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Response to a Request Contained in a Ministerial Statement by the Minister of Competition, Science and Enterprise to the Legislative Assembly on May 14, 2002

On May 14, 2002 the Minister of Competition, Science and Enterprise, in a Ministerial Statement to the Legislative Assembly, requested that my Office review in detail the circumstances under which the previous government amended an agreement with Working Opportunity Fund (EVCC) Ltd. (WOF), and report the results of my review to the Legislative Assembly.

The minister expressed concerns about both governance and risk management. In addition to asking whether, overall, the principles of good governance were adhered to, he asked:

- "Was due process followed?" (and, in particular, "[w]as political pressure brought to bear?"; was "a member of British Columbia's public service .. directed by either senior elected representatives or their appointed political staff to make sure the amended agreement was signed?"; and, was the amended agreement "signed against considerable advice of the public service?")

- "When [was] the amended agreement ... signed?" (and, in particular, was it signed in the final days up to, and possibly after, the election call last April 18th?)

- "Did the actions of the previous government fetter the ability of future governments?"

Finally, the minister asked whether the principles of good risk management were adhered to and, in particular, "Were the taxpayers of British Columbia knowingly put at risk?"

I have carried out a preliminary examination of the questions raised by the minister, and have concluded that a more detailed review of this topic is not needed.

The agreement being amended had its genesis in efforts in 1989, 1990, and 1991 by the government of the day to develop a labour-sponsored investment fund in British Columbia. Similar funds had already been introduced in Quebec and Ontario. An enabling act, the Employee Investment Act, was passed in 1989, and the Province worked with labour groups to develop a mutually acceptable framework during 1990 and 1991. The resulting agreement among WOF, its labour sponsors, and the Province was dated December 20, 1991. One of its key provisions dealt with the maximum amount of equity capital that the fund could raise. This was important because

investors would receive a provincial tax credit of 15% of their investment, thus reducing provincial tax revenues.

The original agreement permitted the fund to raise $15 million in equity capital in the provincial fiscal year 1991/92, $20 million in 1992/93, and $30 million in each fiscal year until March 31, 2001. In 1996 the Province raised the annual limit to $40 million for each year through to March 31, 2001. In March 1999, the agreement was again amended to extend funding approval on a rolling-five year basis after March 31, 2001.

In late 2000 and early 2001 WOF requested that the Province:

1. raise WOF's annual limit to $80 million;

2. amend the agreement to incorporate that higher annual limit;

3. amend the agreement so that no changes to the "fundamental rules now governing the Fund" could be made without the agreement of WOF; and

4. amend the agreement to specify the process by which the official charged with administering the Employee Investment Act carried out his duties.

With the full cooperation of the minister's office and staff, I carried out a preliminary examination, in order to determine whether a detailed review by my Office is needed. In that preliminary examination, my staff interviewed senior officials involved in the amendment of the agreement, reviewed the detailed documentation which they provided, and met with the minister to discuss in more detail his concerns.

The information we gathered strongly suggests to me that reasonable process was followed. Although political pressure was brought to bear on the government by WOF and its supporters, this is not an unusual aspect of democratic government. The third part of WOF's request was counselled against by senior government officials, who found it contrary to well-established principles of administrative law. Their counsel was listened to, and the final agreement did not contain the elements that concerned them.

Once elected representatives had approved the agreement, a senior official was directed to ensure that it be signed. This is not unusual—deputy ministers are empowered to sign agreements on behalf of their ministers. The agreement is dated March 28, 2001, and nothing that has come to our attention leads us to believe that the actual signing happened after the election call.

It seems clear this agreement does constrain the choices available to future governments, but again, this in not unusual. Governments frequently enter into multi-year contracts for goods and services, sign multi-year labour agreements, and issue resource tenures with long lives. The issue of whether it "fetters," in the legal sense, the discretion of the administrator named in the Employment Investment Act was examined by the ministry's legal advisors before the agreement was completed. They concluded that the agreement as finalized does not do so (although the amendment originally proposed to the government by WOF would have done so.)

As to risk management, and risks to the taxpayer other than those discussed above, we did not find anything that caused us concern. The most obvious risk to the taxpayer is the loss of immediate tax revenue as a result of the tax credit concession, but we understand that all British Columbia governments since 1989, including the current government, have concluded that such

risk is compensated for by the economic development so gained.

In summary, I have concluded that a more detailed review of this topic is not needed.