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Delivered by Email and Mail

Mr. Don Wright,
Deputy Minister to the Premier and Head of the Public Service
Suite 272 W Annex – Parliament Buildings
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Dear Mr. Wright:

Re: Ombudsperson's Report, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*

I am writing to you in my role as the independent monitor of the government's progress in implementing or giving effect to the recommendations in the Ombudsperson's Report, *Misfire: The 2012 Ministry of Health Employment Terminations and Related Matters*. I was asked to provide quarterly reports to government. My terms of reference were finalized and posted on May 31, 2017, making September 30, 2017 the end of the first quarter of my mandate. I have delayed this report slightly beyond that date in order to take account of the government's implementation efforts in relation to the Ombudsperson's recommendations with a September 30, 2017 completion date.

For the purposes of this report, I have reviewed the government's Status Update and obtained such additional information as I thought necessary to carry out my role as independent monitor. All of the information that I have requested has been provided and the responsible officials could not have been more helpful in responding to my requests and questions.

I will focus my comments on recommendations that the Ombudsperson suggested should be completed up to the end of September 30, 2017. I have not considered it part of my monitoring role to assess the extent to which implementation is, or is not, on track in relation to recommendations with future completion dates.

I provide below a detailed review of the status of recommendations that were to be implemented up to the end of September.

In summary, my view is that for the vast majority of the recommendations that were to be implemented by the end of September, implementation has been achieved fully and on time. However, I note a few exceptions. I am not satisfied that full implementation had been achieved by the end of September with respect to Recommendations **R – 11, R – 21 (d), R – 33 and R –**

39. I note the extensive efforts taken in relation to **R – 33** (dealing with development of an organizational reconciliation program), but I am uncertain whether the sort of plan envisaged by the Ombudsperson’s recommendation was in place as of September 30, 2017.

I will organize my detailed review of implementation according to the Ombudsperson’s recommended date of implementation.

I. Up to the end of April 2017:

Both recommendations that were to be implemented in April were fully accomplished on time.

R – 26 called for the immediate cessation of the practice of suspending excluded employees without pay pending an investigation. I am advised that this practice was terminated on April 7, 2017, and the change was communicated to the Deputy Ministers and the Public Service Agency.

As recommended by **R – 40**, the government provided a single document response to each of the recommendations on April 7, 2017.

II. End of May 2017:

Two recommendations, **R – 7** and **R – 11**, were to be implemented by the end of May.

The first (**R – 7**) called a for public statement by government that acknowledges and apologizes for the harm caused by the investigation and the decisions that resulted, including the employee suspensions, discipline and terminations, contract suspensions and terminations and unwarranted data access suspensions. The public statements by the then Deputy Minister to the Premier on April 6, 2017 and May 31, 2017 in my view fully carry out this recommendation.

The second recommendation (**R – 11**) related to personal belongings of some of the harmed persons. I understand that a number of personal belongings have been returned as recommended. However, after the government’s status report was released, I was contacted by some of the affected persons and was told that they have requested the return of some additional files and papers but that they have not been returned. Perhaps there is not a common understanding of the nature of the material that falls within this recommendation. I am ready to be of assistance if that is thought necessary.

III. End of June 2017:

1. *Specified ex gratia payments*

Five recommendations to be completed by the end of June related to ex gratia payments to specified persons in specified amounts: Recommendations R -1, R - 2 R - 3(a), R - 5, and R - 14. These payments were made in full and on time or within a few days of the end of June.

2. *Reversing the impact of discipline*

Recommendation **R – 3(b)** concerns reversing the financial impact of discipline imposed on certain employees and removing the disciplinary findings from their employment record. The employees' records have been corrected as recommended and the direct financial impact of the discipline has been addressed within the deadline. There remains an outstanding issue about what, if anything, beyond addressing the direct financial consequences of the discipline is required to “reverse the financial impact” of the discipline. That matter has been referred to me for a recommendation. I have received and am in the midst of considering detailed submissions on that matter.

3. Grievance settlements

Recommendation **R – 6** relates to the potential re-opening of grievance settlements. The parties have agreed that I should resolve this matter rather than submitting it to an arbitrator under the collective agreement. The result is that the process to implement this recommendation is different than that contemplated by the Ombudsperson. The process, however, should be easier for the parties to use and less adversarial. I will be receiving detailed written submissions in the third week of October and will be meeting with the affected persons in November.

4. Report of the Investigations and Forensic Unit

Recommendations **R – 12** and **R – 13** relate to the report of the Investigations and Forensic Unit. **R – 12** calls for a public statement that the report has been withdrawn, that it contains inaccuracies and will not be relied on. **R – 13** deals with those affected by the unauthorized disclosure of that report and provides for letters of apology confirming that the report has been withdrawn and will not affect the ability of the affected individuals to work for, or with, the government.

I am satisfied that these Recommendations have been implemented in a timely way.

5. Policy development and publication

Recommendations **R – 25**, **R – 28** and **R – 29** call for developing and making public certain policies.

Recommendation **R – 25** calls for a policy that requires certain steps to be followed before a Deputy Minister dismisses an employee for just cause. I have been provided with a copy of the Policy developed in response to this recommendation and been advised that it was sent by the Deputy Minister of the Public Service Agency to all members of the Deputy Ministers' Council and all executive (Assistant Deputy Minister level) persons in the BC Public Service Agency. Having reviewed the Policy and the attached checklists, my view is that they comply with the Ombudsperson's recommendation.

I am advised that, while an internal policy of this nature is not normally made public, the government has accepted my suggestion that this policy should be publicly available in light of the public interest in seeing that the Ombudsperson's recommendations are implemented.

The written policy relating to Recommendations **R – 28** and **R – 29** has been developed and made available online. It is, in my view, in accordance with the Ombudsperson's recommendations.

IV. End of July, 2017:

Recommendation **R – 8** called for personal apologies to specified individuals. These letters were sent and I have reviewed their contents. While in my view the contents of the letters comply with the terms of the recommendation, I note that the text of the portion of the Report accompanying this recommendation states that government should be willing to consult with the individual to whom it is apologizing in order to write a letter that is appropriate to that person's circumstances. Some of the harmed individuals feel that there was not adequate consultation. Government has agreed to follow-up with those individuals in an effort to satisfy their concerns.

V. End of September, 2017:

1. Compensation Fund and Awards

I am advised that the Compensation Fund called for by **R – 4(a)(i)** has been established by Treasury Board. I believe that I have identified all of the affected persons who do or may fall within **R – 4(a)(ii)** and have been in contact with all of those who agreed to be contacted.

Under my terms of reference, I am to make recommendations to government for ex gratia payments from the fund on a fair and equitable basis taking into account the impact the data and contract suspensions and cancellations had on the affected people. Those payments are to be made by the end of March, 2018.

The \$500,000 scholarship funding, called for by **R – 15**, has been provided to the University of Victoria and draft terms of reference for submission to the University Senate have been agreed on by the University administration and the family of the late Mr. MacIsaac. The proposal includes the recommendation that the scholarship be named for Mr. MacIsaac. The University Senate has approved the scholarship and the proposal will now be sent to the Board of Governors for final approval.

An award in the Ministry of Health in response to **R – 16** has been created and, with the consent of the family, it will be named the Roderick MacIsaac Award. It will be awarded annually each June for leadership in co-op student success. I have reviewed the nomination guidelines and in my view the award that has been established implements both the letter and spirit of the Ombudsperson's recommendation.

I am also advised that the Public Service Agency has developed an award to recognize excellence in training, mentoring and supporting a co-op student within the broader B.C Public Service.

2. Investigations

Recommendations **R – 21(a)** and **(b)** relate to professional and policy development for the Investigation and Forensics Unit.

With respect to **R – 21(a)**, I am advised that the Comptroller General has implemented a “professional development framework” which ensures that investigators continue professional development in areas such as administrative and procedural fairness. I have reviewed a number of documents in relation to this recommendation, including an *Investigation and Forensic Unit Professional Development Framework and Plan for Fiscal 2017/18*. The Framework and Plan lists professional development opportunities for the year and the list includes some training that relates to administrative and procedural fairness. I have also reviewed the list of professional development programs in which the 2 investigators have participated over the past year. But the Framework and Plan does not, so far as I can see, outline or implement “a program of ongoing professional development on administrative and procedural fairness for its investigators and any employees leading an investigation” as recommended by the Ombudsperson.

With respect to **R – 21(b)**, I have had the opportunity to review *The Investigation and Forensic Unit Policy and Procedures Manual* with a view to seeing whether it adequately integrates the principles of administrative fairness into the investigative approach as recommended by the Ombudsperson. In my view it does. There is a good, plain language description of what administrative fairness requires, the need for fairness is reiterated at appropriate places in the *Manual* and the Administrative Fairness and Evaluation Tool found in Appendix C provides a user-friendly means of helping to ensure that the key elements of administrative fairness have been duly observed at each stage of an investigation.

The *Manual* also implements **R – 21(c)** by requiring the Comptroller General to approve the investigation plan, including the required resources. This oversight is reinforced by Appendix G, *The Engagement Method Guide* which requires the approval of the Comptroller General.

Recent amendments to the *Manual* also respond to Recommendation **R – 21(d)** by making explicit that the Comptroller General is to reassess the investigative plan on a regular basis.

Recommendation **R – 22** called for a report from the Ministry of Finance to the Auditor General respecting the progress of implementing each recommendation of the KPMG report. I have been provided with a copy of a letter dated September 22, 2017 from Carl Fischer to Carol Bellringer enclosing a detailed summary of the steps taken in relation to implementing the KPMG Report. I am satisfied that this report implements the Ombudsperson’s recommendation.

3. Transitions

Recommendation **R – 30** requires a report from the Public Service Agency to the Head of the Public Service concerning executive transitions so that senior executives new to their portfolio are appropriately and effectively supported to immediately carry out their new responsibilities. I have seen the report responsive to this recommendation and have been assured that it has been submitted to you as the Head of the Public Service in a timely way.

4. Reconciliation Program

Recommendation **R – 33** requires the Ministry of Health to develop and implement a carefully designed organizational reconciliation program which is to, among other things, include clear objectives and deliverables.

I have reviewed a number of documents describing the many steps taken by the Ministry in furtherance of this recommendation, including setting up an Advisory Committee and seeking extensive employee feedback through surveys and in person meetings. As I understand it from my review of this material, the action plan has three elements, each with its own objectives and deliverables: Data gathering and consultation; Prioritize actions and confirm the change plan; and implementing the change plan. Some of the documentation indicates that the change plan would be finalized in October, while other documentation indicates that the change plan was in fact finalized in July. I note that the Status Report indicates that “developing an action plan to implement change” is described as one of the “next steps.” While there have unquestionably been extensive efforts in relation to this recommendation, it is not clear to me that the sort of program envisioned by the Ombudsperson was in place by the end of September.

5. Program gaps

Recommendation **R – 34** requires the Ministry of Health to “review and assess the extent to which the termination of evidence-based programs during the internal investigation may have created gaps that now remain in providing evidence-informed, safe, effective and affordable drug therapy and related health care services to British Columbians.”

I have been provided with a Ministry of Health document entitled *Review and Assessment of the Termination of Evidence-based Programs in Pharmaceutical and Related Health Services*. I am satisfied that this Review implements the Ombudsperson’s Recommendation **R – 34**. In saying this, of course, I am not in position to assess the accuracy of the *Review* in the sense of whether it correctly identifies all of the gaps. But I am satisfied that it does what the Ombudsperson recommended to be done. The *Review* assesses the impact of the internal investigation on evidence-based health care research and delineates specific remaining gaps in the areas of evidence-informed pharmaceutical policy, evidence-informed population and public health surveillance, evidence-informed programs and decision-making in health services, and high quality data analytics.

I understand that government has shared this document with the researchers and contractors whom it asked for assistance in developing the *Review*. I have heard from some of them that the Report does not in fact identify the most serious gaps and that the Report does not reflect the advice provided by some of the people most familiar with the impact of these events on evidence-based research in the Ministry. It is beyond my Terms of Reference and my professional competence to evaluate these comments on the merits of the Report. I urge the Ministry to continue to engage with those individuals to the extent that they are willing to assist.

6. B.C. Coroners Service Policy

Recommendation **R – 39** called on the Coroners Service to develop a policy about disclosure, to a deceased family or personal representative, of documents discovered on the deceased’s person’s electronic devices, including pass-word-protected and cloud stored documents. I have

reviewed what I understand to be a revised policy relating to disclosure of information by the Coroner's Service which includes a section dealing with disclosure of information retrieved from electronic devices. The policy in my view does not provide the "clear guidance on the steps a coroner can and should take to disclose documents obtained during an investigation to the deceased individual's family or personal representative..." as the Ombudsperson thought was necessary.

That concludes my first quarterly report which I understand the government will make public once satisfied that its public release is consistent with government's privacy obligations.

Yours very truly,



Thomas A. Cromwell
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