

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE ATTORNEY GENERAL OF ALBERTA**

**-AND-**

**THE CHIEF JUSTICE OF THE COURT OF QUEEN'S BENCH OF ALBERTA**

**1. PREAMBLE**

- 1.1. The Attorney General of Alberta (the Attorney General) and the Chief Justice of the Court of Queen's Bench of Alberta (the Chief Justice) acknowledge their respective responsibility for the administration of justice in the Province of Alberta, with each playing a vital role in the administration of the Court of Queen's Bench.
- 1.2. The Attorney General and the Chief Justice are committed to developing and maintaining an innovative, responsive and accessible justice system in the Province of Alberta that delivers timely and impartial justice.
- 1.3. The Chief Justice recognises that the Attorney General is accountable to the Legislative Assembly of Alberta for the expenditure of public resources required for the administration of justice and, in particular, those resources that are used to operate the Court of Queen's Bench.
- 1.4. The Attorney General recognises that the Chief Justice is responsible for efficient and effective Judicial Administration and that the Court of Queen's Bench must be given sufficient resources to allow it to carry out its functions under the Constitution Act, 1867 (U.K.), 30 & 31 Vict, c. 3, reprinted in R.S.C. 1985 App. II, No. 5, and its Empowering Legislation.
- 1.5. The Attorney General recognises that the judiciary is an independent branch of government and that the constitutional principle of Judicial Independence must be respected to maintain the rule of law and to ensure public confidence in the administration of justice.
- 1.6. The Attorney General and the Chief Justice recognise that Court Administration should be pursued collaboratively to ensure that resources are used as efficiently and effectively as possible.

## 2. PURPOSE

- 2.1. The purpose of this Memorandum of Understanding is to set out the principles that will guide the relationship between the Court of Queen's Bench and the Ministry of Justice and Solicitor General of Alberta.
- 2.2. This Memorandum of Understanding does not create, purport to create, or detract from any law or legal rights or responsibilities that exist or may exist in the future between the Attorney General and the Chief Justice.
- 2.3. This Memorandum of Understanding is not intended as a justiciable document.

## 3. DEFINITIONS

- 3.1. **"Attorney General"** means the Attorney General of Alberta.
- 3.2. **"Assistant Deputy Minister (CS)"** means the Assistant Deputy Minister of the Corporate Services Division in the Department of Justice and Solicitor General of Alberta.
- 3.3. **"Assistant Deputy Minister (RCAS)"** means the Assistant Deputy Minister of the Resolution and Court Administration Services Division ("RCAS") in the Department of Justice and Solicitor General of Alberta.
- 3.4. **"Business Intelligence"** means the collection, storage, disclosure or use of data, to study or influence the productivity or effectiveness of a process and includes strategic planning, analytics, performance measurement, and performance planning.
- 3.5. **"Case"** means any matter initiated in the Court.
- 3.6. **"Chief Justice"** means the Chief Justice of The Court of Queen's Bench of Alberta.
- 3.7. **"Court"** means The Court of Queen's Bench of Alberta and includes the Justices, Masters and Judicial Staff.
- 3.8. **"Court Administration"** means the management and direction of matters necessary for the operation of the Courts, Resolution Services, or other matters assigned to the Attorney General by law. Court Administration specifically excludes Judicial Administration.
- 3.9. **"Court Administration Record"** includes administrative policies and procedures of RCAS and, regardless of the medium in which it is created or stored, information specifically gathered or created for the purposes of managing those policies and procedures, including personnel and financial information that is in the custody or control of RCAS. It does not include a Court Record or Judicial Administration Record.

- 3.10. **“Court Administration Staff”** means all employees appointed under the Public Service Act, RSA 2000, c. P-42, who provide services to the Court, but does not include Judicial Staff.
- 3.11. **“Court Budget”** means the operating budget that is allocated to the Court of Queen’s Bench by the Department annually.
- 3.12. **“Court Information”** means the Court Record, docket system and any other document or information, regardless of the medium in which it is created or stored, that is collected, received, maintained or otherwise handled by the Court in connection with a Case, but does not include a Court Administration Record or Judicial Information.
- 3.13. **“Court Record”** means the part of the Court Information which contains the permanent record of a matter initiated in the Court and which, barring specific exclusions by statute or court order, is available to the public.
- 3.14. **“Department”** means the Department of Justice and Solicitor General of Alberta.
- 3.15. **“Deputy Minister”** means the Deputy Minister of Justice and Deputy Attorney General of Alberta.
- 3.16. **“Empowering Legislation”** means, as applicable, the *Court of Queen’s Bench Act*, RSA 2000, c C-31, the *Judicature Act* RSA 2000, c J-2 or any other act or regulation of the Legislative Assembly of Alberta or Parliament of Canada that enables the Court to exercise its powers or grants jurisdiction to the Court.
- 3.17. **“Information System”** means applications, information technology services and assets, or other information handling components.
- 3.18. **“Judicial Administration”** means the management and direction of matters related to judicial functions in the Court and includes, the scheduling and adjudication of proceedings in the Court, and all other matters undertaken by the judiciary as assigned by law or set out in this Memorandum of Understanding. Judicial Administration specifically excludes Court Administration.
- 3.19. **“Judicial Administration Record”** means administrative information relating to a Judicial Officer, regardless of the medium in which it is created or stored, including:
- a. the scheduling of Judicial Officers and trials;
  - b. professional development information;
  - c. personnel and financial information;

- d. staff meeting materials other than those that are Court Administration Records;
  - e. complaints or other sensitive information directed to or concerning a Judicial Officer;
  - f. aggregated, non-identifying statistical information concerning a Judicial Officer; and
  - g. any record relating to support services provided to a Judicial Officer, but does not include Court Information or a Court Administration Record.
- 3.20. **“Judicial Independence”** includes the judicial independence of an individual Justice or Master and/or the administrative and institutional independence of the Court.
- 3.21. **“Judicial Information”** means information created, stored, accessed, produced or used by or for a Judicial Officer regardless of the medium in which it is created, stored, and wherever it is collected, received, maintained or otherwise handled, including:
- a. pre- and post-hearing work, research memos, hearing and other notes;
  - b. rulings, endorsements, orders, judgments or reasons for judgment, that are in draft form;
  - c. individual calendar notations;
  - d. Personally Identifiable Information;
  - e. Judicial Administration Records;
  - f. information and procedures concerning internal operations;
  - g. statistical information concerning a Judicial Officer’s individual Court-related activity or workload;
  - h. information from judicial meetings, including agendas, supporting documentation, minutes, notes, information about attendees, transcripts and recording and reports of the meeting;
  - i. correspondence or communications to or from a user dealing with the above categories;
  - j. metadata associated with any of the above information; but does not include Court Information or Court Administration Records.
- 3.22. **“Judicial Officer”** means the Justices and Masters of the Court.
- 3.23. **“Judicial Staff”** means all employees appointed under the Public Service Act, RSA 2000, c. P-42, whose function relates to Judicial Administration of the Court. It specifically excludes Court Administration Staff.
- 3.24. **“Office of the Chief Justice”** means the Associate Chief Justice; the Executive Director and General Counsel; Executive Counsel and Directors; the Executive

Legal Officer and Director of Communications; and the Director of Judicial Scheduling and Court Coordination.

- 3.25. **“Personally Identifiable Information (PII)”** means any information that can be used to identify the PII Principal to whom such information relates, or is or might be directly or indirectly linked to a PII Principal.
- 3.26. **“PII Principal”** means a natural person to whom the Personally Identifiable Information relates.
- 3.27. **“Resolution Services”** includes mediation, education and information programs and initiatives available through RCAS to assist Albertans with their legal issues and disputes.

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

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

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

##### **4.2. Court of Queen’s Bench Act**

- 4.2.1. Section 2 of the *Court of Queen’s Bench Act*, RSA 2000, c. C-31, provides for the continuation of the Court as a superior court of civil and criminal jurisdiction.
- 4.2.2. Section 17 of the *Court of Queen’s Bench Act* provides for the appointment of all officers and employees required for the business of the Court.

4.2.3. Section 19 of the *Court of Queen's Bench Act* provides for sheriffs, civil enforcement bailiffs, jailers and peace officers, to assist judges in the exercise of the jurisdiction of the Court.

4.3. ***Government Organization Act, Schedule 9, Judicial Administration***

4.3.1. Section 2, *Schedule 9*, of the *Government Organization Act*, RSA 2000, c. G-10, provides that the Attorney General superintends over all matters relating to the administration of justice in Alberta within the jurisdiction of the Legislature or the Government of Alberta and shall exercise the powers and is charged with the duties attached to the offices of the Attorney General of England by law or usage.

4.4. ***Judicature Act***

4.4.1. Subsection 50(1) of the *Judicature Act*, RSA 2000, c. J-2, provides for the appointment of persons by the Attorney General to provide security in a courthouse.

5. **ADMINISTRATION OF THE COURTS OF ALBERTA**

5.1. **The Role of the Chief Justice**

5.1.1. The Chief Justice has sole responsibility to manage and direct Judicial Administration in the Court, including the following specific areas:

5.1.1.1. the management of Justices and Masters;

5.1.1.2. the scheduling and assignment of Justices and Masters, as well as managing court sittings and courtrooms;

5.1.1.3. management of Judicial Staff, in accordance with the provisions of the *Public Service Act*, the *Financial Administration Act*, RSA 2000, c. F-12, and any other law and public service policy respecting the employment of persons in the public service of Alberta or relating to the expenditure of public funds;

5.1.1.4. the direction of Court Administration Staff when carrying out functions related to Judicial Administration.

5.1.1.5. the direction of Sheriffs when carrying out functions related to Judicial Administration;

5.1.1.6. the development of a proposed budget for the Court and the administration of, and reporting on the approved Court Budget, including the approval of expenditures by the Court, a Justice, a Master or a member of the Judicial Staff.

- 5.1.1.7. the supervision and control of Court Information and Judicial Information;
- 5.1.1.8. the supervision of, and modifications to, court scheduling systems;
- 5.1.1.9. the supervision over the use of Court facilities, specifically courtrooms, and other facilities when those uses relate to Judicial Administration or have the potential to affect the dignity, decorum and reputation of the Court;
- 5.1.1.10. the issuance of practice directives and other notices governing matters of practice and procedure, decorum, and matters relating to Judicial Administration;
- 5.1.1.11. the design and implementation of public and media relations strategies, including public education initiatives that relate to Judicial Administration;
- 5.1.1.12. the design implementation, and reporting to the public of Business Intelligence relating to Judicial Administration;
- 5.1.1.13. other matters assigned to the judiciary by law.

## **5.2. Executive Director and General Counsel**

- 5.2.1. The financial and administrative responsibilities of the Court are exercised through a public service position known as the Executive Director and General Counsel, Office of the Chief Justice, who takes direction from the Chief Justice and through whom all Judicial Staff report.
- 5.2.2. The Executive Director and General Counsel is accountable to the executive branch of government through the Assistant Deputy Minister (RCAS) to ensure compliance with public service legislation, regulations and policies.

## **5.3. The Role of the Attorney General**

- 5.3.1. The Attorney General has sole responsibility to manage and direct Court Administration in the Court, including the following specific areas:
  - 5.3.1.1. the provision and administration of Court registries;
  - 5.3.1.2. the provision and administration of Resolution Services;

- 5.3.1.3. the provision of financial, audit and other administrative and corporate support services to the Office of the Chief Justice, in accordance with government policy;
- 5.3.1.4. the provision of human resource services, including benefits administration, advice and consultation regarding classification, recruitment and employee relations matters for Judicial Staff;
- 5.3.1.5. the provision of resources for Information Systems and information support services, including repair and replacement of hardware and software when appropriate, in consultation with the Chief Justice;
- 5.3.1.6. the provision of resources for judicial libraries and research services in consultation with the Chief Justice;
- 5.3.1.7. the provision of security services, threat assessment services and emergency planning and services in collaboration with the Court on matters regarding the administration of justice;
- 5.3.1.8. supervision, direction, hiring, management, reclassification, and termination of Court Administration Staff and Sheriffs in accordance with the Judicial Security Officer Memorandum of Understanding
- 5.3.1.9. Subject to subsection 8.1.2 of this Memorandum of Understanding, the management and storage, including the archiving of Court Information and those Judicial Administration Records that the Chief Justice requests the Attorney General to manage, store and/or archive;
- 5.3.1.10. the design and implementation of public and media relations strategies relating to Court Administration;
- 5.3.1.11. the provision of statistical information and services;
- 5.3.1.12. the design, implementation, and reporting to the public of Business Intelligence relating to Court Administration; and
- 5.3.1.13. other matters assigned to the Attorney General by law.

## **6. COLLABORATION AND CONSULTATION**

### **6.1. General Acknowledgement**



- 6.1.1. Given the division of roles and responsibilities described in section 5 of this Memorandum of Understanding, the Chief Justice and the Attorney General agree that collaboration and consultation on matters of Judicial Administration and Court Administration are necessary to develop and maintain an innovative, responsive and accessible justice system.
- 6.1.2. The Chief Justice acknowledges that the Attorney General, Deputy Minister and/or Assistant Deputy Minister (RCAS) will be consulted in a timely, transparent, and accountable way on any programs and initiatives developed by the Office of the Chief Justice that may affect, or on any issues that may impact Court Administration, subject to any confidentiality and privilege obligations to which the Chief Justice may be subject.
- 6.1.3. The Attorney General acknowledges that the Office of the Chief Justice will be consulted in a timely, transparent, and accountable way on any programs or initiatives developed by the Attorney General that may affect, or on any issues that may impact Judicial Administration and on any legislation proposed by the Attorney General that impacts the Court's procedure and workload, subject to Cabinet Confidentiality.

**6.2. Provision of Resources**

- 6.2.1. The Attorney General acknowledges responsibility to provide sufficient resources to the Court to allow it to carry out its functions under the *Constitution Act, 1867* and its' Empowering Legislation.
- 6.2.2. The Attorney General and the Chief Justice acknowledge that public funds must be used efficiently and effectively to fund the operation of the Court.
- 6.2.3. The Attorney General and the Chief Justice acknowledge that the preservation of an independent and impartial Court system is a priority in the allocation of public funds.
- 6.2.4. As part of the Attorney General's commitment to provide resources to the Court, the Chief Justice and the Attorney General agree to collaborate and to meet directly with one another, as appropriate and at minimum, semi-annually, on the resource needs of the Court. In an effort to promote efficient discussions and ensure that all parties are sufficiently briefed, information will be exchanged between the Office of the Chief Justice and the Attorney General, Deputy Minister and/or the Assistant Deputy Minister (RCAS) a reasonable period of time prior to the meetings. Without limiting the range of potential agenda items, particular regard will be given to the following topics:

- 6.2.4.1. the general workload of the Court and adjustments to the complement of the Court;
  - 6.2.4.2. changes to the law, both federal and provincial, including to Empowering Legislation, that may affect the workload of the Court;
  - 6.2.4.3. changes to the demographics of Alberta, including population growth and composition, that may affect the workload of the Court;
  - 6.2.4.4. access to the Court, including geographic, temporal, and physical;
  - 6.2.4.5. the use of Information Systems and the modernisation of Court facilities, Court operations, Court Administration and Judicial Administration operations;
  - 6.2.4.6. the needs of the Court, including those with respect to budgeting, business planning, organizational planning, and personnel; and
  - 6.2.4.7. any further issues that are identified by the Attorney General or the Chief Justice and added to a jointly created agenda.
- 6.2.5. When the Attorney General is proposing a change in resources related to Court Administration, the Attorney General will consult with the Chief Justice prior to implementing or proceeding with a proposal.
- 6.2.6. The Chief Justice recognises that, for meaningful decisions to be made about providing sufficient resources to the Court, information concerning the resource needs of the Court and Judicial Administration must be provided to the Attorney General.
- 6.2.7. When the issue of judicial complement is to be addressed by the Attorney General, the Chief Justice agrees to deliver information to the Attorney General concerning the workload of the Court, trends in that workload, and the capacity of the existing judicial complement in the Court to address that workload.

### 6.3. **Budgeting**

- 6.3.1. Every year, the Office of the Chief Justice shall prepare a proposed Court Budget for the following fiscal year.

- 6.3.2. The proposed Court Budget shall be submitted to the Deputy Minister in sufficient time to be reviewed and discussed between the Chief Justice and the Deputy Minister to determine the Department's overall budget submission to Treasury Board.
- 6.3.3. The Attorney General and the Chief Justice agree that no changes to the Court Budget for the following year or the budget for the grants to the Association of Masters in Chambers shall be made without reasonable consultation with the Office of the Chief Justice before the Department's final budget submission to Treasury Board.
- 6.3.4. The Attorney General and the Chief Justice agree that no in-year changes to the current Court Budget will be made without reasonable consultation with the Chief Justice.
- 6.3.5. The Attorney General will ensure that the recommendations of any Judicial Compensation Commission that are accepted or become binding pursuant to any *Provincial Judges and Masters in Chambers Compensation Commission Regulation* or equivalent are funded.
- 6.3.6. Subject to any agreement between the Attorney General and the Chief Justice at the beginning of any budget year with respect to the provision of funding for all Master and Judicial Staff positions, all Master and Judicial Staff positions will be fully funded in the Court Budget.

**6.4. Facilities**

- 6.4.1. Where new courthouse facilities or significant alterations to existing facilities impacting the operations, decorum or reputation of the Court are being considered, at an early stage and before any undertaking or public commitment is made respecting a proposed project, the Attorney General shall provide timely notice and a description of the proposed project to, and consult with, the Chief Justice.

6.4.2. As part of that consultation process, the Attorney General and the Chief Justice recognise that the following factors shall be considered: architectural and building standards, the dignity and reputation of the Court, the impact on the operations of the Court, the importance of the rule of law, the open court principle, access to justice, Judicial Independence, the need to modernise the Court, and the effective and efficient use of public resources.

## **7. SECURITY OF INFORMATION SYSTEMS**

- 7.1. The Attorney General and the Chief Justice acknowledge that the judiciary is responsible for policy for the security of Court Information and Judicial Information and acknowledge the need to maintain Information Systems with comprehensive security and privacy specifications for Court Information and Judicial Information, which, in respect of Judicial Information, are in compliance with the principles outlined in the Canadian Judicial Council's Blueprint for the Security of Judicial Information as published from time to time.
- 7.2. The Attorney General and the Chief Justice acknowledge that Judicial Information and Court Information must be safeguarded regardless of the organization that administers the Information System containing the Judicial Information and the Court Information, including Corporate Services Division, RCAS, or a commercial entity.

## **8. ACCESS TO COURT INFORMATION AND JUDICIAL INFORMATION**

### **8.1. Access to and Use of Information**

- 8.1.1. As outlined in Part 5 of this Memorandum of Understanding, there is a shared responsibility for Court Information.
- 8.1.2. The Chief Justice is responsible for developing or approving policies for managing, auditing, and accessing Court Information and Judicial Information and the Assistant Deputy Minister (RCAS) and the Assistant Deputy Minister (CS) are responsible for ensuring that their respective divisions' practices and procedures conform to the policies developed or approved by the Chief Justice.
- 8.1.3. Access to Court Administration Records is governed principally by the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c. F-25.

## **8.2. Combining of Information**

- 8.2.1. When Court Information or Judicial Information form part of Court Administration Records, the Attorney General must obtain authorization from the Chief Justice for the use or disclosure of that information.
- 8.2.2. At the request of the Attorney General, the Chief Justice may prepare a schedule of certain types or categories of Court Information and Judicial Information granting permission for specified use or disclosure as a matter of course or on terms and conditions set by the Chief Justice.

## **9. BUSINESS INTELLIGENCE**

- 9.1. The Attorney General and the Chief Justice will jointly agree on policies on the collection of statistics and the use of Business Intelligence from Court Information, Court Administration Records or a combination thereof.
- 9.2. The Chief Justice has the exclusive authority to make policies on the collection of statistics and use of Business Intelligence from Judicial Information.
- 9.3. The Attorney General shall not conduct any Business Intelligence activity that affects, or has the potential to affect Judicial Administration or that impairs, or has the potential to impair, Judicial Independence.

## **10. ANNUAL REPORTS**

- 10.1. The Chief Justice shall cause to be published an annual report prior to September 1 for the Court for the previous year that shall include a report on Judicial Administration.
- 10.2. The publication of annual reports that conform to these requirements shall commence in calendar year 2017.

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

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

11.2.2. is subject to review at any time by the Attorney General or the Chief Justice on receipt of a written request from the other party;

11.2.3. may be terminated by the Attorney General or the Chief Justice at any time on ninety (90) days written notice;

**THIS MEMORANDUM OF UNDERSTANDING effective this 30<sup>th</sup> day of January, 2017.**

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*The Honourable Kathleen Ganley*  
**Attorney General of Alberta**

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*The Honourable Neil Wittmann*  
**Chief Justice of the Court of Queen's Bench of Alberta**