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**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
INFORMATION BRIEFING NOTE**

PURPOSE: For INFORMATION for Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE:

Meeting of Federal-Provincial-Territorial Deputy Ministers on the United Nations Declaration on the Rights of Indigenous Peoples on October 8, 2020.

SUMMARY:

- Federal Deputy Ministers have convened an ad-hoc Federal-Provincial-Territorial (FPT) Deputy Ministers (DM's) table to engage in discussions about proposed federal legislation on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- Initial meetings of the table will take place on October 8, 2020 and October 22, 2020. The federal DM's will share information on their proposed legislation and engagement process and will seek input on planning for an FPT Ministerial-level meeting with national Indigenous leaders and other Indigenous representatives.

BACKGROUND:

s.13; s.14; s.16

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s.13 ; s.14 ; s.16

s.13; s.14; s.16

DISCUSSION:

s.13; s.14; s.16

INDIGENOUS PEOPLES CONSIDERATIONS:

- This relates to Canada's commitment to implement UNDRIP and will be of significant interest to Indigenous peoples throughout Canada, including in BC.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Ministry of Indigenous Relations and Reconciliation – Consulted

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Attachment(s):

Attachment 1: s.16
Attachment 2:

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**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE**

PURPOSE: For DECISION of Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE: Delegated authorities for the Maintenance, Enforcement and Locate Services programs in accordance with relevant legislation.

DECISION REQUIRED/ RECOMMENDATION:

Approval for the designation and appointments of Director of Maintenance Enforcement under the *Family Maintenance Enforcement Act*, designated authority for the purposes under the *Interjurisdictional Support Orders Act*, three Search Officers under the *Family Law Act*, and five Case Managers to act for the Attorney General to perform functions under the federal *Divorce Act*.

SUMMARY:

- Maintenance Enforcement and Locate Services (MELS) within the Tribunals, Transformation, and Independent Offices Division (TTIOD), require designation and appointments by the Attorney General under the *Family Maintenance Enforcement Act*, *Interjurisdictional Support Orders Act*, *Family Law Act*, and federal *Divorce Act*.
- The designation and appointments for the Director of Maintenance Enforcement, the designated authority, three Search Officers and five Case Managers authorizes them to exercise powers, duties and functions granted in their positions in accordance with relevant legislation.
- There is authority for the Deputy Attorney General to complete the consultation as caretaker during an election period.

BACKGROUND:

- Background is provided on each of the four Ministerial Orders required.
 1. Director of Maintenance Enforcement Designation
 - In July 2020 Maintenance Enforcement and Locate Services, as an intact unit, became part of the Tribunals, Transformation, and Independent Offices Division under Carmen Zabarauckas.
 - MELS' previous Executive Director is the current Director of Maintenance Enforcement and the Chief Executive Officer of the new BC Family Maintenance Agency.

- The current Director of Maintenance Enforcement's designation will be rescinded upon the designation of a new Director of Maintenance Enforcement, also MELS' new Executive Director.
 - Under the *Family Maintenance Enforcement Act* the Director of Maintenance Enforcement is designated by the Attorney General.
2. Designated Authority Appointment under the *Interjurisdictional Support Orders Act*
- The *Interjurisdictional Support Orders Act* sets out processes to establish, change and enforce child and spousal support orders when parties do not live in the same province, territory or country.
 - MELS' move to TTIOD under a new Executive Director requires a new designated authority for the purposes under the *Interjurisdictional Support Orders Act*.
3. Search Officer Appointment
- Search Officers are appointed under the *Family Law Act*, section 236. Search Officers have the authority to request information concerning location, address, employment, income and assets of individuals in relation to childcare and support issues.
 - Three search officers have been hired by the Ministry of Attorney General for the Locate Services Program. These officers have completed their training and are ready to be appointed under the *Family Law Act* to perform their duties.
4. Case Managers authorization to act for the Attorney General under the federal *Divorce Act*
- Case Managers transmit interjurisdictional child and/or spousal support court applications between British Columbia and other Canadian provinces and territories.
 - s.14
 - Five Case Managers require authorization to perform functions under sections 18 and 19 of the federal *Divorce Act* on behalf of the Attorney General as well as the new Executive Director of MELS.

DISCUSSION:

- See attached proposed Ministerial Orders under *the Family Maintenance Enforcement Act* (Director of Maintenance Enforcement), *Interjurisdictional Support Orders Act* (designated authority), *Family Law Act* (three Search Officers); and, *Divorce Act* (five Case Managers).

INDIGENOUS PEOPLES CONSIDERATIONS:

- No specific issues relevant to Indigenous People's considerations.

OPTIONS:

Option 1 (RECOMMENDED): Support the request for designation and appointments

- Pros:
 - Maintenance Enforcement and Locate Services will have the appropriate designation and appointments allowing leadership and staff to exercise powers, duties and functions granted in their positions in accordance with relevant legislation.
- Cons:
 - Without the designation and appointments, Maintenance Enforcement and Locate Services leadership and staff would not be compliant with the relevant legislation that provides their authority to exercise powers, duties and functions.

Option 2: Do not support the request for designation and appointments.

- Pros:
 - No applicable benefits to option 2.
- Cons
 - Maintenance Enforcement and Locate Service cannot fulfil its mandate to assist children and families in support matters.

OTHER MINISTRIES IMPACTED/CONSULTED:

- No other ministries consulted.

OPTION ____ APPROVED

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

Prepared by:

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Approved by:

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Tribunals, Transformation, and
Independent Offices Division
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Approved by:

Nancy Carter
A/Assistant Deputy Minister
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Attachment(s)

Ministerial Order – Family Maintenance Enforcement Act Designation
Ministerial Order – Family Law Act Authorization
Ministerial Order – Divorce Act Authorization
Ministerial Order – ISOA Appointment

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE ATTORNEY GENERAL

Family Maintenance Enforcement Act

Ministerial Order No.

I, Richard J.M. Fyfe, QC, Deputy Attorney General, on behalf of the Attorney General, order that Carmen Zabarauckas be designated as the Director of Maintenance Enforcement for the purposes of the *Family Maintenance Enforcement Act*. All previous designations of the Director of Maintenance Enforcement are hereby rescinded.

Date

Richard J.M. Fyfe, QC
Deputy Attorney General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Interpretation Act*, RSBC 1996, chapter 238, section 23(1)

Family Maintenance Enforcement Act, RSBC 1996, chapter 127, section 2(1)

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE ATTORNEY GENERAL

Family Law Act

Ministerial Order No.

I, Richard J.M. Fyfe, QC, Deputy Attorney General, on behalf of the Attorney General, order that the following persons be appointed under section 236 of the *Family Law Act* as search officers.

1. Olivia Athaide
2. Joseph Manning
3. Kimberley DeCruze
4. Li Wen (Vivien) Ma

Date

Richard J.M. Fyfe, QC
Deputy Attorney General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Family Act*, section 236

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE ATTORNEY GENERAL

Divorce Act

Ministerial Order No.

I, Richard J.M. Fyfe, QC, Deputy Attorney General, on behalf of the Attorney General, order that the following persons be authorized to act for the Attorney General in the performance of a function under sections 18 and 19 of the *Divorce Act*, R.S.C. 1985, c.3 (2nd Supp.):

1. Christian Lett
2. Erin Kenny
3. Colin Buckton
4. Jasmine Tam
5. Sandra Wolfe
6. Carmen Zabarauckas

All previous authorizations to act for the Attorney General in the performance of a function under sections 18 and 19 of the *Divorce Act* are hereby rescinded.

Date

Richard J.M. Fyfe, QC
Deputy Attorney General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Interpretation Act*, RSBC 1996, chapter 238, section 23(1)

Divorce Act, R.S.C. 1985, c.3 (2nd Supp.), section 18

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE ATTORNEY GENERAL

Interjurisdictional Support Orders Act

Ministerial Order No.

I, Richard J.M. Fyfe, QC, Deputy Attorney General, on behalf of the Attorney General, order that Carmen Zabarauckas be appointed to act as the designated authority for the purposes of the *Interjurisdictional Support Orders Act*. All previous appointments to act as the designated authority are hereby rescinded.

Date

Richard J.M. Fyfe, QC
Deputy Attorney General

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Interpretation Act*, RSBC 1996, chapter 238, section 23(1)

Interjurisdictional Support Orders Act, SBC 2002, chapter 29, section 37(1)

**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
INFORMATION BRIEFING NOTE**

PURPOSE: For INFORMATION for Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE:

The Independent Investigations Office – request from another jurisdiction for assistance from the IIO

SUMMARY:

- The Independent Investigations Office (IIO) received a request from Nova Scotia's equivalent agency, the Serious Incident Response Team (SiRT), to assist with an investigation due to resource challenges within Nova Scotia. The investigation is significant and involves allegations of evidence tampering by the RCMP in a case where a person was wrongfully convicted of murder and imprisoned for 17 years.
- s.14
- The Chief Civilian Director (CCD) of the IIO has indicated his willingness to assist SiRT with the investigation; however, noted that he is seeking formal ministerial approval in order to proceed.
- The Director of SiRT has just advised the CCD that he believes Nova Scotia's Minister of Justice may be planning to announce that the IIO is agreeable to assist but is awaiting formal approval.
- JSB staff have reached out to Nova Scotia officials to request that such a statement not be made given that British Columbia is in interregnum. JSB staff have also notified BC Government Communications staff in the event that Nova Scotia does make a public announcement.

BACKGROUND:

- SiRT has been asked by Nova Scotia's Minister of Justice to conduct a special investigation into the Glen Assoun case, in which Mr. Assoun was wrongfully convicted of murder. The Director of Nova Scotia's SiRT, Felix Cacchione, reached out to the CCD of the IIO, Ronald MacDonald, on September 21st to request the IIO's assistance with the investigation due to current resource challenges in Nova Scotia.
- The Director of SiRT believes that this investigation would benefit from a review conducted by non-police oversight personnel. The IIO has a number of investigators with civilian backgrounds and is well positioned to assist in this regard.

- The CCD of the IIO believes that the IIO has the capacity to assist SiRT and does not anticipate any significant negative impact on the IIO's caseload.
- The BC *Police Act* does not contemplate or explicitly authorize the IIO to provide investigative services to another jurisdiction. In order for the IIO to assist SiRT, the AG must be satisfied that he or she has the legal authority and spending authority to authorize an arrangement between British Columbia and Nova Scotia.
- s.14

DISCUSSION:

- Nova Scotia's *Police Act* authorizes SiRT's Director to enter into agreements with other provinces to conduct investigations on behalf of SiRT.
- Some authorities would, however, need to derive from British Columbia law, including the authority to expend British Columbia public funds, even under reimbursement; information collection; and the authority to bind the British Columbia executive to an agreement.
- s.14
-

INDIGENOUS PEOPLES CONSIDERATIONS:

- N/A

OTHER MINISTRIES IMPACTED/CONSULTED:

- N/A

Prepared by:

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s.13 ; s.14

**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
INFORMATION BRIEFING NOTE**

PURPOSE: For INFORMATION for Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE:

- Meeting of Federal-Provincial-Territorial Deputy Ministers on the United Nations Declaration on the Rights of Indigenous Peoples on October 22, 2020.

SUMMARY:

- Federal Deputy Ministers have convened an ad-hoc Federal-Provincial-Territorial (FPT) Deputy Ministers (DM's) table to engage in discussions about proposed federal legislation on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- A meeting of this table is scheduled for October 22, 2020. Deputy Attorney General, Richard Fyfe, will co-chair the meeting along with federal deputy ministers. The federal DMs will share information on their proposed legislation and engagement process and will seek input on planning for an FPT Ministerial-level meeting with national Indigenous leaders and other Indigenous representatives scheduled for November 12th.

BACKGROUND:

s.13; s.14; s.16

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DISCUSSION:

s.13; s.14; s.16

s.13; s.14; s.16

INDIGENOUS PEOPLES CONSIDERATIONS:

- This relates to Canada's commitment to implement UNDRIP and will be of significant interest to Indigenous peoples throughout Canada, including in BC.

OTHER MINISTRIES IMPACTED/CONSULTED:

- Ministry of Indigenous Relations and Reconciliation – Consulted

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Attachment(s):

Attachment 1: s.13; s.14; s.16
Attachment 2:
Attachment 3:
Attachment 4:

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**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
INFORMATION BRIEFING NOTE**

PURPOSE: For INFORMATION for Richard J.M. Fyfe, QC
Deputy Attorney General

ISSUE:
Status of prompt payment legislative project.

SUMMARY:

- At this time, ministry staff are observing prompt payment legislative development in other jurisdictions.
- Contact has been made with Ontario Dispute Adjudication for Construction Contracts (ODACC), lawyers responsible for Ontario's *Construction Lien Act*, and analysts responsible for the *Federal Prompt Payment for Construction Work Act*.
- Anecdotal reports out of Ontario indicate that response to Ontario's prompt payment legislation has been mixed.
- The Federal government is proposing regulations that will address some of the issues that have been identified in Ontario's adjudication framework. The Federal government is very interested in having provinces adopt its adjudication regime and utilize its adjudication authority in order to achieve economies of scale and promote uniformity.

BACKGROUND:

- Ontario's amended *Construction Lien Act* was brought into force on October 1, 2019. The prompt payment provisions only apply to construction contracts entered into after that time.
- Other provinces and the federal government have enacted prompt payment legislation; however, this legislation is not yet in force:
 - In Nova Scotia, amendments to the *Builders' Lien Act* received Royal Assent on April 12, 2019. When the amendments are brought into force, that Act will be renamed *Builders' Lien and Prompt Payment Act*.
 - Saskatchewan's *Builders' Lien (Prompt Payment) Amendment Act, 2019* received Royal Assent on May 15, 2019.
 - The *Federal Prompt Payment for Construction Work Act* was enacted in June 2019.

• s.16

s.16

- Generally, sub-contractors are in favour of prompt payment legislation, whereas developers are opposed to prompt payment legislation.

DISCUSSION:

On a theoretical basis, it is difficult to argue with the premise that a person or business has the right to be paid within a reasonable amount of time after work has been completed.

However, complexity arises with respect to implementing a fast and inexpensive dispute resolution mechanism to enforce such a right. In the absence of a practical adjudication regime, enacting legislation that gives parties a right to payment within a specified period of time has limited value.

Staff have been unable to find empirical studies in any of the jurisdictions that have implemented prompt payment legislation to determine whether the existence of such legislation has resulted in more timely payments in the construction industry.

Currently, ODACC only receives a handful of disputes a month. The disputes brought to ODACC are being resolved within statutory timelines and for the statutorily established costs. However, there are anecdotal complaints about the training of ODACC adjudicators and the ability to find adjudicators willing to adjudicate lower value (less than \$50,000) disputes. Apparently, the more-skilled adjudicators (particularly lawyers) are unwilling to adjudicate these disputes because of the fixed fee. The adjudicators who do adjudicate the dispute, in addition to being less well trained, apparently are also limiting the number of hours they put into reviewing the adjudication materials; which, in turn, is reflected in the quality of decisions. It has been noted that disputes about payments are not necessarily simple (i.e., it is not merely a matter of calculating the time from when work was finished and determining whether payment was made within the prescribed 30-day period). An adjudicator may also be required to:

- Value the services or materials provided under the disputed contract;
- Determine whether amounts retained under a right of set-off were appropriate;
- Assess whether payment (or non-payment) of a holdback was appropriate; and
- Any other matter that the parties agree to.

In discussions with ODACC, it was agreed that it may take some time to properly assess utilization of the authority to settle payment disputes due to the prompt payment provisions only applying to contracts after October 2019. In addition, COVID-19 may have impacted the utilization of ODACC, due to a lull in construction in the middle of 2020. Finally, both Ministry and ODACC staff have acknowledged that a lack of utilization of ODACC may not indicate that Ontario's legislation is ineffective. Ideally, prompt payment legislation would encourage parties to voluntarily pay within the

prescribed timelines established by the legislation, knowing that a failure to do so would result in being compelled to make the payment anyway. Ministry staff have responded to recent correspondence from sub-contractor groups lobbying for prompt payment legislation asking them to contact their counterparts in Ontario and ask for an assessment of the effectiveness of the Ontario legislation in improving timeliness of payments. It should be noted that recent correspondence from sub-contractor lobby groups has moved away from simply requesting that British Columbia adopt Ontario's legislation without amendment, acknowledging that it may be advisable to refine British Columbia's legislation to address perceived deficiencies with Ontario's model.

Recent discussions with staff from Public Services and Procurement Canada (October 19, 2020) were very productive. Federal staff will be sharing results from recent consultations with industry that asked them to assess the effectiveness of Ontario's legislation and adjudication regime. In addition, Federal staff have offered to allow British Columbia to include specific questions in their upcoming consultation ("Request for Information").

Finally, staff will be providing specific information setting out what they believe the benefits of their dispute resolution framework and adjudication authority will be with the intent of encouraging adoption of the Federal model and usage of the Federal authority.

INDIGENOUS PEOPLES CONSIDERATIONS:

- This initiative will not directly impact indigenous peoples, although they will benefit to the extent that they own or work for sub-contractor companies in the construction industry and will be impacted as developers.

OTHER MINISTRIES IMPACTED:

- The Ministry of Finance has been collaboratively working on the issue of prompt payment with industry representatives through the Deputy Ministers Industry Infrastructure Forum (DMIIF). Industry reps on DMIIF have not lobbied for prompt payment legislation at that table. However, the Minister of Finance has met with others about adopting prompt payment legislation outside of the DMIIF (e.g. Mechanical Contractors of BC).

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**MINISTRY OF ATTORNEY GENERAL
JUSTICE SERVICES BRANCH
DECISION BRIEFING NOTE**

PURPOSE: For DECISION of Richard J. M. Fyfe, QC
Deputy Attorney General

ISSUE: The Independent Investigations Office (IIO) – request from another jurisdiction for assistance from the IIO

DECISION REQUIRED/ RECOMMENDATION:

Option 1 (recommended) – Pursue an OIC after establishment of a new government to enable the Province to enter into an agreement with Nova Scotia (N.S.)

SUMMARY:

- The IIO received a request from N.S.'s equivalent agency, the Serious Incident Response Team (SiRT), to assist with an investigation due to resource challenges within N.S. The investigation is significant and involves allegations of evidence tampering by the RCMP in a case where a person was wrongfully convicted of murder and imprisoned for 17 years.
- N.S.'s *Police Act* authorizes SiRT's Director to enter into agreements with other provinces to conduct investigations on behalf of SiRT.
- Investigatory authority would therefore be provided by N.S. law, not British Columbia (B.C.) law. Some authorities would, however, need to derive from B.C. law, including authority to expend B.C. public funds, even under recovery of the funds from N.S.; information collection; and the authority to bind the B.C. executive to an agreement.
- The media reported on October 15th that the Director of SiRT asked the IIO for assistance with the investigation, citing the need for public perception of complete independence.
- B.C. staff have a meeting with N.S. policy staff, the Director of SiRT, the CCD of the IIO and Legal Services Branch staff on October 27th. N.S. staff and SiRT will be advised that the actual investigative assistance will have to wait until the B.C. Cabinet has been sworn in.

BACKGROUND:

- SiRT has been asked by N.S.'s Minister of Justice to conduct a special investigation into the Glen Assoun case, in which Mr. Assoun was wrongfully convicted of murder. The Director of N.S.'s SiRT, Felix Cacchione, reached out to the Chief Civilian Director (CCD) of the IIO, Ronald MacDonald, on September 21st to request the IIO's assistance with the investigation due to current resource challenges.

- The Director of SiRT believes that this investigation would benefit from a review conducted by non-police oversight personnel. Given that the IIO has a number of investigators with civilian backgrounds, the IIO is well positioned to assist.
- The CCD of the IIO believes that the IIO has the capacity to assist SiRT and does not anticipate any significant negative impact on the IIO's caseload.
- The B.C. *Police Act* does not contemplate or explicitly authorize the IIO to provide investigative services to another jurisdiction. Therefore, the AG must be satisfied that there is legal and spending authority to authorize an agreement between B.C. and N.S.
- The option of one or more IIO Investigators taking leave without pay or being seconded to work as employees or contractors of SiRT was explored and found to be problematic. This option does not provide the flexibility that is required for the IIO to provide services to N.S. in the most effective and efficient manner. The CCD's oversight and expertise is required and a secondment of his services is not feasible. Secondment would also raise information and privacy issues regarding the use of provincial resources (phones, computers etc.). IIO employees would have to obtain their own computer devices and not use the BC government network to conduct investigative work for N.S. There would be possible negative impact on their pensions, annual leave and other matters. IIO Investigators working as temporary employees or contractors of SiRT would require personal legal counsel to ensure their rights under any service provider contract are protected. LSB can not provide those services.

DISCUSSION:

s.13; s.14

s.13; s.14

Spending Authority

- Spending (and recoveries) in respect of the IIO is set out in Vote 18 of the current Estimates. Costs may only be recovered in relation to activities described within the sub-vote. Unfortunately, providing investigative services for another province is not described as an activity within the sub-vote and therefore expenditures such as salary and resources required for the IIO to conduct this investigation are not authorized under Vote 18.
- Consequently, authority to permit the Province to expend provincial resources to have a BC public service employee conduct an investigation on behalf of another province must be found elsewhere. The Ministry's Chief Financial Officer is consulting the Office of the Comptroller General (OCG) on this issue. One possible solution is that the contemplated expenditures could be authorized under Vote 15. The AG's sub-delegation for Ministry Operations (Vote 15) lists, under executive and support services, "other initiatives sponsored by the AG" and provides for costs to be recovered from N.S.
- Once the legal authority and an agreement are in place, costs incurred by the IIO would be journal vouchered from IIO to Executive and Support Services (ESS) and matched with recoveries to result in zero financial impact on Ministry operations.

s.13; s.14

INDIGENOUS PEOPLES CONSIDERATIONS:

- N/A

OPTIONS:

Option 1 (recommended) – Pursue an OIC after establishment of a new government to enable the Province to enter into an agreement with N.S.

Pros

- This option would allow the new government to consider N.S.'s request and decide whether they wish to enter into an agreement.

Cons

- Staff resources are required to draft an agreement and an OIC is required.

Option 2 – Do not enter into an agreement with N.S.

Pros

- Does not require any additional work on behalf of the Province.

Cons

- Does not promote inter-agency or inter-provincial cooperation.

OTHER MINISTRIES IMPACTED/CONSULTED:

- N/A

RECOMMENDED OPTION APPROVED

DATE:

Richard J. M. Fyfe, QC
Deputy Attorney General

Prepared by:

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