

RE: IESO-KPMG indemnity letter

From: "Kaufman, Paul (TBS)" <paul.kaufman@ontario.ca>
To: "Veinot, Cindy (TBS)" <cindy.veinot@ontario.ca>
Cc: "Hosick, Sarah (TBS)" <sarah.hosick@ontario.ca>, "Donaldson, Mark (TBS)" <mark.donaldson@ontario.ca>, "Compagnone, Lisa (TBS)" <lisa.compagnone@ontario.ca>, "Hatzis, Len (TBS)" <len.hatzis@ontario.ca>
Date: Wed, 30 Aug 2017 11:59:40 -0400
Attachments: Draft Indemnity letter EY_TBS LSB.docx (40.18 kB)

Hi Cindy,

I've reviewed and have a few comments:

1. Just for clarity, even though the filename is 'indemnity letter' there is no actual indemnity or obligation to hold KPMG harmless in the letter (which is good).
2. I've proposed a few tracked changes to the letter in the attached. A couple of these are just technical (a minor clarification in the first paragraph, and another in the text above your signature line on the last page). The only substantive change is on page 2 – KPMG's draft would have OPCD agree on behalf of EY that EY won't sue KPMG in connection with EY's reliance on anything in the memo or any answers that KPMG provides to EY. This just isn't possible legally – we can't commit an independent party like EY to these terms.

Since KPMG wants EY to countersign the letter anyway, I've proposed minor amendments whereby EY would agree to these terms directly. I think this is a simple fix that still gives KPMG what they are looking for, but if you or they have any concerns please let me know.

3. The letter provides that the information acquired as a result of the review of KPMG's memo won't be shared with third parties (other than EY) except as required by law. This means that any such information that is reflected in the technical paper that EY produces couldn't be voluntarily disclosed to third parties (e.g. the AG or SCOPA) or made public without KPMG's consent, but we could disclose that information if legally compelled to by those parties. If this works for you then no concerns on our end, but if you want more flexibility we can propose amendments or clarifications.
4. The terms of the letter require us to agree that we won't sue KPMG even if KPMG engages in wilful misconduct or fails to act in good faith in answering questions that EY asks – I doubt we could do much to move KPMG on this point since we aren't paying them for their services, but flagging it as it would be quite unreasonable in a normal commercial relationship.
5. Once you and KPMG are comfortable with the letter, we should ensure EY will also be willing to sign it before you execute it.

Thanks,

Paul

Paul Kaufman
Counsel

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

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From: Veinot, Cindy (TBS)
Sent: August-30-17 9:21 AM
To: Kaufman, Paul (TBS); Hatzis, Len (TBS)
Cc: Hosick, Sarah (TBS); Donaldson, Mark (TBS)
Subject: Fw: IESO-KPMG indemnity letter

Hi Paul and Len,

Could one of you review the attached. We would like to provide access to a memo prepared by KPMG in connection with their audit of IESO to EY who is working with OPCD on documenting our analysis regarding the Fair Hydro Plan.

Thx

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Kim Marshall <Kim.Marshall@ieso.ca>
Sent: Wednesday, August 30, 2017 7:59 AM
To: Veinot, Cindy (TBS)
Subject: FW: IESO-KPMG indemnity letter

I can sign IESO – mirrors language already in our contract with KPMG – what do you think about the other for you and kpmg?

Kimberly Marshall | VP, Corporate Services & CFO
Independent Electricity System Operator (IESO) | T: (416) 969-6232 | C: (416) 545-7202
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From: Picard, Michel [<mailto:mpicard@kpmg.ca>]
Sent: August 29, 2017 4:14 PM
To: Kim Marshall
Cc: Michael Boll
Subject: RE: IESO-KPMG indemnity letter

Kim,

Please find enclosed the draft letters for your review and signature.

Regards,

Michel

From: Picard, Michel
Sent: Tuesday, August 29, 2017 3:40 PM
To: 'Kim Marshall' <Kim.Marshall@ieso.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: RE: IESO-KPMG indemnity letter

Will provide updated letters soon...

From: Kim Marshall [<mailto:Kim.Marshall@ieso.ca>]
Sent: Tuesday, August 29, 2017 11:16 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: Re: IESO-KPMG indemnity letter

Could we use the same letter with a revised first sentence reference to document(s)

Sent from my iPad

On Aug 29, 2017, at 8:44 AM, Picard, Michel <mpicard@kpmg.ca> wrote:

Hi Kim,

It does not. It is a different document.

Michel

From: Kim Marshall [<mailto:Kim.Marshall@ieso.ca>]
Sent: Tuesday, August 29, 2017 7:40 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>
Subject: IESO-KPMG indemnity letter

Michel, attached is the indemnity letter previously signed by IESO and KPMG. We believe this covers the release of the KPMG material to E&Y – agreed thanks

Kimberly Marshall | VP, Corporate Services & CFO
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Corporate Services collaborates with you to deliver solutions and expertise that enable the IESO to achieve its goals.

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From: Picard, Michel [<mailto:mpicard@kpmg.ca>]
Sent: May 18, 2017 9:03 AM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall

Subject: RE: Final letter

All,

Please find enclosed the signed indemnity letter.

Regards,

Michel

From: Bruce Campbell [<mailto:bruce.campbell@ieso.ca>]
Sent: Thursday, May 18, 2017 8:20 AM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>; Bruce Campbell <bruce.campbell@ieso.ca>
Subject: RE: Final letter

Mr. Picard – attached is the signed letter. Can you please fully execute and return a copy to us.

Thank you,
Lorraine Turnevicius
For Bruce Campbell

Lorraine Turnevicius | Executive Assistant

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LinkedIn: [saveONenergy](#)

From: Picard, Michel [<mailto:mpicard@kpmg.ca>]
Sent: May 17, 2017 5:36 PM
To: Bruce Campbell
Cc: Michael Boll; Kim Marshall
Subject: RE: Final letter

Thanks Bruce.

As agreed over the phone, you can release the report to the Ministry on the proviso that you sign tomorrow the EL as provided to you a few minutes ago, a copy of which is attached.

Good evening,

Michel

From: Bruce Campbell [<mailto:bruce.campbell@ieso.ca>]
Sent: Wednesday, May 17, 2017 5:30 PM
To: Picard, Michel <mpicard@kpmg.ca>
Cc: Michael Boll <Michael.Boll@ieso.ca>; Kim Marshall <Kim.Marshall@ieso.ca>
Subject: FW: Final letter

Thank you Michel – as discussed we will be sending the material to the Ministry now – we will get you a signed copy in the morning.

Bruce

Bruce Campbell | President & CEO

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LinkedIn: [saveONenergy](#)

From: Picard, Michel [<mailto:mpicard@kpmg.ca>]

Sent: May 17, 2017 5:15 PM

To: Bruce Campbell

Subject: Final letter

Bruce,

Please find enclosed the final indemnity letter. We have accepted your last suggestion.

Michel Picard, CPA, CA

Partner, Accounting Advisory Services

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- [Disclaimer concerning tax advice](http://taxdisclaimer.kpmg.ca) (<http://taxdisclaimer.kpmg.ca>).

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