

RE: Deloitte Confidentiality Agreement for Associate Deputy Minister

From: "Hosick, Sarah (TBS)" </o=govon/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=hosick, sarah (tbs)>
To: "Laughton, Patrick (TBS)" <patrick.laughton@ontario.ca>
Date: Fri, 18 Nov 2016 10:49:02 -0500
Attachments: RE: Deloitte Confidentiality Agreement for Associate Deputy Minister (63.49 kB); Access letter _Karen Hughes -signed.pdf (223.35 kB)

Hi Patrick

Legal is ok with the letter as it currently stands. Do you want me to drop off a hard copy for signature?

Thanks
Sarah

From: Laughton, Patrick (TBS)
Sent: November-18-16 10:40 AM
To: Hosick, Sarah (TBS)
Subject: RE: Deloitte Confidentiality Agreement for Associate Deputy Minister

If legal is comfortable I think this should be fine.

I will flag for Karen and confirm whether she has issues.

From: Hosick, Sarah (TBS)
Sent: November-18-16 10:39 AM
To: Laughton, Patrick (TBS)
Subject: FW: Deloitte Confidentiality Agreement for Associate Deputy Minister

Hi Patrick,

Deloitte removed the indemnity piece – legal is taking a look over the attached revised letter. If they are ok with it, we will need Karen to sign before the opinion paper can be released to the panel members.

Any concerns on your end about this?

From: Hosick, Sarah (TBS)
Sent: November-18-16 10:34 AM
To: Kaufman, Paul (TBS); Tam, Nelson (TBS)
Cc: Hatzis, Len (TBS)
Subject: RE: Deloitte Confidentiality Agreement for Associate Deputy Minister

Hi Paul,

Deloitte has agreed to remove the indemnity piece from the access letter – can you please take a look over the revised letter attached and let us know if you have any concerns?

Thanks
Sarah

From: Kaufman, Paul (TBS)
Sent: November-17-16 5:56 PM
To: Tam, Nelson (TBS)
Cc: Hosick, Sarah (TBS); Hatzis, Len (TBS)
Subject: Re: Deloitte Confidentiality Agreement for Associate Deputy Minister

Nelson, there is no FAA issue with the panel member giving Deloitte an indemnity, and the panel has not been indemnified by the province. However, if Deloitte ever seeks to recover under the indemnity the appointee will likely ask the province for corresponding coverage.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Tam, Nelson (TBS)
Sent: Thursday, November 17, 2016 5:36 PM
To: Kaufman, Paul (TBS)
Cc: Hosick, Sarah (TBS); Hatzis, Len (TBS)
Subject: RE: Deloitte Confidentiality Agreement for Associate Deputy Minister

Paul

We can discuss with Deloitte tomorrow if they are willing to remove the clause and whether the four signed panel members is sufficient for now.

Attached is the letter for Patricia which I sent to her for review and she has no issue signing it. Question – Number 5 – has the indemnity wording. Does this have any FAA implications if she is signing the agreement as an individual? Does the AAD, from your knowledge, indemnifies an expert panel member is that member is subject to an indemnity claim?

Basically, if Patricia violates the agreement and has to indemnify Deloitte, does the province have to indemnify Patricia under the AAD? It is not in the Minister's appointment letter.

Thanks

Nelson
X20514

From: Kaufman, Paul (TBS)
Sent: November-17-16 5:21 PM
To: Tam, Nelson (TBS)
Cc: Hosick, Sarah (TBS); Hatzis, Len (TBS)
Subject: RE: Deloitte Confidentiality Agreement for Associate Deputy Minister

Nelson, the indemnity that Deloitte is requesting from the Province under clause (ii) would require approval from the DM of Finance (or Minister of Finance or President of Treasury Board) pursuant to section 28 of the *Financial Administration Act*. This approval would need to be obtained prior to the agreement being signed. Sarah is familiar with the process for getting approvals under section 28 of the FAA – usually a business case and briefings are required.

For what it's worth, the indemnity doesn't seem that reasonable given that we paid Deloitte for the report and now just want to share it with other expert advisors that we've retained (although ultimately I defer to your division on this, and appreciate that you don't have a lot of leverage at this stage). You may want to push back on the indemnity – it may be enough for Deloitte that we agree to not sue them under clause (i) of the letter.

Note also that Deloitte would still want individual agreements from each of the panel members before they get access – its not clear to me whether Deloitte intends to give us a template or expects us to draft this agreement for them - you might want to clarify this with Deloitte.

Happy to discuss.

Paul

Paul Kaufman
Counsel

Ministry of the Attorney General | Legal Services Branch | Treasury Board Secretariat

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From: Tam, Nelson (TBS)
Sent: November-17-16 5:06 PM
To: Hatzis, Len (TBS); Kaufman, Paul (TBS)
Cc: Hosick, Sarah (TBS)
Subject: Deloitte Confidentiality Agreement for Associate Deputy Minister

Len, Paul

Attached is the confidentiality letter that Deloitte wants the Associate Deputy Minister to sign to release the accounting opinion to the panel members. The Associate Deputy Minister was the recipient of the opinion.

Reviewed with Sarah, and we want your thought prior to requesting the Associate Deputy Minister's signature. In particular, the bullet point regarding "indemnity" and requirements under the Financial Accountability Act.

Thanks

Nelson
416-212-0514