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18-25

**Special Prosecutor issues Clear Statement re:
*Draft Multicultural Strategic Outreach Plan***

Victoria – The BC Prosecution Service announced today that Special Prosecutor David Butcher QC has issued a Clear Statement addressing his involvement in the investigation and prosecution of individuals following the receipt by the RCMP of a complaint arising out of the *Review of the Draft Multicultural Strategic Outreach Plan*, a report that was completed in March 2013 by the then Deputy Minister to the Premier. The complaint also alleged *Election Act* irregularities.

The Assistant Deputy Attorney General for the BC Prosecution Service (BCPS) appointed Mr. Butcher as Special Prosecutor on August 29, 2013 under s. 7 of the *Crown Counsel Act* to assist the RCMP with its investigation. The appointment of a Special Prosecutor was intended to avoid any potential for real or perceived improper influence in the administration of justice in light of the nature of the investigation, and the potential involvement of government officials as suspects.

As all related court proceedings have now concluded the Special Prosecutor has determined it to be in the public interest that further information about this matter should be provided to the public, including information about other charges that may have been considered during the course of the RCMP investigation and not approved.

The Clear Statement setting out this information is attached.

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Clear Statement

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CHARGE APPROVAL AND FINAL REPORT RELATING TO THE 2011 BC LIBERAL PARTY LEADERSHIP ELECTION, THE 2012 PORT MOODY BY-ELECTION, AND THE IMPROPER USE OF PUBLIC RESOURCES FOR PARTISAN PURPOSES DURING THE RUN UP TO THE 2013 PROVINCIAL GENERAL ELECTION.

In accordance with Crown policy in cases such as this, I am issuing this Clear Statement respecting my work as Special Prosecutor in this matter.

In August, 2013, I was appointed by the Ministry of Attorney General to act as Special Prosecutor. I was asked to provide assistance to the RCMP during their investigation of allegations contained in a complaint made by Adrian Dix, then the Leader of the Opposition; to review and assess any evidence gathered by the RCMP in that investigation in accordance with the charge approval standard applied by Crown Counsel in this province; and to prosecute any charges that I approved.

The following sets out the background and context of my assessment and a brief summary of my conclusions.

A. BACKGROUND

Gordon Campbell announced his retirement as leader of the BC Liberal Party ("BCLP") and premier of British Columbia on November 3, 2010. That announcement triggered a leadership election within the BCLP, which was contested by three sitting MLA's and a former MLA, Christy Clark. It is important to appreciate that although Ms. Clark became premier of the province upon winning the leadership election, the election itself was an internal process within the BCLP, to which many provisions of the *Election Act*, RSBC 1996, c. 106, did not apply.

A provincial general election was held on May 13, 2013. The BCLP, led by Ms. Clark, won a majority of seats. In the months leading up to the election, a document, described as a draft Multicultural Strategic Outreach Plan ("MSOP") was leaked to the New Democratic Party. That plan involved a proposed coordination of government, government caucus, and BCLP activities designed to recruit voters from ethnic communities in swing ridings for the BCLP. The document was tabled in the Legislature in February 2013. Premier Clark directed the Head of the Public Service, John Dyble, to conduct an investigation into allegations made in the Legislature by John Horgan, an NDP MLA at the time. Mr. Dyble's report found serious

breaches of the Public Service Standards of Conduct by some individuals. His report can be found online at <https://archive.org/details/623634-bc-130314-dyble-report/page/n11>.

Mr. Dix, and his counsel, received information and additional documents from a whistleblower who had not been interviewed by Mr. Dyble's investigative team. The whistleblower had some knowledge about the BCLP leadership election, and significant knowledge about the MSOP. In August, 2013, Mr. Dix made a complaint to the RCMP, in which he asked that an investigation be conducted to determine whether any criminal offences were committed during the BCLP leadership election, and as a result of the carrying out of activities proposed in the MSOP.

It is important to emphasize that Mr. Dix did not, in his complaint, seek a public inquiry, and that neither the RCMP nor I were mandated to conduct any such broad inquiry into the subject matter of the complaint.

B. THE CHARGE APPROVAL PROCESS

The Charge Assessment Guidelines of the BC Prosecution Service establish the criteria to be applied by Crown Counsel in determining whether or not a prosecution should proceed. The two-part test requires prosecutors to "independently, objectively, and fairly measure all the available evidence" in order to determine:

1. whether there is a substantial likelihood of conviction; and if so,
2. whether the public interest requires a prosecution.

The first part of the test requires Crown Counsel to be "satisfied there is a strong and solid case of substance to present to the court". Crown Counsel must consider the likely admissibility and objective reliability of the evidence, and the likelihood of success of any viable defences. The second part of the test requires Crown Counsel to weigh a number of factors in the particular circumstances of each case.

The charge approval process must occur in the context of the fundamental principles of our criminal law: the presumption of innocence and the prosecution's burden of proof beyond a reasonable doubt.

C. THE 2012 BCLP LEADERSHIP ELECTION

The RCMP investigation disclosed the following:

- For the 2012 leadership election, the BCLP used an internet voting system provided by a Nova Scotia company, Intelivote. Personal Identification Numbers (PINs) were sent by post to the residential address of each BCLP member. Each member had a single vote in the election, which was to be placed electronically on a secure website.
- During the election campaign, leadership candidates sought out new party members, with the expectation or hope that those new members would support their candidacy.
- The Intelivote system did not prohibit proxy voting.
- On election day, one BCLP supporter sent two emails to an MLA's office. These emails contained a total of 110 PINs. The MLA's office forwarded those emails to the candidate's campaign team, presumably to be registered as votes for that leadership candidate.

The RCMP did not recommend any *Criminal Code* charges from this part of the investigation. As a result of the circumstances disclosed by the RCMP investigation, I considered whether there was evidence to support an allegation of identity theft or fraud arising out of the use of proxy votes. I concluded that there was not sufficient evidence to prove that the PINs were stolen, and even if they were, that anyone transmitting or using the PINs had knowledge that they were stolen. As a consequence, I declined to approve any charges.

The RCMP did recommend charges under sections 186 and 266 of the *Election Act*. Those provisions then required that individual political contributions, including party memberships, be paid personally, or be clearly reported if paid by a third party, and created an offence of providing false statements. Although some evidence suggested that new membership fees were paid by persons other than the new members, and were not reported as such, that evidence fell far short of the required standard.

The RCMP also recommended one charge of obstruction arising out of the investigation. I did not approve that charge as the evidence fell short of the required standard.

D. THE MULTICULTURAL STRATEGIC OUTREACH PLAN

As noted above, the issue of improper use of government resources for partisan purposes had been publicly aired and reported prior to the Dix complaint. The RCMP investigation of this matter was lengthy and challenging. Many senior civil servants were interviewed. Some people involved in the MSOP were fully cooperative. Several key witnesses never provided statements to police.

In an effort to secure all relevant emails, the police served production orders in Canada and obtained Mutual Legal Assistance orders to gather evidence stored on Gmail servers in California. Some email accounts were empty when searched. The RCMP recommended, and I approved, a charge of breach of trust against Brian Bonney, who at all material times was both a member of the BCLP executive and a government communications officer. Mr. Bonney ultimately pleaded guilty to that offence, and on January 31, 2018, the Honourable Judge St. Pierre imposed a nine-month conditional sentence on Mr. Bonney.

The leading Supreme Court of Canada case on breach of trust is *R. v. Boulanger*, 2006 SCC 32. There, the Court made it clear that the offence requires proof of conduct sufficiently serious to cross the line from administrative fault to criminal conduct. It must be “conduct so far below acceptable standards as to amount to an abuse of the public’s trust in the office holder” (at para. 52). The public official’s conduct must be a marked departure from the standards expected of an individual in the accused’s position of public trust. The mental element required is not met by mistakes or errors of judgment. It is necessary to prove a corrupt, dishonest, partial, or oppressive purpose (at paras. 56-58).

On October 12, 2017, Bonney pleaded guilty to the offence of breach of trust. Among the facts alleged by the Crown, and not contested by the defence, during the sentencing proceeding were the following:

- A member of the Premier’s staff called a meeting on December 1, 2011; it was attended by staffers from the Premier’s office, government caucus, BCLP, and Bonney, who by then was a government employee.
- Following the meeting, a number of drafts of the MSOP were prepared. The drafts clearly set out a plan to woo ethnic voters. The plan included a coordinated media strategy, community engagement, and “Quick Wins” announcements (in which government could quickly and easily seek to please ethnic communities by, for example, offering apologies for historic wrongs).

- Although several witnesses asserted that the plan was never carried out, the evidence gathered by the RCMP established that certain parts of it were executed.
- A key point of the MSOP was to hire Community Liaisons to work directly with targeted community groups. Three were hired; two were employed by the government caucus, and the third was paid by a numbered company, and later by caucus. The numbered company (0750837 BC Ltd.) was controlled by Bonney and a colleague in the BCLP.
- The third Community Liaison was required to keep their contract private. They were not to tell anyone about it other than their accountant, and were never to say that they worked for a government Minister, MLA, or a political party. Their business card described their position as "Honourary Community Liaison" for an MLA.
- The numbered company's contract payments to the third Community Liaison were reimbursed by the BCLP.
- The objectives of the Community Liaison program were set out in a number of documents. The goal was clear: to target ethnic voters in the swing ridings in which BC elections are won and lost.
- From his government office and using government time over a nine-month period, Bonney directed and supervised the three Community Liaisons, who were engaged in partisan work such as participating in call-in radio shows, writing letters to the editor, and arranging meetings between community groups and politicians.
- On May 3, 2012, Treasury Board approved additional funding for \$750,000 to be paid in community grants, and \$100,000 to pay for four Community Liaison workers to work inside the Multiculturalism Branch. Bonney and a political assistant helped prepare applications for three of the successful candidates for these positions.
- Bonney began to supervise and direct these four individuals even though their contracts had not been, and never were, approved by the government. There was no apparent distinction between the directions given by Bonney to the four contractors and those given to the caucus employees. Bonney knew that his involvement was inappropriate. On September 7, 2012, he sent the group an email saying, "(Remember, you still don't know me!!!☺) Soon, we will have all this sorted out and we will be introduced and can talk normally!". On September 17, 2012, he sent an email saying "Remember, focus now is on largest most important events With best potential outcome – groups MOST likely to want to support us (BC Liberals)".

On January 31, 2018, the Honourable Judge David St. Pierre of the Provincial Court of British Columbia sentenced Bonney to a nine-month jail sentence to be served in the community. In his reasons for sentence, *R. v. Bonney*, 2018 BCPC 12, Judge St. Pierre said:

[82] Mr. Bonney's personal circumstances and his lack of any history relating to wrongdoing of this kind must be recognized.

[83] All of that, of course, plays against the insidious damage caused by offences such as these.

[84] Those cynics who disbelieve that government actually works for the benefit of the people and not themselves are richly rewarded when this type of story emerges. Their ranks increase. That is a serious problem for society. All citizens have the right to trust that our public servants are working for all of us and not just for those who check off the "right" box on a ballot.

...

[88] Is it mitigating that Mr. Bonney did not go along with this scheme that was developed by people up the chain of command for financial benefit, but did so only for political benefit? I suppose the answer to that lies in how much importance you place on the idea of a level and fair playing field when it comes to the democratic process.

[89] I find that the misuse of government power or resources for other purposes, such as the gaining an unfair advantage on political opponents is properly characterized as a kind of political corruption.

[90] That being said I recognize the position that Mr. Bonney was in. He was not the architect of the scheme being implemented. He has admitted, however, to going well beyond what he was entitled to do while he was working as a public servant. He did so knowing that it was wrong.

E. THE PORT MOODY BY-ELECTION

Mr. Dix did not specifically complain about irregularities in the conduct of the 2012 Port Moody by-election. The RCMP learned during the investigation that:

- The third Community Liaison was directed to assist in campaigning for Dennis Marsden, the BCLP candidate in the April 19, 2012 Port Moody by-election.

- The Liaison's work on the campaign constituted a political contribution within the meaning of section 180 of the *Election Act* and was not reported as required to Marsden's financial agent.
- There was no evidence that Marsden or his financial agent had any knowledge of this breach of the *Election Act*.

As a result, Bonney, his colleague, and the numbered company were charged on September 8, 2014, with three alternate offences under the *Election Act*. On May 13, 2016, 0750837 BC Ltd. entered a guilty plea. A fine of \$5,000.00 was imposed by the Honourable Judge St. Pierre.

This clear statement concludes my work as Special Prosecutor on these matters.