

**REPORT OF THE PARLIAMENTARY STANDING
COMMITTEE ON THE PUBLIC ACCOUNTS ON THE
SPECIAL REPORT OF THE AUDITOR GENERAL ON
THE MISUSE OF PUBLIC FUNDS**

TO HIS HONOUR THE SPEAKER AND THE MEMBERS OF THE HONOURABLE HOUSE OF ASSEMBLY:

The Parliamentary Standing Committee on the Public Accounts has the honour of submitting the following Report:

1. Introduction

Your Public Accounts Committee (PAC) is pleased to report to the Honourable House of Assembly that we have reviewed the outstanding section *Inappropriate Use of Public Funds for Payment of Personal Legal Expenses* of the Special Report on the Misuse of Public Funds as produced by the Auditor General and tabled in this Honourable House on 3 March, 2012. This PAC Report covers the second section of the Auditor General's report; the first section was reported on by PAC on 20 July, 2012.

2. Meetings

PAC held nine meetings on this report with the Auditor General and staff, current and former public officers, and had deliberations amongst the committee. Below are the dates of the meetings:

- 12 September, 2013
- 19 September, 2013
- 3 October, 2013
- 24 October, 2013
- 31 October, 2013
- 13 February, 2014
- 14 February, 2014
- 23 April, 2014
- 29 May, 2014

3. Witnesses

PAC sought clarity on the matters raised in the report from a number of current and former Ministers and current and former public officers. The list below identifies the persons who provided information to PAC and how it was provided. All oral testimony was held "in camera". Written submissions received by PAC have been included in this report.

Oral Testimony

- Robert Horton, former Permanent Secretary of Public Works
- Anthony Manders, current Financial Secretary
- Randy Rochester, former Permanent Secretary of Public Works

Written Submission

- Doctor the Honourable Ewart F. Brown, J.P., former Premier
- Honourable Derrick V. Burgess, J.P., M.P., former Minister of Public Works

Invited to Attend

- Honourable Paula A. Cox, J.P., former Premier and Minister of Finance
- Kathy Lightbourne-Simmons, former Permanent Secretary of Legal Affairs
- Michael J. Scott, J.P., M.P., former Attorney-General
- Kim N. Wilson, J.P., M.P., former Attorney-General

4. Findings

- a. PAC found that a contract with the Canadian law firm was ratified by Cabinet and executed by the Solicitor General on behalf of the Government.
- b. The main contention was how an action approved by Cabinet for the Government of Bermuda ended up as a lawsuit filed in the name of former Premier Ewart Brown and former Minister Derrick Burgess.
- c. PAC, like the Office of the Auditor General, was unable to ascertain precisely by whom or when authorisation was given for the legal action to be filed in the name of former Premier Ewart Brown and former Minister Derrick Burgess (as opposed to the Government of Bermuda). The Ministry of Justice, in its response, stated that, "the

personal action was the only means by which the Government could take action against those responsible for essentially attacking the Government via its Ministers." This determination arose from the fact that a Government cannot be a plaintiff in a defamation action.

- d. Given that the action was filed in the names of former Premier Ewart Brown and former Minister Derrick Burgess, and although Dr. Brown and Mr. Burgess have stated publicly that any proceeds would not have benefited them personally, the PAC was provided with no legal or contractual evidence to support this. Though the action may have been for a government purpose, the lack of documentation regarding any potential damages allowed for the possibility for someone to personally benefit from the lawsuit. While PAC is not accusing former Premier Ewart Brown and former Minister Derrick Burgess of seeking to profit from this action, there was no documentation provided to PAC or to the Office of the Auditor General that satisfies this dilemma.
- e. Given that the lawsuit was filed in the names of former Premier Ewart Brown and former Minister Derrick Burgess, and given that they may have stood to benefit from a successful suit, the Auditor General argues that this was a misuse of public funds. The PAC agrees with the Auditor General in the strict letter of the law that a lawsuit in private names can be viewed as a violation of Financial Instructions; however, given the unusual circumstances of this case, the Public Accounts Committee acknowledges the Government's position that it considered this action to be for a "government purpose" and thus in line with existing Financial Instructions.
- f. PAC is wholly dismayed by the unwillingness of Attorney-General's Chambers to share information with the Office of the Auditor General and does not accept their claim of privilege. Audit functions cannot be properly executed if government departments claim legal privilege and block access to documents. Although the Members of the PAC are not lawyers, we did not see the need to spend government funds on seeking an independent legal opinion to validate what we all saw as patently obvious. We fully support the Auditor General's position that she is a servant of the government and, given the contract was between the government and the law firm, any information requested should have been provided to the Auditor General. In our attempt to further understand the Government's reasoning for not sharing the requested information with the Auditor

General, PAC tried to speak with the former Permanent Secretary in the Ministry of Legal Affairs. Unfortunately, the Committee did not get to speak with Ms. Lightbourne-Simmons as she had left Government at the time of the hearings. PAC is also dismayed that the former Attorney-General Michael Scott, when asked to attend PAC, declined the opportunity to attend to provide PAC additional clarity regarding these events. PAC believes that our report would have been more complete if we had participation from these two officers.

- g. PAC takes note that the retainer agreement between the Government of Bermuda and Lax O'Sullivan Partners was terminated in September 2011 in line with the Auditor General's recommendation.
- h. PAC takes note of the Auditor General's recommendation that surcharged funds be paid back, but does not support the recommendation - as the Committee accepts the explanation that Cabinet approved the funds and it was the view of Cabinet that the funding was for a "government purpose".

5. **Recommendations**

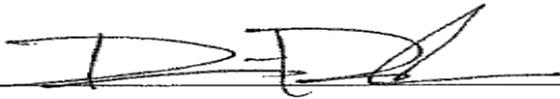
- a. PAC recommends that the Government examine amending Financial Instructions to allow for the Cabinet to support a civil action taken on behalf of a Minister against anyone who defames and damages the reputation or credibility of the Minister when he or she is carrying out his or her duties. The PAC also recommends that any amendment to Financial Instructions make it clear that any proceeds from any such action revert to the Government of Bermuda.
- b. PAC recommends that the Government ensures that the Auditor General receives access to all Government files without delay. The Office of the Auditor General must have the cooperation of the executive of the day to be effective - the lack of access to information gives the impression, whether rightly or wrongly, of something to hide. The PAC recognises the doctrine of legal privilege, however if such communication is to a legal team funded by the government, it is the opinion of this Committee that the Office of the Auditor General should have access to any information requested in accordance with the section 14 of the Audit Act 1990.

6. Conclusion

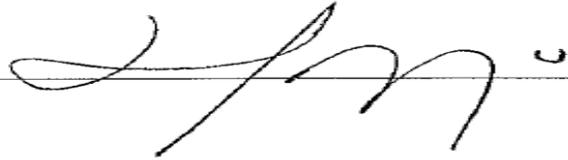
- a. PAC would like to acknowledge the advice and assistance provided by the Auditor General, Mrs. Heather Jacobs Matthews, and her professional staff during our deliberations; as well as the sterling work done on behalf of the Committee by Deputy Clerk to the Legislature, Mr. Clark W. Somner. PAC would also like to acknowledge the contributions of the Honourable Jeanne Atherden, J.P., M.P., who served on PAC prior to being appointed a Minister.
- b. PAC recommends that the Minister of Finance be requested to inform the Honourable House of Assembly of the action that is to be taken on the recommendations submitted in this report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

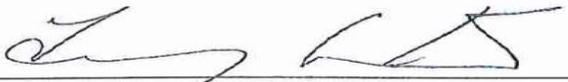
Mr. E. David Burt, J.P., M.P. – Chairman



Ms. Lovitta F. Foggo, J.P., M.P.



Mr. Terry E. Lister, J.P., M.P.



Mr. N. H. Cole Simons, J.P., M.P.



Mr. Glen C. Smith, J.P., M.P.



Mr. Jefferson C. Sousa, J.P., M.P.



Date:

6th June, 2014

