shall not have the power to alter, modify or amend any of the provisions of this Agreement.

Should the parties disagree as to the meaning of the arbitrator's decision, either party may apply to the arbitrator to clarify the decision. The arbitrator shall make every effort to do so within seven days of receipt of the application.

Each party shall pay one-half of the fees and expenses of the arbitrator.

Termination and Discipline Arbitration

The grievance/arbitration provisions of this Agreement shall apply to disputes relating to discipline or the termination from employment of a Crown Counsel. In

such cases, the burden of proving just cause rests with the Employer. The Employer shall provide the Crown Counsel with notice of the discipline or termination in writing and set forth the reasons.

Where an arbitrator determines that discipline other than termination was not for just cause, he shall have the authority to order that the discipline be rescinded or substitute some other form of discipline. Where an arbitrator determines that termination was not for just cause he shall award damages based on common law principles, unless the Association persuades the arbitrator that reinstatement is the appropriate remedy in all of the circumstances.

Where the performance of a probationary employee has raised concerns regarding his or her suitability to meet the standards for Crown Counsel, the parties may agree to an additional review period of six (6) months (or the equivalent of six (6) months of full time employment) following the six (6) month probation period. The Association will respond to an employer request for the additional review period in a timely manner. Upon request, the Employer will provide the Association with written reasons supporting its request for the additional review period.

Where there is agreement to the additional review period, the test of just cause shall be one of suitability for continued employment in the position, provided the factors involved in suitability could reasonably be expected to affect their work performance as Crown Counsel. Any decision of the Employer not to continue employment at the end of the additional review period is subject to the grievance procedure, with the entire timeframe since the date of hire being relevant.

No loss of pay

A Crown Counsel who has initiated a grievance under this Article shall be given time off with no loss of pay and no loss of time bank credits to attend meetings with the Employer under this Article. Where a Crown Counsel's grievance has been referred to arbitration he or she will be allowed leave without loss of pay and without loss of time bank credits to attend the arbitration hearing.

The above clause shall also apply to one Association representative to attend meetings with the Employer or to attend an arbitration hearing.

Procedural Errors and Time Limits

A grievance shall not be invalidated due to procedural errors provided such errors have no essential bearing on the substance of the grievance. Time limits in each step of the grievance/arbitration procedure may be extended only by mutual agreement in writing between the Association and the Employer.

An arbitrator may relieve on just and reasonable terms against breaches of time limits or other procedural requirements set out in this agreement.

Article 30: Parking

The parties are committed to maximizing the personal safety of Crown Counsel to the extent reasonably possible, while traveling between their work location and parking facilities.

Consequently, in accordance with the regulations established by the Workers Compensation Board, the Parties will instruct a Committee to review the matter of employee safety while travelling to or from their workplace. The Committee will meet within thirty (30) days following the signing of this Agreement and provide to the Joint Standing Committee every six (6) months thereafter recommendations and a status report regarding the establishment of policies and/or procedures to eliminate or minimize such risk to employees. Where elimination of such risk is not reasonably possible, the Committee may make recommendations to either manage or avoid the risk.

Article 31: Recognition for Exceptional Responsibilities

Where the Deputy Attorney General has designated that a particular assignment significantly exceeds normal work expectations and merits recognition for exceptional responsibilities, the parties may agree to additional compensation to be paid to Crown Counsel involved in the matter.

For clarity, even in cases where the particular assignment has been designated pursuant to this article by the Deputy Attorney General, each Crown Counsel must still qualify for additional compensation based on her/his individual role and responsibilities to the extent they significantly exceed normal work expectations and merit recognition. Further, each Crown Counsel's additional compensation will only apply to the period of the particular assignment which significantly exceeds normal work expectations and merits recognition.

The parties affirm that assignments which require the undertaking of exceptional responsibilities are those "mega-cases" which involve a significantly higher degree

of responsibility and personal sacrifice on the part of the individual Crown Counsel for their level (i.e. 1 – 4) having regard to considerations such as:

- (i) complexity or seriousness of legal and factual issues
- (ii) number of counsel assigned
- (iii) number and nature of accused, witnesses, and victims
- (iv) volume, format, and type of evidence
- (v) risk to the Crown Counsel including professional reputation
- (vi) length of the assignment(s)
- (vii) interference with the ability to accept other assignments or opportunities
- (viii) interference with career development
- (ix) location away from the home office
- (x) interference with the ability to take vacation time off
- (xi) interference with the ability to maintain a regular work-life balance

In recognition of their particular role in such cases, the parties agree that the additional compensation paid to the lead Crown Counsel(s) shall be 40% greater than that for other Crown Counsel involved in the matter. For clarity, this means that if lead Crown Counsel receive a salary differential of 14% over and above their normal wage rate, then other Crown involved in the case shall receive a salary differential payment of 10% over and above their normal wage rate.

Article 32: Downsizing

a) For the purpose of this Article only, upon completion of probation (or the review period as the case may be), Regular Crown Counsel will accumulate Branch wide seniority from the date they were last hired in a continuous employment relationship. Where Crown is originally hired into an auxiliary position and moves directly into a regular position with no break in service, the auxiliary hire date shall be used. In this Article, "senior" or "junior" relates to Branch seniority, not years of call.

b) The Employer will provide the Association with up to date Branch seniority lists on a semi-annual basis. The Association will have four weeks to bring to the Employer any inaccuracies after which the list will be considered accurate.

c) If the Employer reduces the number of Regular Crown Counsel in any office, the following will apply:

(i) Within an office, layoff of Regular Crown Counsel will be in reverse order of Branch seniority. Where the Crown with least seniority has expertise without which critical work cannot be performed, the next most junior Crown shall be laid off.

(ii) The Employer will provide a minimum of 2 weeks' notice of layoff, or 2 1/2 weeks' pay in lieu of notice, to any Regular Crown Counsel whose position will be eliminated due to the downsizing and who will be laid off.

(iii) As an option to accepting layoff, the Regular Crown Counsel who is notified of layoff may instead elect to displace the most junior Crown Counsel in the nearest office within the Region that has a Regular Crown Counsel with less Branch seniority, or the most junior Regular Crown Counsel in the Region, provided the Crown Counsel has the ability to perform the work of the displaced Crown. Notwithstanding the foregoing, Crown Counsel laid off from an office of Criminal Appeals and Special Prosecutions ("Crown Law Division") or Office of the ADAG, may elect to displace the most junior Crown Counsel in the nearest office within Crown Law Division or Office of the ADAG respectively, or the nearest non-Crown Law Division or non-Office of the ADAG office in the Region in which their Crown Law Division or Office of the ADAG office is physically situated (eg. Region 2 for a Crown Law Division Crown laid off from 865 Hornby Street in Vancouver) where a Regular Crown with less Branch seniority is employed, and provided the Crown has the ability to perform the work required.

(iv) As an option to accepting layoff, the Regular Crown Counsel who is displaced by the operation of this Article may instead elect to displace the most junior Crown Counsel in the nearest office within the Region that has a Regular Crown Counsel with less Branch seniority, or the most junior Regular Crown Counsel in the Region, provided the Crown Counsel has the ability to perform the work of the displaced Crown. Notwithstanding the foregoing, Crown Counsel laid off from an office of Criminal Appeals and Special Prosecutions ("Crown Law Division") or Office of the ADAG, may elect to displace the most junior Crown Counsel in the nearest office within Crown Law Division or Office of the ADAG respectively, or the nearest non-Crown Law Division or non-Office of the ADAG office in the Region in which their Crown Law Division or Office of the ADAG office is physically situated (eg. Region 2 for a Crown Law Division Crown laid off

from 865 Hornby Street in Vancouver) where a Regular Crown with less Branch seniority is employed, and provided the Crown has the ability to perform the work required.

(v) In the application of paragraphs 3(iii) and 3(iv) above, relocation assistance will only be provided if the Crown Counsel displaces the most junior Crown Counsel in the Region, or for displacements within Crown Law Division and Office of the ADAG, and the distance of the move qualifies for relocation assistance under the Relocation Policy for excluded employees.

(vi) Any Regular Crown Counsel who is given notice of layoff and who is unable or unwilling to displace another Crown pursuant to this Article, shall be laid off. Any Regular Crown Counsel who is displaced pursuant to this Article, and who is unwilling to displace another Crown pursuant to this Article, shall be laid off.

d) Laid off Regular Crown Counsel will retain recall rights to the office from which they were laid off for a period of twelve months from the date of layoff.

e) Laid off Regular Crown Counsel will be recalled to the office from which they were laid off in order of Branch Seniority, provided they are qualified to perform the work required. The employment of Regular Crown Counsel who fail to notify the employer that they will accept a recall to the office from which they were laid off within 5 days of being so advised, or who fail to return to work within 2 weeks (or such longer period as agreed between the Employer and the Crown) of notifying the Employer of their willingness to accept the recall, or who are not recalled for a period of at least one month of continuous work within 12 months of their date of layoff, shall be deemed to be terminated with no right of recall.

f) It is understood that recall rights will be terminated at any time an employee accepts a permanent position or displaces a permanent position within the Branch.

g) During the recall period, Regular Crown Counsel who are laid off shall be advised of all vacant positions for which they are qualified in order that they may indicate their interest in being considered for the position.

h) No competitions will be held for vacant positions in the Region when there are laid off Regular Crown Counsel with recall rights in the Region who are

qualified and willing to perform the work required. Vacant positions will be offered to qualified laid off Regular Crown Counsel with recall rights in the Region in order of Branch Seniority.

i) The Employer will not hire any new Regular Crown Counsel, Term Certain Regular Crown Counsel, or new Auxiliary Crown Counsel within a region unless all Regular Crown Counsel with recall rights who are qualified to perform the required work are recalled, or have been offered the opportunity in order of Branch Seniority and have refused. All new Ad Hoc assignments within a Region in which there are laid off Regular Crown Counsel with recall rights will be offered first to Regular Crown Counsel who are laid off with recall rights in order of Branch seniority and who are qualified and can confirm their ability to perform the work as and when required.

j) Regular Crown Counsel who are laid off, are displaced or are on the recall list have at any time up to the end of the recall period the option of accepting a severance package equivalent to the principles laid out in common law.

k) Article 22 - Job Posting does not apply to positions within a Region in which there are laid off Crown Counsel with recall rights.

l) Where the Employer anticipates the need for a layoff, the Branch will provide the Association with an updated Branch Seniority list and the parties will meet to discuss ways to minimize the impact on affected Crown Counsel, taking into account the operational needs of the office(s) affected.

Article 33: Time off for Association Business

The Employer will continue its current practice with respect to permitting Association representatives reasonable time off without loss of pay, benefits or time bank credits to investigate or handle grievances, attend grievance meetings and negotiations.

The Employer will grant the President of the Association, or an alternate designated in the event the President is unable to perform the duties of President, time off without loss of pay, benefits or time bank credits for up to 50% of a full time Crown to perform duties required as President of the Association.

Article 34: Vehicle Safety

Where Crown Counsel are required to travel by automobile and where weather conditions, such as winter driving, are, or could reasonably be expected to become adverse, Crown Counsel may elect to use their own vehicle on a mileage basis rather than a rental or government supplied vehicle where Crown Counsel reasonably believes their own vehicle is safer.

Crown Counsel may also elect to use their own vehicle as outlined above when they are required to travel on roads where the road surface presents a significant driving challenge such as gravel or dirt over considerable portions of the route.

In such cases, the Crown Counsel will ensure that their vehicle has sufficient liability insurance as set out in government policy.

The Employer shall ensure that emergency safety equipment is made available where rental or government vehicles are used for government business.

Article 35: Isolated Communities Fund

The Employer will make available a minimum of \$50,000.00 per year to this fund to **facilitate** Regular Crown Counsel in Region 5, Nelson and Cranbrook (and any other mutually agreed isolated areas) to travel for professional development **activities**, to enable management to backfill absences created by Association members' attendance at such professional development **activities**, to identify and fund opportunities for Regular Crown Counsel in those areas to junior or co-counsel Crown in other regions, **and to reasonably facilitate mentorship, including the exchange of ideas relevant to and in furtherance of their professional development.**

The fund will be administered by the Assistant Deputy Attorney General, or designate **who is a Legal Counsel Manager**, and the Association Board Member from Region 5, who will meet at least quarterly to review how the fund is being dispensed, **and who will agree on the expenditures to be made from the fund.**

Article 36: Human Rights Code

The parties hereto subscribe to the principles of the Human Rights Code of British Columbia. The Employer, in cooperation with the Association, will promote a work environment where all employees are treated with respect and dignity.

This clause does not preclude a Crown Counsel from filing a complaint under Section 13 of the Human Rights Code, however, should the Crown Counsel choose to file a complaint under the Human Rights Code, they shall not be permitted to file a grievance related to the same matter pursuant to this article under this Agreement.

Dated this _____ day of _____, 2016

For the Government
of the Province of British Columbia

For the British Columbia
Crown Counsel Association

Rebecca Sober

Kevin Marks

John Davison

Kim Thorne

Joyce DeWitt Van Oosten

Richard de Boer

Jenny Manton

SCHEDULE A

CLASSIFICATION AND COMPENSATION

CROWN COUNSEL LEVELS

Crown Counsel Level I - Entry Level

This Level is applicable to lawyers commencing their career as Crown Counsel with five (5) years or less admission to practice and related practice of law.

Experience as assessed as equivalent gained in another jurisdiction may be credited for hiring and promotion.

Increases within Level 1 shall be on a lock-step basis.

Annual salary by year of call is as follows:

Effective April 1, 2007

Year 1	\$58,206.01
Year 2	\$62,502.14
Year 3	\$66,798.52
Year 4	\$71,095.43
Year 5	\$75,390.51

Crown Counsel Level 2 – Working Level

This Level is applicable to lawyers with six (6) or more years of admission to practice and related practice of law. This level is the working level.

Experience as assessed as equivalent gained in another jurisdiction may be credited for hiring and promotion.

Increases within Level 2 shall be on a lock-step basis.

Annual salary of year of call is as follows:

Effective April 1, 2007	Salary
Year 6	\$80,403.57
Year 7	\$85,415.85
Year 8	\$90,426.82
Year 9	\$95,443.01
Year 10	\$99,419.28
Year 11	\$104,273.19

Crown Counsel Level 3

Whether practicing as general Trial Counsel or within a specialized area or an Administrator, Crown Counsel Level 3 demonstrates performance at a level which clearly exceeds the working level by:

1. Accepting responsibilities and/or initiating measures in addition to working level job requirements.
2. Demonstrating exceptional interpersonal skills when dealing with victims, witnesses and the public.
3. Performing duties with minimal direction.
4. Demonstrating sound judgment, effective problem solving and interpersonal skills in a manner that clearly exceeds the working level.
5. As Trial Counsel, consistently conducts prosecutions in a manner that clearly exceeds the working level.
6. As Administrative Counsel, demonstrates effective delegation, supervisory skills, and manages administrative issues in a manner that clearly exceeds the working level.
7. As Legal Policy Counsel, participates actively and effectively in initiating and providing legal policy advice in a manner that clearly exceeds the working level.

8. Entry into this level requires a minimum of eight (8) years of call.

Effective April, 2007	Salary
Level 3 Step 1	\$107,372.86
Step 2	\$110,024.84
Step 3	\$112,674.99
Step 4	\$115,326.97
Step 5	\$118,262.28
Step 6	\$121,198.63
Step 7	Step 6 annual salary plus \$2,555.00

Movement within the salary/contract range will be based on demonstrated performance reviewed on an annual basis. Progression to the next step of the salary scale will occur on the anniversary of Crown Counsel's appointment to this classification.

Any Crown who has been at Step 4 for at least 12 months as at April 1, 2007 shall progress to Step 5 on that date. Any Crown who has been at Step 5 for at least 12 months as at April 1, 2008 shall progress to Step 6 on that date.

Effective April 1, 2012, a step 7 will be added to the Level 3 salary scale. The amount of salary will be the salary for Step 6 at that time, plus \$2, 555. Any Crown who has been at Step 6 for at least 12 months as at April 1, 20012 shall progress to Step 7 on that date.

Effective April 1 of each year of this Agreement all Crown Counsel who are in Year of Call 12 or more or who will be, on or before December 31 of the respective year, and who are not already classified at Level 3 or higher, shall be reclassified to level 3 unless the Employer establishes that an individual Crown Counsel's work performance demonstrates that s/he is unlikely to be able to meet the criteria for Level 3. The effective date of reclassification for such employees will be April 1 of the year in which the employee becomes eligible for reclassification. Any disputes concerning entitlement to progress to Level 3 shall be subject to the grievance/arbitration process in Article 29.

Effective April 1, 2007 all Crown who were in Level A will move to the corresponding step in the new Level 3. For example if a Crown was at Level 3A step 3, that Crown will move to Level 3 step 3. Any Crown who has been at the same step for at least 12 months will automatically advance to the next step in the level.

Crown Counsel Level 3B

Effective April 1, 2007 no further Crown Counsel will progress to Level 3B. Those Crown Counsel who are in Level 3B as of March 31, 2007 will be grandfathered in Level 3B at the following salary scale until they are eligible to progress to Level 4.

Effective April 1, 2007	Salary
Level 3B Step 1	\$115,327.75
Step 2	\$118,262.28
Step 3	\$121,198.63
Step 4	\$124,133.15
Step 5	\$128,601.99
Step 6	\$133,231.27

Movement within the salary/contract range will be based on demonstrated performance reviewed on an annual basis. Progression to the next step of the salary scale will occur on the anniversary of Crown Counsel's appointment to this classification.

Crown Counsel who have been at step 4 for at least 12 months as at April 1, 2007 shall progress to step 5 on that date.

* Step 6 will become effective April 1, 2012 but the amount will be adjusted annually during each year of this collective agreement. Crown Counsel who have been at Level 3B step 5 for at least 12 months as at April 1, 2012 shall progress to Level3B step 6 on that date.

Crown Counsel Level 4 – Senior Crown Counsel

This Level is reserved for select Crown Counsel who have distinguished themselves in the practice of their profession as exceptional senior counsel.

1. Recognized as leaders in the field.
2. Complete confidence in ability to conduct any case at any level of court and in doing so performance is exceptional.

3. Able to assume a demanding workload and discharge responsibilities in an exceptional way.
4. As Counsel, are able to consistently conduct the most demanding, high profile, difficult and complex prosecutions.
5. Routinely exercises superior independent judgment and decision making.
6. Routinely advises or represents the Crown on the most significant legal, evidentiary or policy issues, the outcome of which is critical to the administration of criminal justice, the interests of the Province, or the reputation of the Branch.
7. Appointment to this level is at the discretion of the Deputy Attorney General.
8. Entry to this level requires a minimum of ten (10) years of call.

Effective April 1, 2007	Salary
Level 4 Step 1	\$124,134.19
Step 2	\$129,306.66
Step 3	\$134,478.86
Step 4	\$139,650.54
Step 5	\$144,823.01
Step 6	\$149,996.52

Movement within the salary/contract range will be based on demonstrated performance reviewed on an annual basis. Progression to the next step of the salary scale will occur on the anniversary of Crown Counsel's appointment to this classification.

Crown Counsel who are appointed to Level 4 from a lower level will enter Level 4 at the lowest step which provides a salary increase from their last salary level.

Crown Counsel who have been at step 5 for at least 12 months as at April 1, 2007 shall progress to step 6 on that date.

Annual Salary Adjustments

Effective April 1, 2007 and on the first of April of each year of the collective agreement thereafter, all salaries listed in Schedule A above shall be adjusted by an amount equal to the increases provided to Provincial Court Judges plus 1.27%. For example, if judges' salaries are increased by 2%, then all salaries will be increased by 3.27%. The increases will be made retroactive to April 1 of each year if the annual judges' adjustments are not made by that date.

Classification Progression

Effective October 1, 2000, the level 3 classification shall undergo the following changes: The stipulated number 38 shall be increased to 55 and will be a 'not less than' number rather than both a maximum and a minimum.

Effective April 1, 2007, the stipulated number of level 4 Crown Counsel, excluding those who entered Level 4 as a result of being awarded the Queen's Counsel designation, shall be increased from 12 to 15.

The Employer shall make such reclassifications or appointments as are necessary to ensure that the above numbers are maintained and not reduced for a period of longer than 90 days.

INFORMATION APPENDIX A

LETTER OF UNDERSTANDING # 1

July 5, 2011

Samiran P. Lakshman
President
BC Crown Counsel Association
600-865 Hornby Street
Vancouver, BC V6Z 2G3

Dear Mr. Samiran P. Lakshman:

Re: Indemnity

As a result of discussions with the Crown Counsel Association, I confirm that Indemnity protection for Crown Counsel is that was set out in the Letter of Understanding #1 Re: Indemnity, as part of the October 23, 2007 Agreement, was intended to be that which was applicable to excluded management employees in the consolidated Terms and Conditions for Excluded Management Employees at the time. I further confirm that the policy will continue to be applied to Crown Counsel in the following manner:

Given the serious issues that arise from civil malicious prosecution suits brought against Crown Counsel acting in good faith and in the course of employment, it is appropriate that in such cases senior counsel be assigned to represent the interests of Crown Counsel and the Crown. Therefore, in such cases senior counsel will be appointed by the Legal Services Branch from a list agreed to by the Crown Counsel Association, and the Ministry, following consultation with the Crown Counsel being sued and the Criminal Justice Branch (CJB), notwithstanding the terms of section 73(6) of the Terms and Conditions. Counsel so appointed will represent the interests of both Crown Counsel and the Crown.

Given the requirements of the Ministry of Justice Act and the indemnity provisions of the Terms and Conditions, and because the Ministry of Justice and the Crown will normally be named in the suits, it is necessary that counsel be retained by the Legal Services Branch. If any conflict arises between the interests of Crown Counsel and the interests of the Ministry of Justice or Branch, including consideration of appeals, separate counsel will be appointed to represent their respective interests.

Given that Crown Counsel may be exposed to Law Society discipline proceedings on disclosure issues as a result of the decision of the Supreme Court of Canada in *Krieger v. The Law Society of Alberta*, [2002] 3 S.C.R. 372, that Law Society discipline proceedings are a specialized area of practice and that such proceedings can result in significant penalties, it is appropriate that a senior counsel be assigned to represent the Crown Counsel involved. In such cases, senior counsel will be chosen by the Crown Counsel involved from the list agreed to by the Crown Counsel Association, and the Ministry, provided that any external counsel chosen agree to work for the rates established by the Ministry for this purpose.

Given that Crown Counsel may be exposed to criminal prosecution for, *inter alia*, disclosure of wiretap intercepts, disclosure of the identity of individuals affected by a SOIRA (*Sex Offender Information Registration Act*) application, and inadvertent release of youth court records, and that the defence of such charges is a specialized area of law, senior counsel will be chosen by the Crown Counsel involved from the list agreed to by the Crown Counsel Association and the Ministry, provided that any external counsel chosen agree to work for the rates established by the Ministry for this purpose.

Given that Crown Counsel may be called to provide testimony or otherwise provide information before Inquires, Inquests, or similar proceeding, that such proceedings are a specialized area of practice and can result in significant findings, it is appropriate that a senior counsel be appointed by the Assistant Deputy Attorney General from a list agreed to by the Crown Counsel Association, and the Ministry, following consultation with the affected Crown Counsel. Counsel so appointed will represent the interests of the Crown Counsel, CJB and the Ministry of Justice.

If any conflict arises between the interests of Crown Counsel and the interests of the Ministry of Justice or CJB, including consideration of appeals, separate counsel from the above mentioned list will be appointed to represent their respective interests.

The Association and the Ministry will meet and update the list of senior counsel within three months of the ratification of the contract between the Association and the Government and shall update the list annually or as they otherwise mutually agreed. In addition, based on the specific issues of the case and expertise of counsel, the parties may agree to counsel not on the current list.

Finally, I confirm that should the Terms and Conditions for Excluded Management Employees with regard to indemnity change in a manner that would affect any of the above, the Association will be consulted regarding how to best address their members' needs in light of such a change.

Yours truly,

Robert W. Gillen
Assistant Deputy Attorney General
Criminal Justice Branch

cc: Richard de Boer
Rebecca Sober

LETTER OF UNDERSTANDING # 2

Re: National Criminal Law Program and Other Legal Conferences

The National Criminal Law Program is held annually in various Canadian locations in the summer. This program is of interest to Crown Counsel and, depending on the location, a number of Crown Counsel have attended the program. In addition, other criminal law conferences are of particular interest to Crown Counsel, specifically, the International Association of Prosecutors Conference and the Annual Crown Summer School organized by the Ontario Crown Attorney's Association.

The following practice applies in relation to Crown Counsel who wish to attend the National Criminal Law Program, the International Association of Prosecutors Conference or the Annual Crown Summer School organized by the Ontario Crown Attorney's Association. In addition, the same practice will apply in relation to other such work related conferences as approved by the ADAG from time to time:

- Subject to the operational requirements in each office, Crown Counsel may attend such conferences. The operational requirements of each office will be determined by the Administrative Crown Counsel. If more counsel apply to attend these conferences than can be allowed due to operational requirements, the process for determining who should attend will be made by Regional Crown Counsel or Deputy Regional Crown Counsel in consultation with Administrative Crown Counsel;
- When Crown Counsel attend such conferences, it is not necessary for them to utilize holiday time;
- The Professional Requirements Allowance (PRA) may be utilized to offset the registration fees by making a deposit from the PRA prior to the end of any fiscal year, and then paying the outstanding amount from the PRA at the beginning of the next fiscal year. In such cases, a copy of the receipts should be provided with a request for reimbursement of the training allowance portion;

- Incidental expenses, as set out in Article 24 of the Crown Counsel Association Agreement with government, include travel expenses up to the PRA cap.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 3

Re: Exclusions

In accordance with s.4.1(1) of the *Crown Counsel Act*, the parties agree that the following positions are excluded from the definition of "Crown Counsel" for the purpose of application of the terms and conditions of this collective agreement:

- (i) All Executive Directors, Directors and Deputy Directors of the Criminal Justice Branch who have province-wide responsibilities.

The Employer will provide 30 days notice of its intention to create positions of the above type.

Either party can terminate this Letter of Understanding upon provision of 30 days written notice to the other side. Should this occur, all positions of the above type created prior to the notice being given and the positions for which notice has been given under this Letter will remain excluded from the BCCCA bargaining unit, but any other positions not included within the definition of Crown Counsel under the Crown Counsel Act will be subject to negotiation and agreement pursuant to the Act.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 4

Re: Supernumerary Employment Opportunities

The parties agree in principle that it is desirable to retain knowledge and experience in the workplace through fostering opportunities for members of the Association to work as Crown Counsel after reaching the point of being able to retire.

The parties agree that through the Joint Standing Committee they will actively explore options for the provision of such opportunities to their mutual benefit.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 5

Re: Professional Requirements Allowance – Health and Wellness

This letter will clarify the expanded name of the Professional Requirements Allowance (PRA) Article 24 as it relates to health and wellness.

The parties agree that in order to assist in the enhancement of the health and wellness of Crown Counsel, Crown Counsel shall be permitted to use their PRA for the purchase of:

1. Memberships in, and or admission to fitness facilities;
2. Textbooks and/or related media on health/wellness related topics;
3. Registration and/or travel, for health/wellness conferences, and
4. Classes/courses for health/wellness enhancement.

It is understood between the parties that the purpose of item 1 is for membership in facilities in which the primary focus is development and or improvement of fitness or health such as gym memberships, YMCA/YWCA memberships etc. Facilities in which the primary focus is social such as country clubs or golf courses do not qualify as a use for which the PRA will be used.

The Joint Standing Committee will develop a policy for which the PRA may be used where the proposed health/wellness expense does not fall into one of items 1 through 4 listed above.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 6

Re: Term Certain Regular Crown Counsel

This will form a Letter of Understanding what will expire on March 31, 2019 unless the parties agree in writing to extend the term.

- a) The requirements of Article 22 do not apply to Term Certain Regular (TCR) Crown Counsel.
- b) Upon completion of articles and at the discretion of the Branch, TCR Crown Counsel may be offered employment for up to 2 years (the “TCR Term”) in a location listed in Article 35, and up to one year in all other locations.
- c) The rates of compensation outlined in Schedule A of this Agreement shall apply to Term Certain Regular (TCR) Crown Counsel.
- d) The service date for Term Certain Regular Crown Counsel who become regular Crown Counsel, without any break in branch service, shall be their original date of hire as a Term Regular Crown Counsel.
- e) Unless otherwise specified, all other provisions in the agreement pertaining to Auxiliary Crown Counsel who have completed twelve (12) consecutive months of full-time work and who are employed for work which is of a continuous full-time nature shall apply to Term Certain Regular Crown Counsel.
- f) At the discretion of the Branch, at any time prior to the completion of the TCR term **the Branch may apply, pursuant to section 10 (b) (iii) of the Public Service Act, to the Public Service Agency head for direct appointment approval to** offer the TCR Crown Counsel a regular Crown Counsel position, for those locations listed in Article 35. For greater clarity, employment as a Regular Crown Counsel in any other location will be subject to Article 22.
- g) In any geographic location, no Regular Crown Counsel will be laid off, have their hours reduced, or be denied a prior written request to permanently increase their hours up to full time when there is a Term Certain Regular Crown Counsel hired in the Region.

h) Within six months of the commencement of each TCR Term in locations other than those described in Article 35, the Branch will hold a competition for a permanent LC 1 position in the geographic location. If such a competition is not held, the Branch will not employ any new Term Certain Regular Crown Counsel in that region until a competition is held, and then one new Term Certain Regular Crown Counsel may be hired for each new permanent LC 1 position posted in the region.

i) By April 1, or as otherwise agreed, of each year of the collective agreement the Employer will advise the Association in advance of how many articulated students it intends to employ, and in which offices. The Employer will provide an update of these numbers again by October 1 of each year. The Employer will advise the Association through the Joint Standing Committee if these plans change.

Under definitions “Term Certain Regular” is a Crown Counsel employed for a defined period who has been hired immediately following the completion of their articles with the Criminal Justice Branch under the Ministry of Justice Articling Program.

The first sentence of Article 32 (i) is amended to read:

(i) The Employer will not hire any new Regular Crown Counsel, Term Certain Regular Crown Counsel, or new Auxiliary Crown Counsel within a region unless all Regular Crown Counsel with recall rights who are qualified to perform the work are recalled, or have been offered the opportunity in order of Branch seniority and have refused.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 7

Re: Diversity

The parties affirm their commitment to work collectively through the Joint Standing Committee to promote a workplace that provides all members of the branch with a workplace where they are treated with respect and dignity, and which promotes diversity issues.

Either party may cancel this Letter of Understanding by providing not less than 6 months notice to the other party.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 8

Re: Meetings Pursuant to Article 6

With respect to meetings contemplated by Article 6, the parties agree as follows:

1. The Employer may elect to have a representative of the BC Public Service Agency (“BCPSA”) attend a meeting.
2. Association or BCPSA attendance at a meeting may be by teleconference or in person, at the election of the Association or BCPSA respectively.
3. Attendance by the Association or BCPSA will not unduly delay any meeting.
4. Attendance by the Association or BCPSA will not detract from the legitimate purpose for which the meeting was called.
5. Inadvertent failure by the Employer to advise the Association of the meeting will not of itself invalidate the meeting, or any letter of expectation or discipline that may be imposed at the meeting.
6. Unless altered or cancelled by mutual agreement, this Letter of Understanding will continue to apply notwithstanding the expiration of the current collective agreement.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING # 9

Re: Professional Responsibilities

Given the professional nature of their responsibilities, Crown Counsel are expected to work the hours necessary to fulfill their assigned responsibilities. This includes court days assigned according to the rotas approved by Regional Crown Counsel or their designates and will approximate the current Branch target of 2 days preparation for 3 substantial days in Provincial Court and a day preparation for every substantial day in Supreme Court. This will entail more than a 35 hour work week. However, Crown Counsel are not expected to work an unreasonable number of hours; hours worked will differ from week to week depending on the nature of cases or assignments. While Crown Counsel should normally work the hours necessary to complete their assignments, hours of work should be reasonable, taking into consideration the nature of Crown Counsel legal work and the circumstances of any specific assignment including significant factors such as location, travel and vulnerable witnesses.

In recognition of the nature of Crown Counsel work, the Branch will continue to exercise flexibility with respect to time off during working hours to accommodate personal commitments. In addition, where Crown Counsel work extraordinary hours over an extended period, the Branch will allow time off, during normal working hours, in recognition of these efforts.

However, these expectations concerning hours of work and days in court must be balanced against Crown Counsel's professional responsibilities as illustrated by a ruling of the Ethics Committee of the Law Society. In response to inquiries from the Association the Committee expressed its views as follows:

...it is proper for lawyers to decline to act on matters that they do not have the capacity to deal with adequately. Whether a lawyer has the capacity to take on additional work in any given situation, and what preparation time is necessary to permit a lawyer to perform a task adequately are issues of fact that can only be resolved by reference to specific situations.

In addressing these issues it is also important to re-emphasize the long standing view of the Branch that Crown Counsel should only accept the conduct of a file where they have the ability and capacity to prosecute it effectively. This Branch position, and that of the Ethics Committee, recognize that Crown Counsel have a right and duty to practice in a professionally responsible way.

Further, the parties affirm that prosecutions throughout the Branch must be conducted in a manner consistent with the professional obligations and standards of Crown Counsel.

The Workload Directive process to request additional preparation time shall apply and the Workload Directive will not be changed without prior consultation with the B.C. Crown Counsel Association.

Province of British Columbia

B.C. Crown Counsel Association

LETTER OF UNDERSTANDING #10

Re: Reporting to the Law Society or the appropriate Judicial Authority

Nothing in this Letter of Understanding is intended to discourage complaints, but rather it is intended to establish an understanding between the parties as to process and provide an opportunity for advice and reflection regarding a decision of whether to make a report.

In recognition that situations may arise in the course of their employment in which a Crown Counsel believes that he or she may be required, or it may be appropriate, to report a lawyer to the Law Society, or to report a member of the judiciary to the appropriate judicial authority, the Parties hereby agree that the following process and principles will be followed.

1. Where Crown Counsel believes that he or she may be required, or it may be appropriate, to report a lawyer to the Law Society, the Crown Counsel will consult with Regional Crown Counsel/Director.
2. In addition, Crown Counsel may consult with a Bencher as to the nature of the matter and to further assist in determining whether it is appropriate to report the lawyer.
3. In a case that the Regional Crown Counsel/Director and Crown Counsel, having considered any advice that the Crown Counsel may have received from a Bencher, agree it would be appropriate to pursue a complaint, including the form and content of the complaint, the complaint may be made by the Crown Counsel as a member of the Criminal Justice Branch on Branch Letterhead or, where more appropriate, by Regional Crown Counsel on behalf of the Branch. In either case, a copy of the complaint will be forwarded to the ADAG.
4. In a case that the Regional Crown Counsel/Director, having considered any advice that the Crown Counsel may have received from a Bencher, does not agree that the Crown Counsel should pursue the complaint, including the form and content of the complaint, but the Crown Counsel believes that he or she is obligated as a member of the Law Society of British Columbia to report, then the following shall apply:
 - a) the complaint will not be made on Crown Counsel letterhead;

- b) the complaint will clearly set out that it is being made by the Crown Counsel as an individual lawyer by virtue of being a member of the Law Society of British Columbia;
- c) the complaint will indicate it is not being made on behalf of the Criminal Justice Branch; and,
- d) a copy of the complaint will be provided to the Regional Crown Counsel/Director.

5. In a situation concerning a potential complaint against a member of the provincial court to the Chief Judge pursuant to section 11 of the *Provincial Court Act*, or against any other judge to the appropriate judicial authority, the Crown Counsel will consult with Regional Crown Counsel/Director.

6. In all cases concerning a potential complaint against a member of the judiciary, Regional Crown Counsel/Director will consult with the Assistant Deputy Attorney General.

7. In addition, as set out in the Protocol between the Law Society and the Provincial Court of British Columbia (appendix 1) where it appears to the Crown Counsel that the conduct of a Provincial Court Judge may be in question, and he or she desires assistance in making a complaint or deciding whether it is appropriate to do so, the Crown Counsel may raise the matter with a Bencher.

8. Further, as set out in the Protocol between the Law Society and the BC courts (appendix 2), where it appears to the Crown Counsel that the conduct of a judge of any court in BC may be in question in an ongoing proceeding, and he or she desires assistance in making a complaint or deciding whether it is appropriate to do so, or whether there is another approach to address the concern, the Crown Counsel may raise the matter with the special panel identified in the protocol.

9. In a case that the Assistant Deputy Attorney General, Regional Crown Counsel/Director and Crown Counsel, having considered any advice that the Crown Counsel may have received from a Bencher or special panel, agree it would be appropriate to pursue a complaint, including the form and content of the complaint, the complaint may be made by the Crown Counsel as a member of the Criminal Justice Branch on Branch letterhead or, where more appropriate, by Regional Crown Counsel on behalf of the Branch. In either case, a copy of the complaint will be forwarded to the ADAG.

10. In a case where the Assistant Deputy Attorney General and Regional Crown Counsel, having considered any advice that the Crown Counsel may have received from a Bencher or special panel, do not agree that the Crown Counsel should pursue the complaint, including the form and content of the complaint, against the member of the judiciary, but the Crown Counsel chooses to pursue the complaint, the directives set out in paragraph 4(a) to (d) noted above apply.

11. This Letter of Understanding shall terminate upon expiry of the Agreement signed by the Parties on October 23, 2007, unless renewed by mutual agreement between the Parties.

Letter of Understanding #11

Re: Regarding the movement of Crown Counsel between offices in the Greater Vancouver Regional District (GVRD)

- 1) It shall not be a violation of Article 32 if, within the GVRD, the Branch moves a Crown Counsel from an office in one region to an office in another Region without replacing the Crown Counsel in the office that the Crown Counsel is moved from, provided that:
 - i) The Branch asks for volunteers to move before moving any Crown Counsel.
 - ii) If there is a volunteer who is qualified, then that volunteer Crown Counsel shall be the one moved. If there are more than one qualified volunteer, then the most senior volunteer shall be the one moved.
 - iii) If there are no qualified volunteers, then the most junior qualified Crown Counsel shall be the one moved.
 - iv) Any Crown Counsel required to move will be provided not less than ninety (90) days' notice unless they agree to a shorter time period.

The Parties agree the process set out above and this LOU is without prejudice to their respective positions on the application of Article 32.

LETTER OF UNDERSTANDING #12

To the President of the BCCCA
From Joyce De Witt Van Oosten

December 1, 2015

RE: Paid and Unpaid Suspensions:

This letter is to advise you of the Branch's standard practice when investigating a Crown Counsel for alleged misconduct.

In circumstances where the Branch believes that the allegations of misconduct against a Crown Counsel warrant their removal from the office pending conclusion of an investigation, the Crown Counsel will be suspended with pay pending the outcome of the investigation.

Where there are exceptional circumstances which the Branch believes warrant the Crown Counsel being suspended without pay pending the conclusion of the investigation, the Branch will provide the Association with written reasons for this decision. The Association shall have the right to have the decision and the reasons to suspend without pay reviewed by Arbitrator David McPhillips or another arbitrator mutually agreed upon. On an expedited basis, Arbitrator McPhillips or the alternate will hear from the Branch and the Association and determine whether the suspension shall continue without pay or with pay. The decision of Arbitrator McPhillips or the alternate are not subject to the grievance process as set out in article 29. The parties agree that if the Branch takes the position that disclosing particular evidence to the Association may prejudice its investigation then the Branch may make submissions to the Arbitrator alone, who will decide whether the submissions will be disclosed to the Association, and if so, under what conditions.

If at the conclusion of an investigation when a Crown Counsel has been suspended without pay the Branch does not impose a disciplinary suspension, then the Crown Counsel will be paid back wages and benefits to be made whole for the suspension. If the Branch imposes a disciplinary suspension, then the period of the unpaid suspension will constitute all or a part of the disciplinary suspension imposed. If the Branch terminates the employment of the Crown Counsel, then the unpaid suspension will constitute part of the discipline.

Regards,
Joyce DeWitt Van Oosten