



**House of Assembly
Newfoundland and Labrador**

**Minutes of the House of Assembly
Management Commission**

Date: March 18, 2009

Location: House of Assembly Chamber

Time: 9:00 p.m. – 3:15 p.m.

Members Present:

Hon. Roger Fitzgerald, Speaker

Mr. William MacKenzie, Clerk of the House of Assembly

Hon. Joan Burke, Government House Leader

Mr. Kelvin Parsons, Opposition House Leader

Ms. Yvonne Jones, MHA (L) Cartwright - L'Anse Au Clair

Ms. Beth Marshall, MHA (PC) Topsail

Ms. Lorraine Michael, MHA (NDP) Signal Hill - Quidi Vidi

Hon. Trevor Taylor, MHA (PC) The Straits - White Bay North

Other:

Mr. Tom Osborne, Deputy Speaker

Ms. Marlene Lambe, Chief Financial Officer

Ms. Marie Keefe, Policy & Communications Officer

Invited Guest:

Mr. John Noseworthy, Auditor General

Regrets:

None

The Commission held an *in camera* session at the beginning of the meeting to discuss personnel and legal matters. There were no decisions made at the *in camera* session to be reported at the televised portion of the meeting.

The Members of the Management Commission and officials of the House of Assembly Service stood for a moment of silence to acknowledge the victims of the Cougar helicopter crash on March 12, 2009.

CM 2009 – 010 The minutes of the House of Assembly Management Commission meeting held on January 27, 2009 were approved as read.

The Speaker gave an update on authorizations made under Section 18(4) of the *Members Resources and Allowances Rules*. The amount of \$1600.00 was approved for a sign for the Constituency Office of the former Member for Baie Verte – Springdale, Mr. Tom Rideout. The approval was delayed due to the late submission of the invoice and the retirement of the Member.

The Speaker reported authorizations for travel under extenuating circumstances as provided for in Section 43 of the *House of Assembly Accountability, Integrity and Administration Act*. The Speaker approved meals and accommodations for Ms. Patty Pottle on February 10 and February 12 – 15, 2009 at a total cost of \$522.47. Ms. Pottle was stranded in Postville due to adverse weather conditions.

CM 2009 – 011 The Commission, pursuant to section 64 of the *House of Assembly Accountability, Integrity and Administration Act*, gave approval to the following amendment to the *Members' Resources and Allowances Rules*:

Paragraph 20(8)(c) of the *Members' Resources and Allowances Rules* is repealed and the following is substituted:

- (c) where accommodation referred to in paragraph (b) cannot be obtained, the member shall decide in which community his or her office will be located and the member shall obtain in that community commercial office accommodation in accordance with the tender processes for leasing commercial space under the *Public Tender Act*.

Subsection 20(9) of the Rules is repealed and the following is substituted:

- (9) A tender for accommodation under paragraph (8)(c) shall stipulate that the lease shall be terminable at or before the expected date of the next general election.

- (9.1) Proposal documentation submitted by a landlord responding to a tender made under paragraph (8)(c) shall

include the total monthly cost, including utilities, taxes, insurance, security, janitorial services, signage and snow-clearing.

Subsection 20(10) of the Rules is repealed and the following is substituted:

- (10) A lease contract for office accommodation acquired under this section shall be prepared between "Her Majesty the Queen in Right of the Province of Newfoundland and Labrador, represented here by the Honourable the Speaker of the House of Assembly" and the owner of the office space and the cost of that preparation shall, unless stipulated otherwise by the speaker in exceptional cases, be paid directly by the House of Assembly in accordance with the approved office lease.

- CM 2009 - 012** The Commission considered whether to proceed with the financial statement audits for 1999-2000 and 2000-2001 fiscal years and requested additional information regarding the process and costs involved to recreate financial statements for the period be provided at a subsequent meeting.
- CM 2009 - 013** The Commission approved the recommendation of the Audit Committee that the Auditor General be appointed the auditor for the House of Assembly for the year ended March 31, 2009.
- CM 2009 - 014** The Commission, pursuant to subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, approved the Standard Signage Policy for Constituency Offices, dated March 2009.
- CM 2009 - 015** The Commission, pursuant to subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, approved the Inventory Management Policy, dated March 2009, for the House of Assembly and the Statutory Offices, with section 4.2 amended to include laptops and cameras.
- CM 2009 - 016** The Commission, pursuant to subsection 24(9) of the *Act*, approved the reimbursement of expenses totaling \$166.19, as detailed in the Member's correspondence of February 3, 2009, which were submitted by the

Member for St. John's Centre later than the 60 day deadline as required under subsection 7(6) of the *Members' Resources and Allowances Rules*.

CM 2009 - 017

The Commission, pursuant to subsection 24(9) of the Act, approved expense claims totaling \$120.00, as detailed in the Member's correspondence of February 23, 2009, which were submitted by the Member for Burgeo-LaPoile later than the 60 day deadline as required under subsection 7(6) of the *Members' Resources and Allowances Rules*.

Adjournment: 3:15 p.m.
Hon. Roger Fitzgerald, MHA
Speaker and Chair

Wm. MacKenzie
Clerk and Secretary to the Commission

To: House of Assembly Management Commission

From: Speaker of the House of Assembly

Date: April 30, 2009

Subject: Authorizations under Section 43 - *Members' Resources and Allowances Rules*

Section 43 of the *Members' Resources and Allowances Rules* provides that the Member may claim for additional travel expenses when the Member is traveling and unable to return to his/her residence when scheduled to do so and would not otherwise be entitled to claim reimbursement for such expenses. Under the Rules, a Member shall make application to the Clerk or the Speaker before incurring such expenses, if practical. Otherwise, the Member must notify the Speaker at the earliest reasonable opportunity after incurring the expenses. The Speaker must report, in writing, to the Commission any authorizations made under this section of the Rules.

Report on Section 43 – **Period Ending: April 30, 2009**

DISTRICT	MEMBER	TYPE OF EXPENDITURE	COSTS	DETAILS
Torngat Mountains	Ms. Patty Pottle	Meals and Accommodations April 2/3, 2009	\$144.47	Flight Schedules required the Member to overnight in Goose Bay en route to Member's home in Hopedale.

To: House of Assembly Management Commission

From: Speaker of the House of Assembly

Date: April 30, 2009

Subject: Delegated Authority Respecting Financial Matters

At its November 18, 2008 meeting, the House of Assembly Management Commission, pursuant to Subsection 20(4) of the *House of Assembly Accountability, Integrity and Administration Act*, delegated authority to the Speaker respecting urgent financial matters relating to the administration of the House of Assembly and the Statutory Offices. **CM 2008 – 095** refers.

Subsequent to the March 18 Commission meeting, four Members submitted claims past the 60 day deadline for eligible expenses related to the fiscal year ending March 31, 2009. As all claims for the previous year had to be processed by April 30, 2009, the Speaker, under authority delegated by **CM 2008 – 095**, approved the payment of the claims. As required, the following provides details of the approved claims.

Period Ending: April 30, 2009

DISTRICT	MEMBER	TYPE OF EXPENDITURE	COSTS	Reason
Carbonear-Harbour Grace	Mr. Jerome Kennedy	Meals and Accommodations	\$875.00	Claim submitted past 60 day deadline
Cartwright – L'Anse au Clair	Ms. Yvonne Jones	Constituency Allowance - Event	\$708.48	Claim submitted past 60 day deadline
Humber West	Mr. Danny Williams	Communications – Christmas Cards	\$1,935.87	Claim submitted past 60 day deadline
St. John's South	Mr. Tom Osborne	Communications (Delivery of Christmas Cards) and Constituency Allowance (Event)	\$907.54	Claim submitted past 60 day deadline

Briefing Note

House of Assembly Management Commission

Title: Financial Statement Audits

Issue: Cost of recreating financial information for **1999-00 and 2000-01**

Background:

- At its March 18, 2009 meeting, the Commission requested additional information regarding the process and costs involved to recreate financial statements for the 1999-00 and 2000-01 fiscal years. **CM 2009 – 012 refers.**
- Developing an accurate estimate of the cost of recreating the financial information is a project in itself, perhaps requiring one or two weeks of dedicated accounting effort to confirm that the assumptions noted below are defensible. The various assumptions are reasonable but have not been confirmed through testing. Nevertheless, the following list provides an overview of the complexities of the undertaking.
- **Accounts Payable Invoices:** Each invoice and the scanned supporting documentation will need to be re-examined to determine the correct accounting distribution. In many cases, it is unlikely that sufficient detail will be available on the invoice to determine to which activity/office the expenditure relates.

It is estimated that it will take 5 minutes per transaction for a straight-forward invoice payment. For those which require that the scanned documents be examined in detail, one transaction can require 15 minutes. In a one year period, there may have been 1500 transactions.

If it is assumed that 750 transactions will be straight-forward, and 750 will require the extra time, then **250 hours** will be required. (750 x 5 minutes plus 750 x 15 minutes.)

Documentation for all invoices is only available on micro-fiche. It is estimated that it will take an average of 20 minutes to locate and print the invoice, recap and supporting documentation for one transaction. For a one year period, this will require **500 hours** for 1500 transactions.

- **Members' Claims:** Although these claims have been exhaustively examined in the past, an external auditor charged with providing an audit

opinion will quite likely require that individual items be checked and “re-posted”. From our experience in re-posting claims for April 2006, many claim forms and the related supporting documentation from that period did not provide sufficient detail to determine to which accounts the amount paid should be charged.

If 48 Members submitted 25 claims per year, each with 10 separate expense items, this will entail 12,000 separate items to be reviewed. At 10 minutes for each item, this will require **2,000 hours**.

Documentation for all claims processed prior to April 2000 is only available on micro-fiche. It is estimated that it will take an average of 20 minutes to locate and print the documents on one claim for review. For the fiscal year 1999-00, this will require **400 hours** for 1200 claims.

Documentation for all claims processed after April 2000 is available in hard copy so no additional time has been estimated to locate the documents.

- **Salary costs:** Salaries are the single largest expenditure in the Legislature. The payroll registers are not available for review as they were destroyed after the seven year required period of retention.

Salary costs comprised approximately 70% of total expenditures. Based on a cursory review of 2005-06 transactions, it appears that certain salary amounts for committees, etc. were budgeted under the salaries main object but the actual expenditures were charged incorrectly to allowances and assistance main object. Without a review of the payroll registers, it will not be possible to “re-post” to the correct accounting distribution.

- **Journal Vouchers:** All JVs for each year (which correct and re-assign expenditures posted to incorrect accounts) will have to be re-examined. Checking 40 of these, at 15 minutes each, will require **10 hours** per year.
- **Budget Transfers:** All budget transfers (which transfer funds from one Main Object and/or Activity to another) will have to be re-examined. Checking 50 of these, at 15 minutes each, will require **13 hours** per year.
- **Public Accounts Submission for Accruals:** The travel imprests, petty cash and other receivables as well as accrued annual leave, payroll, overtime, severance and invoices payable amounts which were submitted to Public Accounts must be re-examined and possibly re-calculated.

Without the payroll registers to determine the employees on payroll during the fiscal year, the accruals for annual leave, payroll, overtime and severance pay will be difficult. Reliance will have to be placed on the

existing documentation compiled and submitted to Public Accounts by the former Director of Financial Operations for each of the two fiscal years.

If we assume that all items except severance take about 60 minutes each to re-examine, it will require **7 hours** per year.

It is likely that personnel files will have to be re-examined in order to determine severance amounts payable. For 130 employees at 15 minutes each, it will require **33 hours** per year.

Accounts receivable amounts will have to be calculated for the double billing amounts and the overpayments to the five former Members which were identified by the Office of the Auditor General. It will be necessary to identify how much of the total double billings and overpayments occurred in each of the two fiscal years.

If we assume that it takes about 2 hours to gather the information and calculate the portion of the double billings amount related to one Member for a year, it will require **10 hours** per year.

- **Financial Information Presentation:** Each individual financial transaction above will have to be “re-posted” in an accounting software program in order to create a set of cash statements by activity. (We cannot alter the entries in government’s FMS [Oracle] system for those two years.)

If we assume that 500 transactions have to be reposted, at 2 minutes each, it will take 16 hours, plus 4 hours to summarize the results of the re-posting, for a total of **20 hours**.

We can assume that the initial set up time for the accounting program and the search for and printing of records, etc. can take **40 hours**.

- **Other Considerations:**
 - The lack of adequate documentation from many of the transactions during that period will complicate the process.
 - As the House of Assembly Service does not have original documentation for the four MHAs facing criminal charges, an external auditor will have to agree that the photocopies received from the RNC are an acceptable form of documentation.
 - Supporting documentation for purchase orders (if it still exists) is not scanned into TRIM at the Office of the Comptroller General and thus is not available for auditing purposes.

- Equipment and furniture purchases valued at \$500 or more are the property of the House of Assembly and have a depreciation factor of 1/3 of its value each year, and at the end of 3 years is the property of the Member. All claims and direct payments on behalf of Members will need to be reviewed in order to determine the items that should be recorded as property of the House of Assembly. This will require a review of the claims and direct payments for the two year period prior to 1999-00 since the items would still be assets of the House for that period. While the total purchases are likely to be immaterial, it is difficult to determine with any degree of certainty without a review of claims and invoices.
- Additional time will be required for research to become familiar with the Members' Rules and other background information. There will also be a cost to acquire and set up a system to record the re-created transactions.
- The seven projects identified above will require **3,283 hours** for 1999-00 and **2,843** for 2000-01. At a junior rate of \$100 per hour with a public accounting firm, the cost could be **\$328,300** for the first year and **\$284,300** for the second year for a total of **\$612,600**. Both the Office of the Comptroller General and the Office of the Auditor General have indicated to us that the time estimates are conservative.
- If a letter of representation by management is possible, it will likely include qualifications regarding the alleged fraud, reference to the fact that the salary accounts were not re-examined as payroll registers were not available and any other items that may result from the re-examination.
- It is not possible for an external auditor to advise in advance whether or not the 'recreation' will be satisfactory for any opinion to be provided.

Action Required:

The direction of the Commission is requested.

Prepared by: Marlene Lambe
2009.04.09

Approved by: Wm. MacKenzie

17 April 2009

William MacKenzie
Clerk of the House of Assembly

Re: Review of the Management Certification Contract – House of Assembly

The Professional Services and Internal Audit Division was requested to review the consulting services agreement associated with the Management Certification project, and the related documents, as per a motion passed at a meeting of the Management Commission on 18 November 2008.

Enclosed is our Report which includes the findings and recommendations resulting from this review. I note that a draft of this Report was discussed with you and your officials on 16 April 2009.

If you have any questions, please do not hesitate to contact me or Dave Hill at 729-0702.



RONALD A. WILLIAMS, CA
Comptroller General of Finance

Enclosure

cc: Terry Paddon



House of Assembly

Review of the Management Certification Contract and Related Documents

March 2009

Professional Services and Internal Audit Division

Office of the Comptroller General

Government of Newfoundland and Labrador

Department of Finance



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I. EXECUTIVE SUMMARY

As requested by the Management Commission, the Professional Services and Internal Audit (PSIA) Division of the Comptroller General's Office performed a review of the Management Certification contract for the House of Assembly. This review encompassed an examination of: the scope of the request for proposals; the evaluation of the proposals; the contract; the consultant invoices and related cost overruns; and the processes in place to monitor the contract and address cost overruns.

The *Review Commission on Constituency Allowances and Related Matters* identified a number of issues related to the financial administration of the House of Assembly (HOA). One of the recommendations of this Commission was for the Clerk and senior management of the HOA, with the support of the HOA Management Commission, to engage in a Management Certification process. There was a legislated timeline of August 31, 2008 put in place for completion of the Management Certification process. After the public request for proposals and evaluation, Grant Thornton was awarded the contract with an estimated total cost of \$47,250 excluding HST. The actual cost incurred by the end of the project totaled \$124,843.

The following summarizes the main findings from this review:

a) **Compliance with Consultant Guidelines**

Conclusions

- It was determined that HOA officials did not fully comply with the Guidelines Covering the Hiring of External Consultants (Guidelines).
- Section 2.4 of the Guidelines specifically states that Treasury Board approval is needed to authorize payments which are in excess of 110 percent of the contract amount. In this circumstance, we would have expected Management Commission approval to comply with the spirit and intent of the Guidelines. HOA officials did not receive approval from the Management Commission prior to making these excess payments and therefore did not comply with the Guidelines.
- We note that there was no scheduled Commission meeting from July 4th to October 14th, and there was no formal process in place at the time to accommodate urgent matters requiring the attention of the Commission. However, the Clerk did not initiate a request to the Speaker.
- Consideration should have been given to the Management Commission being able to fulfill its financial stewardship and oversight responsibilities under section 20 of the *Accountability, Integrity and Administration (AIA) Act*. Without having been advised of this significant matter, the Commission was unable to fulfill this responsibility.

Recommendations

- HOA officials should ensure compliance with the spirit and intent of the Guidelines. Approval to authorize payments in excess of 110 percent of approved contractual amounts must be sought in advance from the HOA Management Commission.
- The HOA Management Commission should formally adopt and approve policy/guidelines for the hiring of external consultants, consistent with those of Government departments. The guidelines should be modified to meet the needs of HOA operations.

b) **Proposal Evaluation Process***Conclusions*

- Grant Thornton's estimate of the time to complete the project as well as associated costs (as per their proposal) was much lower than that of the second proponent.
- Both proponents were national accounting firms that had considerable expertise in the provision of such consulting services.
- There were no obvious errors in the evaluation process.
- Given these factors we must accept that the decision of the evaluation committee to award the contract to Grant Thornton was reasonable at the time based on available information.

c) **Scope of the Management Certification Project***Conclusions*

- The large increase in cost was due to increased work by Grant Thornton.
- Although management certification was a new task for the HOA and all of Government, the scope as set out in the RFP and the inability to provide additional information by HOA officials were contributing factors to the significant cost overruns.

d) **Monitoring of Contract Costs***Conclusions*

- Payments were made to the consultant without appropriate contract amendments which exposed the House of Assembly to both financial and legal risk.
- When it was identified that there would be cost overruns, there were no formal documented discussions regarding the estimated additional costs.
- There was a lack of formal monitoring of the consultant time and costs associated with the Management Certification.
- A steering committee was established for this project as well as a project plan, but they did not function as intended. One of the key areas of this project plan was that monthly status reports be prepared for the Steering Committee. These monthly status reports were never prepared.

- HOA senior management felt that meeting the legislated deadline was a priority and that informal updates were sufficient instead of spending time documenting status updates.
- Funds were not encumbered in relation to the Management Certification contract as required by subsection 26 (1) of the *Financial Administration Act*.

Recommendations

- For future contracts, HOA officials should have formal processes in place to monitor contract costs and ensure that potential cost overruns are identified early in the completion of a project
- All necessary amendments to contracts should be completed as required to minimize financial and legal risk.
- For financial management purposes, all contracts should be encumbered in accordance with the requirements of the *Financial Administration Act*.

Please refer to our Analysis, Findings and Recommendations section for further details.

II. INTRODUCTION

Professional Services and Internal Audit (PSIA) was asked to review the Management Certification contract and related documents, pertaining to the House of Assembly (HOA), as per a motion passed at a meeting of the House of Assembly Management Commission on 18 November 2008. This review encompassed an examination of: the scope of the request for proposals; the evaluation of the proposals; the contract; the consultant invoices and related cost overruns; and the processes in place to monitor the contract and address cost overruns.

Background

The *Review Commission on Constituency Allowances and Related Matters*, chaired by Chief Justice Derek Green, was established following the reports of the Auditor General concerning irregularities in the financial administration of the HOA. The Review Commission identified a number of measures to address these irregularities, one of which was for the Clerk of the HOA, with the support of the House of Assembly Management Commission, to implement a Management Certification process. Such certification would provide additional assurance that the HOA administration was operating in accordance with sound financial management principals.

The Management Certification process is generally built upon the requirements of the Ontario Securities Commission's Multi-Lateral Instrument 52-109 (MI 52-109), which have had wide-ranging effects on public companies throughout Canada and their senior management. Simply put, Management Certification is intended to provide assurance that the financial information disclosed meets a standard of overall material accuracy and completeness that is broader than financial reporting requirements under Generally Accepted Accounting Principles (GAAP). Internal controls over financial reporting are controls to provide reasonable assurance regarding the reliability of financial reporting and financial statements.

Management Certification as it pertains to the HOA was legislated under Section 28 of the *House of Assembly Accountability, Integrity and Administration Act* which states that the Clerk is responsible for "certifying to the Commission as required that the House of Assembly and statutory offices have in place appropriate systems of internal control and that those systems are operating effectively." The certification was required to be completed by August 31, 2008.

More specific guidance is provided under recommendation 48 of the *Report of the Review Commission on Constituency Allowances and Related Matters* which states that "the Clerk and senior management in the House, with the support of the House of Assembly Management Commission, should forthwith implement a Management Certification process by developing processes to:

- a) establish and maintain disclosure controls and procedures;

- b) enable the Chief Financial Officer and Clerk to certify that they designed, or caused to be designed, a system of internal control to provide reasonable assurance regarding the reliability of financial reporting in accordance with the required policies; and
- c) enable the Chief Financial Officer and Clerk to certify that the internal control environment is operating effectively.”

To meet its legislative requirements regarding Management Certification, HOA officials issued a public request for proposals (RFP) in December 2007. Only two proposals, one from Grant Thornton LLP (GT) and one from a second proponent, were received in response to the RFP. Subsequent to an evaluation process, GT was awarded a contract for the provision of consulting services associated with the Management Certification.

While the Management Certification was completed in accordance with the legislated timeline (i.e. August 31, 2008), billings from the external consultant were greatly in excess of the original amount proposed. GT’s original estimate for consulting services associated with the Management Certification was 315 hours with a total cost of \$47,250 (exclusive of HST). The actual number of hours billed was 739, with invoices totaling \$124,843 (exclusive of HST).

III. SCOPE

As per the Minute of the Management Commission meeting of 18 November 2008, PSIA was requested to review the Management Certification contract and related documents. For the purposes of this review, the related documents included the request for proposals (RFP); the two proposals in response to the RFP; and the evaluation chart used to score the proposals. These documents were provided to the Management Commission by the Clerk of the HOA prior to the November 18th meeting. We also reviewed the consultant invoices and related cost overruns and the processes in place to monitor the contract and address cost overruns.

In addition to our review of the aforementioned documentation, we interviewed the Clerk and Chief Financial Officer (CFO) of the HOA. As well, a list of questions was provided to Grant Thornton for response on December 19, 2008. The response from this external consultant was received January 30, 2009.

IV. ANALYSIS, FINDINGS AND RECOMMENDATIONS

a) Compliance with Consultant Guidelines

The Guidelines Covering the Hiring of External Consultants (the “Guidelines”) are to be followed in all circumstances where a Government department directly engages the services of an external consultant. By introducing financial, selection, and contractual guidelines, it is Government’s intention to provide consistency throughout departments when engaging external consultants and encourage management to become more thorough in the preparation of project

and administrative documents, place itself in a favorable position with any possible legal contractual obligations, and establish a strong consulting community within the Province.

Recommendation 39 of the Green Commission Report, states that “where it is appropriate, in legislation, to allow for any deviation from financial control policies of the executive in its application to the House, the House of Assembly Management Commission should be statutorily required to deviate only if more appropriate or efficient alternative policies are to be put in place.” In this regard, Subsection 20. (3) of the *House of Assembly Accountability, Integrity and Administration Act (AIA Act)* states that “...the financial and management policies of the government shall apply to the House of Assembly and statutory offices except to the extent that they may be modified by directive of the commission.” As such, without an appropriate alternative, we would expect House of Assembly officials to comply with the spirit and intent of the Guidelines, providing that there are appropriate modifications which contemplate the financial management structure and authorities specific to HOA operations.

Section 3.5 of the Guidelines requires that a public RFP be issued when the total consultant fees and expenses are estimated to exceed \$50,000. A public RFP was issued by the HOA in December 2007 in accordance with the Guidelines.

Further, Section 2.4 of the Guidelines state that “in cases of contracts awarded at set amounts, departments must receive Treasury Board approval to authorize payments which are in excess of 110 percent, in the aggregate, of approved contractual amounts.” In addition, regarding the duties and responsibilities of the Commission, we note that section 20 of the AIA Act states in part “the commission is responsible for the financial stewardship of all public money, within the meaning of the *Financial Administration Act*, that may be voted by the House of Assembly for the use and operation of the House of Assembly and statutory offices...in particular, the commission shall...(a) oversee the finances of the House of Assembly including its budget, revenues, expenses, assets and liabilities...” In these circumstances, we would expect that HOA officials would seek approval from the Management Commission regarding significant cost overruns in excess of 110 percent, prior to their payment.

We note that the actual cost of the consulting services related to the Management Certification more than doubled the amount proposed by GT of \$47,250 (excluding HST). However, the HOA paid invoices totaling \$121,797.50 (excluding HST) prior to requesting approval from the Management Commission on October 15, 2008. An additional invoice in the amount of \$3,045.00 (excluding HST) was paid on October 27, 2008 after the Management Commission had highlighted concerns with the cost overruns. As noted, HOA officials were required to seek approval from the Commission prior to payment of a cost overrun in excess of 110 percent.

The issue surrounding cost overruns was discussed with officials of the HOA. Both the Clerk and the CFO note that the Management Commission did not meet during the period July 4 to October 14, 2008; and in their view, there was no medium to bring the request for approval of cost overruns to the Commission. However, per discussions with the Clerk, he acknowledged that while there was no meeting scheduled, he also did not seek a meeting via request of the Speaker.

Furthermore, from an analysis of the invoices received from GT, it was determined that at June 5, 2008, billings to May 23rd equaled \$34,158.75 (exclusive of HST) and at July 9, 2008, billings to the end of June had accumulated to \$68,823.75 (exclusive of HST). The Clerk and CFO of the HOA acknowledge that cumulative billings to the end of June were not presented to the Management Commission at the July 3 meeting as the June invoice was not received until July 9, 2008, subsequent to the meeting. Furthermore, cumulative consultant costs to the end of May were also not presented at the July 3 meeting as the proposed fee of \$47,250 had not been exceeded at this time. We note, however, that while the estimated cost of the project had not been surpassed up to the point at which the agenda materials were distributed for the July 2008 meeting, HOA management officials were aware that the project cost was likely to be in excess of the estimate provided by GT, particularly given that the cumulative billings received by June 5 had reached 72% of the total proposed consultant cost and that an additional 193.25 hours had been completed in June.

A status update regarding the Management Certification project was provided by the Clerk of the HOA at the July 3rd meeting of the Commission; however, it was very administrative in nature. After a brief overview of the certification process, the Clerk informed the Commission that the project was on schedule and expected to be completed by the required deadline. There was no mention of potential cost overruns nor were there any questions posed by the Commission regarding costs.

Conclusions

HOA officials were not in compliance with the Guidelines with regards to the treatment of cost overruns associated with the Management Certification contract. HOA officials had already paid invoices in excess of \$74,000 over the proposed contract cost when approval was sought from the Management Commission. We do note the importance of the August 31 deadline as it was a legislated responsibility of the Clerk however, as part of sound financial management practice it is imperative that the policy be followed. In addition, consideration should have been given to the Management Commission being able to fulfill its responsibilities under section 20 of the AIA Act without having been advised of this significant matter.

We note that the Management Commission has not approved a set of guidelines, similar in spirit and intent to the Guidelines Covering the Hiring of External Consultants, which supports their own structure and organizational system. While the Guidelines used throughout Government are sufficient in detail to allow HOA officials to manage consulting contracts in a prudent and effective manner, there are distinct differences between the HOA and Government departments which warrant several modifications to the existing Guidelines. For example, a number of sections of the Guidelines call for Treasury Board or Cabinet approval to authorize certain processes. These would need to be modified to contemplate approval of the House of Assembly Management Commission.

When the contract between GT and the HOA was being executed, there was no process in place to deal with matters that required decisions by the Management Commission when a meeting was not scheduled. As noted, once the June 2008 invoice was received in July 2008

from GT, the consultant costs had already exceeded the estimate in the contract. Cost overruns should have been approved by the Management Commission, in line with policy set out in the Guidelines. However, the Commission did not have a scheduled meeting from July 4, 2008 to October 14, 2008, after the project was completed. Even though we note that the Clerk did not initiate a request to the Speaker, there was no formal process in place at the time to accommodate urgent matters requiring the attention of the Commission. We note that subsequent to this, as per the Management Commission meeting of 18 November 2008, the Commission voted to delegate to the Speaker of the House of Assembly the power to make decisions respecting financial matters relating to the administration of the House of Assembly and statutory offices. This is provided that the decision is urgently required and the Commission is unable to meet on the matter in a timely manner. The Speaker's decision would be in consultation with the Government House Leader, the Official Opposition House Leader and the Leader of the Third Party,

Recommendations

For future consulting projects it is recommended that HOA officials ensure compliance with the spirit and intent of the Guidelines Covering the Hiring of External Consultants, especially in the area of cost overruns. Approval to authorize payments which are in excess of 110 percent, in the aggregate, of approved contractual amounts must be sought in advance from the Management Commission.

It is also recommended that the Management Commission formally adopt and approve policy/ guidelines for the hiring of external consultants, consistent with those of Government departments. These guidelines would need to be modified to meet the needs of HOA operations.

b) Proposal Evaluation Process

The Guidelines provide direction to departments as to the factors on which external consultant bids should be evaluated (i.e. qualifications, background, experience, rates, reputation and professional standards). Additional guidance has been issued from Treasury Board which stipulates that a weighting of at least 25% should be allocated to consultant fees and expenses when evaluating proposals.

HOA senior management correctly included details of its evaluation criteria in the request for proposals and included such categories as proposed approach and methodology, technical experience of the firm and experience of the team; all of which are in line with the Guidelines. As well, HOA officials appropriately weighted cost in excess of 25% (i.e. 30% allocated to cost and 70% allocated to remaining technical criteria). The RFP specifically stated that the lowest price proposal may not necessarily be awarded the contract.

Both proponents submitted questions to the CFO of the HOA prior to sending in their proposals. The CFO provided written responses to both firms and correctly sent the responses to each, so as to ensure that one bidder did not have more information than the other. The proposal evaluation committee consisted of two staff members of the HOA as well as a former employee

of the Professional Services and Internal Audit Division, Office of the Comptroller General. The former employee performed this role independent from other employees of the Division.

GT was awarded the consulting services with a score of 84.5, while the second proponent scored 57. GT scored 54.5 on the technical and experience components, while the second proponent scored 50; GT scored the maximum number of points allocated to cost while the second proponent scored only 7 out of the potential 30. The total cost and hours proposed by GT was \$53,392.50 (including HST) and 315, respectively; whereas the second proponent bid \$224,070 (including HST) with a total of 1,512 hours. It is also noted that the second proponent included \$10,500 in expenses (travel) while the GT proposal did not anticipate any out-of-pocket expenses and did not invoice any out-of-pocket costs during the project. Other than the cost component, both proposals were relatively equal in terms of the remaining evaluation criteria. However, had both bidders proposed equal costs, GT would still have received the contract based on the evaluation.

Conclusions

Even after a public call for proposals, the HOA received only two bids on the Management Certification consulting services. As noted, GT's estimate of the time to complete the project as well as the associated cost was much lower than that of the second proponent. The actual hours incurred by GT were midway between that originally proposed by the firm and the total hours proposed by the second proponent (i.e. actual hours, 739; hours proposed by GT, 315; hours proposed by second proponent, 1,512) and the final cost figure was still much less than that proposed by the second bidder. The evaluation committee, however, could base its decision only on information available at the time of the proposal. In this regard, we note that both proponents were national accounting firms that had considerable experience and expertise in the provision of such consulting services and both had technically strong proposals. In fact, one of the staff resources proposed by the second proponent for carrying out most day to day tasks of the assignment subsequently joined GT and worked on the project. There were no obvious errors in the evaluation process.

Given these factors as well as the significant difference in the proposed consulting fees, we must accept that the decision of the evaluation committee to award the contract to GT was reasonable based on available information at the time.

c) Scope of the Management Certification Project

Management Certification is still a relatively new concept to publicly traded entities and moreover, it is a new concept to much of the Newfoundland and Labrador business community. As well, there is very little expertise within Government regarding certification requirements. The AIA Act does not define a clear scope for Management Certification.

As per discussions with the Clerk and CFO of the HOA, other than some reading on the topic and a one day course attended by the Clerk and two professional accountants within the HOA, there was no staff within the HOA that had a good understanding of Management

Certification requirements. As such, the CFO contacted two public accounting firms prior to preparing the RFP to obtain some background information on what typically would go into an RFP for consulting services associated with Management Certification. Both firms provided some background information which helped create the scope that was eventually outlined in the original request for proposals. This was confirmed in the response by Grant Thornton.

While the RFP was developed in an environment whereby there was a significant learning curve associated with Management Certification, we note that the experience of the proponents, both of which were national accounting firms, should have alleviated some of the uncertainty surrounding the certification requirements. Moreover, both firms were given the opportunity to ask questions prior to submitting their proposals. However, in responding to the questions the CFO stated "...as in some cases I do not have a full appreciation of the questions posed and therefore have not been able to provide a lot of direction..." "...we utilize the financial management and payroll systems of the Executive Branch and...anticipate that one of the first tasks would be to determine how this relationship should "fit" in the overall development of an implementation plan".

It is noted that the GT proposal stated "As identified in your response to questions, several factors impacting the level of effort that will be required throughout the management certification project have yet to be determined in the scoping exercise. Specifically, the amount of time which will be required to analyze, document and remediate controls relating to the financial management and payroll systems of the Executive Branch of Government, as well as the general computer controls environment in which the House of Assembly operates."

This statement effectively recognized that the project could include additional work consistent with the scope. Also the contract (paragraph 7.1) has a clause on cost such that it was "based upon the information gathered to date". In responding to our questions regarding why there were additional costs, and if the scope of the project changed, GT stated "In developing our proposal, we had to make assumptions regarding which processes would be covered given the minimal direction provided in the RFP..." They also commented, amongst other things, that given the nature of the centralized processes there were many process owners for each of the cycles reviewed and each cycle required multiple meetings across multiple departments and multiple divisions with the Comptroller General's office.

We are unable to comment as to whether the second proponent would have attempted to bill for additional hours based upon any situations encountered, however, it is noted that their bid was 1,512 hours in total (over double the actual hours billed by GT).

Conclusions

Management Certification was a new concept and process for the HOA and Government. The scope as set out in the RFP and the inability to provide additional information by HOA officials to the respondents, were contributing factors to the significant cost overruns.

d) Monitoring of Contract Costs

The contract (paragraph 7.4) with GT stated that they would "...advise the client management on a timely basis...should any other circumstances arise which cause actual time to exceed that estimate." The contract (paragraph 7.5) also provided that "The payment shall be in accordance with the budget for that work as provided under this agreement and the Consultant estimates in the proposal for this work submitted to the Client on February 1, 2008 unless prior written agreement has otherwise been reached between the Consultant and the Client". We were advised by HOA officials and GT that there were no amendments to the contract to reflect the increased actual time that was billed. Therefore, adequate authority for payment of the cost overruns did not exist at the time they were paid.

As per review of the GT proposal, a Steering Committee was put in place to monitor project progress. The members of the Committee were the Clerk and CFO of the HOA as well as the GT Partner and Senior Consulting Manager responsible for the Management Certification project. This project plan stated that a monthly status report was to be prepared for the Steering Committee summarizing items such as:

- Progress on project plan;
- Processes completed;
- Status of work;
- Findings from work completed to date;
- Extent of remediation required;
- Summary of time incurred;
- Estimate of time to complete; and
- Challenges to complete.

Had the above process for regular status updates been followed, HOA officials would have had an invaluable tool in place to assess escalating project costs. However, as per discussions with the Clerk and CFO of the HOA, no formal status reports were provided by GT or requested by HOA senior management during the project. The CFO acknowledged that while there was no formal reporting of project progress, she was aware of the day-to-day progress as she was in constant contact with the Senior Consulting Manager. As well, the CFO noted that she did not complete any invoice analysis for the purpose of determining the actual blended consultant rate (\$169/hr) versus the quoted blended rate (\$150/hr). She did have email correspondence in late September 2008, after the project was completed, in which GT provided some high level commentary as to the increased project costs.

According to the Clerk and CFO of the HOA, they felt that meeting the legislated deadline of August 31, 2008 was the overriding priority of the project. They felt that informal updates were sufficient instead of spending time documenting and meeting as necessary to achieve formal status updates. Moreover, they felt that GT was meeting the contract requirements in a professional and effective manner. They also point out that the original

budgeted amount for the project was \$230,000, so even with significant cost overruns; the final costs were well below budget, and still well below the bid received from the second proponent.

In response to our questions regarding a breakdown of billable hours, GT advised that the project team incurred an additional 97 hours which was not billed. However, without formal negotiation at the time on the remaining estimated hours and related estimated costs, it is difficult to determine if the actual billed costs could have been less.

Finally, we note that another important aspect of contract monitoring is that related to meeting encumbrance requirements as set out in the *Financial Administration Act* (FAA). We note that the CFO of the HOA has acknowledged that no funds were encumbered in relation to the Management Certification contract, as was required by subsection 26 (1) of the FAA.

Conclusions

Payments were made to GT without appropriate contract amendments which exposed the House of Assembly to both financial and legal risk. There was a lack of formal monitoring of the consultant time and costs associated with the Management Certification. The Steering Committee, while in concept did exist, did not function as intended. No meetings were held and no formal status updates as to the progress of the consultant, summary of time incurred, estimated time to complete, etc., were provided. As such, the Project Plan was not adhered to. Instead, we were informed that there were informal updates provided to the CFO by the Senior Consulting Manager on a daily basis.

In addition, when it was identified that there would be cost overruns, there were no formal documented negotiations regarding the estimated additional costs. Moreover, there was very little by way of cost monitoring as per invoices received. We note that the bills received from Grant Thornton were not reviewed in sufficient detail to ensure that the blended rate was in line with that set out in the proposal. While the individual rates were in line with those set out in the contract, the total blended rate was well in excess of that quoted in the proposal, which means that more time was spent on the project by consultant staff with higher charge rates than was originally proposed.

Recommendations

For future contracts, it is recommended that the HOA have formal processes in place to monitor contract costs to ensure that cost overruns are identified early in the completion of a project. Early identification of potential cost overruns allows for the potential to re-negotiate with a consultant and/or modify the project scope to help curtail mounting costs. All necessary amendments to contracts should be completed as required to minimize financial and legal risk. For financial management purposes, all contracts should be encumbered in accordance with the requirements of the *Financial Administration Act*.

Briefing Note

House of Assembly Management Commission

Title: Management Certification

Issue: Management Certification Internal Audit Report

Background:

- At its November 18, 2009 meeting, the Management Commission was requested to approve the additional payments for the completion of the management certification project which were greater than the original estimated cost of the project.
- The Commission discussed the overrun and directed the Management Certification contract and related documents be referred to the Professional Services and Internal Audit Division of the Comptroller General's Office for review, with a report to be brought back at a subsequent meeting of the Commission. **CM 2008 – 091 refers.**
- The attached report of the Professional Services and Internal Audit Division of the Comptroller General's Office was received April 17, 2009.

Action Required:

For reporting purposes.

Prepared by: Marie Keefe
April 28, 2009

Approved by: Wm. MacKenzie

**House of Assembly Management Commission
Briefing Note**

Title: Commission Adoption of Ministerial Expense Policy

Issue: Comptroller General's decision re S. 15(1) of *House of Assembly Accountability, Integrity and Administration Act*

Background:

- The Commission, by CM 2008-010 and CM 2008-020, adopted the Ministerial Expense Policy which was publicly released in December, 2007. By long tradition, the Speaker and the Leader of the Official Opposition have been eligible for the same expense reimbursement regime in the execution of their duties as Ministers. The application of this to the Leader of the Third Party is a more recent introduction.
- The Office of the Comptroller General, in the Fall of 2008, sought legal advice as to whether the three office holders noted were eligible to receive the Automobile Allowance (Option A) of the Ministerial Expense Policy. This option allows Ministers to receive an annual \$8,000 taxable, non-accountable vehicle allowance and, with receipts, to be reimbursed for gas and consumable liquids. Ministers who select this option do not submit claims for mileage as MHAs on constituency business as authorized by the *Members' Resources and Allowances Rules*, subordinate legislation to the *House of Assembly Accountability, Integrity and Administration Act*.
- The Comptroller General's issue respecting the eligibility of the three office-holders to receive the automobile allowance hinged on Subsection 15(1) of the *House of Assembly Accountability, Integrity and Administration Act*. That section states:
 15. (1) An adjustment to salaries under subsections 11 (1) and 12 (1) shall not be made and **an additional non-accountable allowance shall not be created or provided for** except
 - (a) in response to a recommendation of a members' compensation review committee constituted under section 16 ; and
 - (b) by introduction of an amending Bill in the House of Assembly with votes on first, second and third readings being taken on separate days.

- Following the Comptroller General’s raising of the issue, the Clerk and the Law Clerk reviewed the Act, the Green Report and the Members’ Resources and Allowances Rules. It was our conclusion that the *House of Assembly Accountability, Integrity and Administration Act* (with exceptions for specific purposes, such as establishing salaries by statute rather than Commission decision) addresses issues respecting Members of the House of Assembly as Members and not as other office-holders. Thus, subsection 15(1) was intended to address Members as Members with respect to their constituency and House of Assembly duties, and not as holders of other offices or positions, such as Speaker or Minister.
- The Comptroller General, based on legal advice from the Department of Justice, countered that the \$8000 was a non-accountable allowance that could not be adopted in any manner for office-holders of the Legislature except as laid out in paragraphs 15(1)(a) and (b). This means that the Speaker, Leader of the Opposition and the Leader of the Third party would not be eligible to receive the \$8000 automobile allowance under the Ministerial Expense Policy as adopted by the Commission. They would, however, be eligible for mileage reimbursement for their office-holder duties under the Ministerial Expense Policy and for conducting constituency business under the *Members’ Resources and Allowances Rules*.
- The Comptroller General’s correspondence of 17 April 2009 is attached. As noted in the second-last paragraph, the Comptroller General will not permit the Automobile Allowance option of the Ministerial Expense Policy to be applied to the Speaker, Leader of Official Opposition, or Leader of the Third Party and therefore these three office holders may only avail of the “ministerial/departmental” mileage option (Option B) in discharging their duties of office. To receive the Option A allowance, the Act would have to be amended or a Members’ Compensation Review Committee would have to recommend this allowance and a Bill be passed in the House, as outlined in subsection 15(1).
- The Commission could pursue various options respecting this matter:
 1. The Commission could seek an additional legal opinion respecting subsection 15(1), which may or may not convince the Comptroller General. Based on this opinion, the Commission could decide whether to seek a court ruling to settle any ambiguity in the existing subsection 15(1).
 2. The Commission could make a request to Cabinet for a legislative amendment to the Act to remove any ambiguity.

3. The Commission could choose to wait for a Members' Compensation Review Committee Report which may or may not make a recommendation for an amendment to the Act.
- If the decision of the Comptroller General stands, then the issue of repayment of funds received to date by the three office holders arises. The April 17 correspondence from the Comptroller General cites the Department of Justice legal opinion, which has not been shared with the House, as suggesting that the estoppel principle may preclude a requirement for funds to be repaid. However, the correspondence does not provide a legal opinion on this aspect of the automobile allowance issue and suggests instead that the House seek legal advice.

Action required:

The Commission's direction is requested.

Prepared by:
Wm. MacKenzie
2009.04.30



Government of Newfoundland and Labrador
Department of Finance
Office of the Comptroller General

April 17, 2009

Mr. William MacKenzie
Clerk of the House
House of Assembly

RE: NON-ACCOUNTABLE ALLOWANCE AND ADOPTION OF MINISTERIAL
EXPENSE REIMBURSEMENT POLICIES OF THE EXECUTIVE BRANCH
AND SECTION 15 (1) OF THE *HOUSE OF ASSEMBLY ACCOUNTABILITY,
INTEGRITY AND ADMINISTRATION ACT (ACT)*

I refer to our discussions on the above-noted matter.

I have received a legal opinion provided to me by Mr. Reg Locke, Senior Solicitor, Department of Justice.

The opinion provides advice with respect to the non-accountable allowance and Section 15 (1) of the Act. The commission has adopted the ministerial car allowance on January 23, 2008 and April 11, 2008, and this is a type of non-accountable allowance. Section 15 (1) of the Act does not provide for this non-accountable allowance unless the process outlined in Section 15 (1) is followed, and this has not yet occurred.

I also note that historically, prior to this new Act, the Speaker and Leader of the Opposition had generally been afforded the ministerial benefits such as a car allowance as provided to Ministers of Government. I also acknowledge your understanding that the intent of the Act was not to deny this.

In the event that you are considering an amendment to the Act to cure the situation, please keep me advised of the intended wording of the proposed amendment and when it has been enacted. In the drafting of an amendment, consideration should also be given to address the capital cost component which is included in mileage reimbursement by its very nature versus a car allowance amount. I also noted that the ministerial reimbursement policies permit a Minister to claim either the car allowance or mileage but not both. I advise for completeness of information that the Canada Revenue Agency requires employers to report as a taxable benefit amounts paid for mileage when a car allowance is also paid.

I note that I am not in a position to continue those car allowance payments under CM2008-010 and CM2008-020 in future in the absence of an amendment to the Act as the *Financial Administration Act* precludes this.

I also note that the opinion stated that the amounts already paid may not be recoverable based upon the doctrine of estoppel. You may wish to seek legal advice to explain this doctrine and its impact. Any adoption of this doctrine as a reason not to collect prior amounts should be confirmed at a meeting of the Management Commission. Please advise me of their decision.



RONALD A. WILLIAMS, CA
Comptroller General of Finance

RW/ei

cc T. Paddon