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Special Prosecutor concludes involvement in BC *Election Act* investigation

Victoria - The BC Prosecution Service (BCPS) confirmed today that Special Prosecutor David Butcher QC has concluded his involvement in the investigation conducted by the RCMP into allegations of indirect political contributions and other potential contraventions of the BC *Election Act*.

Assistant Deputy Attorney General Peter Juk QC, appointed Mr. Butcher as Special Prosecutor in the matter on March 30, 2017. The media statement announcing his appointment is included here:

www2.gov.bc.ca/assets/gov/law-crime-and-justice/criminal-justice/prosecution-service/media-statements/2017/17-05-sp-election-act.pdf

Mr. Butcher was given a mandate to offer such legal advice to the police as may be necessary and to conduct an independent assessment of any RCC that may be submitted. After a lengthy investigation involving several interim reports, the RCMP provided a "Concluding Report" summarizing the investigation to Mr. Butcher. No Report to Crown Counsel (RCC) for consideration of charges was submitted.

After reviewing the "Concluding Report", Mr. Butcher determined that there is no further action to take with respect to the matter. Mr. Butcher prepared the attached [Clear Statement](#) outlining the results of the investigation and his conclusions.

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Clear Statement

In early March, 2017, the Globe and Mail, and other newspapers, ran a series of articles about donations to political parties in British Columbia. The media criticism had two central themes: first, that British Columbia was out of step with most other jurisdictions in Canada that restricted who, and how much, could be donated, and in many cases banned corporate and union donations; and secondly, the criticism alleged that: *"B.C.'s fundraising rules are absurdly loose and weak. Only a complete reform will erase the impression that government is for sale to the highest bidders."*

Public interest groups made similar complaints as the articles were being published.

On March 8, 2017, the BC Chief Electoral Officer asked the RCMP to investigate the allegations. He said that the scope of the investigation would exceed the capacity of his office, and his office wished to appear neutral in the period before the general election, then scheduled for May 9, 2017.

I was appointed Special Prosecutor on March 29, 2017.

In British Columbia, the roles of the police and Crown Counsel are well defined. The obligation of the police is to independently investigate allegations of criminal activity. If the police conclude that there are grounds to believe a crime was committed, they are obligated to forward a Report to Crown Counsel recommending charges. Crown Counsel receive those reports and conduct charge approval assessments. The charge approval policy [\(CHA 1\)](#) requires Crown Counsel to be satisfied that there is a substantial likelihood of conviction and that it is in the public interest to proceed with prosecution.

The RCMP did not deliver a Report to Crown Counsel in this case. Rather, they provided a series of updates and a Concluding Report, which was delivered in August 2019. Those reports attached a large number of documents obtained during the investigation. The concluding report contained this comment in the Executive Summary:

The RCMP believes that there is no substantial likelihood of conviction for any of the violations of the Election Act that were examined during the course of this investigation. Furthermore, where violations have occurred the RCMP has determined that is not in the public interest to pursue a prosecution, as the cost of doing so would be disproportionate to the value of the donations under investigation.

A review of the background and the RCMP investigative conclusions is warranted.

Operating political parties and running election campaigns is expensive. All parties in all democracies need money to fund campaigns and support candidates. Most western democracies recognize that the fundraising process creates opportunities for those who might wish to purchase

influence with a political party. Most have, therefore, introduced statutory schemes to manage or eliminate the risk of influence-peddling. The two primary methods used are to either impose strict limits and reporting requirements on donations, or to provide direct government funding to political parties. At least in recent times, British Columbia has adopted the regulatory approach. Until late 2017, BC had some of the least restrictive rules in the western world.

Briefly, Part 10 of the *Election Act*, R.S.B.C. 1996, c. 106, prior to the 2017 amendments:

- (a) required all parties and candidates to appoint financial agents, who were responsible for receiving, recording, and reporting financial contributions;
- (b) defined a contribution as a donation of money or in kind;
- (c) required donors to provide financial agents with clear identification of the true donor, if a donation was made on behalf of another (usually a corporate entity);
- (d) prohibited making indirect donations by giving money or services of another;
- (e) prohibited charitable organizations from giving donations;
- (f) created offences for breach of these rules; and
- (g) imposed no financial limits on the amount of donations.

The key investigative findings reported by the RCMP were that:

- Between 2013 and 2017:
 - the BC Liberal Party (BCLP) received 36,069 donations totalling \$44,965,255 from 11,963 donors.
 - the BC NDP received 123,288 donations totalling \$19,177,120 from 10,285 donors.
 - the largest donors to the BCLP were large corporations, mainly involved in the mining, lumber, and property development industries.
 - the largest donors to the BC NDP were large unions.
 - Many of the large corporations who donated to the BCLP also donated to the BC NDP, but in much smaller amounts.
 - Donations by registered lobbyists accounted for approximately 2% of the amount donated. Large law firms were prominent in the list.

The synopsis of the final report concluded that:

The initial review of information provided by Elections BC as well as whistle-blowers and independent media suggested that the scope of the problem was both significant and systemic. However, upon more detailed analysis there was no information found to support the broad allegations made in the media; both statistical and individual analysis of the donation data failed to identify a significant volume or pattern of donations.

The RCMP conducted an analysis of the lobbyists and corporations named in the media reports. They noted that:

- many of the lobbyists identified in the reports quickly filed corrections with Elections BC, confirming that donations made by corporations or union employees were in fact made by their employees.
- donations improperly reported by employees were often a fraction of the total donated by the employers.
- in most cases, there was no confusion about who the real donors were, particularly for the employees of large corporations who donated in their own name.
- the employees interviewed by the police expressed a lack of knowledge of the provisions ss. 186 and 187, and explained, reasonably, that the breaches of the *Act* were inadvertent.
- Evidence of criminality was difficult to gather because there were structural flaws in regulatory accounting systems.

I have spent considerable time reviewing the data gathered by the RCMP and have determined that the conclusion of the police is correct: that there is insufficient evidence available to meet the charge approval standard in this case.

The 2017 media report contained two allegations. The first was that the absence of contribution limits made it very easy for corporations and lobbyists to attempt or appear to attempt to purchase influence with the government. The second was that the rules were being circumvented by lobbyists and others to hide the true source of the donations. The first issue arose from the legislation and not the commission of an offence. The RCMP found no or insufficient evidence to support any charges relating to the second component. Accordingly, I have concluded that there is no prospect of any conviction in this case.

The *Election Amendment Act, 2017*, S.B.C. 2017, c. 20 (in force November 30, 2017) introduced significant changes to Part 10 of the *Act*, which appear to have cured the difficulties reported by the media. Section 186 has been substantially rewritten. Only “eligible individuals” (citizens or permanent residents who are residents of BC) can make donations, with s. 186.01 capping “eligible individual” contributions to a party, candidate, or constituency association at \$1,200 per year (newly adjusted by inflation for 2020 at \$1,253.15). Organizations (incorporated or unincorporated) are prohibited from making contributions. Section 220.04 creates administrative penalties of up to twice the amount of a prohibited contribution upon the person making the contribution.

These amendments should squarely address the concerns expressed by the media and the complainants in this case.