

**Minister of Finance Response on the 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 MEMBERS OF THE HONOURABLE HOUSE OF ASSEMBLY:**

**Introduction**

Mr. Speaker, I am grateful for this opportunity to respond to the Public Accounts Committee (PAC) Report on the Special Report of the Auditor General on the Misuse of Public Funds that was tabled in this Honourable House on March, 2012. This PAC Report focused on the outstanding section – Inappropriate Use of Public Funds for Payment of Personal Legal Expenses.

Mr. Speaker, it should be noted that the above mentioned incident being reported on occurred under the former administration at a time that I was actually Chairman of the PAC. Unfortunately, the previous PAC was unable to report on this matter due to the change in Government. The change in Government has obviously led to delays in responding. Nevertheless, I table the Government's written response to the above mentioned PAC Report in order to complete the financial reporting accountability cycle within Government.

Since coming into office in December 2012, the Government has placed great emphasis on the need to make continued improvements to Government's accounting and financial control systems and practices.

As mentioned above, this PAC Report focuses on one particular matter – 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 in March 2012. For ease of reference I have attached the PAC Report as **Annex I**.

### **Inappropriate Use of Public Funds for Payment of Personal Legal Expenses**

The Government acknowledges the work of the Public Accounts Committee in addressing items of concern relating to the above mentioned matter. I also note the findings and recommendations emanating from the PAC Report.

As recommended by the PAC, I hereby inform this Honourable House of the recommendations submitted and in the PAC Report on the Special Report of the Auditor General on the Misuse of Public Funds - Inappropriate Use of Public Funds for Payment of Personal Legal Expenses and the actions that are to be taken in response to those recommendations.

## Recommendation 1 - Section 5a of the Report:

“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”.

The Government is fully supportive of this recommendation and will ensure that any civil action taken on behalf of a Minister approved by Cabinet will be transparent and fully documented. One of the key findings in the PAC report was that whilst the former administration considered the funding of this action to be for a government purpose and was an appropriate course to follow in the interest of the Government, the Country and Bermuda’s international reputation, there was a lack of documentation to support this position. As mentioned above, any future civil actions taken by the Government on behalf of a Minister will be fully documented which will also make it clear that any proceeds from any such action revert to the Government of Bermuda. It should be noted that Financial Instructions already state that “Government funds or property should only be used for **Government purposes** and must not be used for personal reasons”. Accordingly there is no need to amend Financial Instructions to provide for this recommendation. The key requirement is to document the cases in which the Cabinet is 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 carrying out his or her duties. This documentation will be the support for any payments made towards this matter.

Recommendation 2 - Section 5b of the Report:

“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 the Committee that the Office of the Auditor General should have access to any information requested in accordance with section 14 of the Auditor Act 1990.”

While the Government supports the PAC’s recommendation that the Auditor General should have access to any information requested in accordance with section 14 of the *Audit Act 1990* (“**the Act**”), the Government, having taken legal advice from the Attorney General, does not accept that such information includes documents or information which is protected by legal professional privilege. The suggestion by the PAC in paragraph 5(b) of its report that the withholding of legal professional privileged documents or information gives the impression that there is something to hide fundamentally fails to comprehend why it is important to protect from disclosure to the public legal professional privileged information.

It is the opinion of the Attorney-General, who is charged under section 71 of the Bermuda Constitution Order 1968 to be the principal legal adviser to the Government, section 14 of the Act does not entitle the Auditor General to have access to legal professional privileged information.

It is important that the Government supports the non-disclosure of legal professional privileged information to the public in order to ensure that:

- (1) Government officials are not deterred from telling the whole truth to their attorneys for fear that such information may be made public; and
- (2) Legal advisers are able to give honest and candid advice on a sound factual basis to the Government without couching such advice for fear that it may find its way into the public domain and used against the Government in any civil proceedings against the Government.

The Government is a legal person and is entitled to the same protection against the disclosure of legal professional privilege information as any other person who seeks advice from legal counsel.

In the present case, the Attorney-General informed the Auditor General (citing legal authorities) of her legal interpretation of section 14 of the Auditor Act 1990 and it is inappropriate for the PAC to infer in its findings and recommendation expressed in paragraphs 4(f) and 5(b) of its report that such legal opinion is incorrect without citing any legal authorities that support such an inference. It should be noted that under same section 14 (d) of the Act, the Auditor General is entitled, in the exercise and for the purpose of his functions, to seek from the Attorney General in writing an opinion on any question regarding the interpretation of any statutory

provision. Hence, it appears that the Legislature intended the Attorney General to advise the Auditor General in regards the interpretation of any statutory provision, including provisions under the Auditor Act 1990.

**Mr. Speaker**, it should be noted that the above mentioned position is consistent with the position of the former administration as recorded in their reply to the Special Report of the Auditor General on the Misuse of Public Funds dated December 19<sup>th</sup> 2011.

### **Conclusion**

**Mr. Speaker**, I wish to express my thanks to the Auditor General and members of the Public Accounts Committee for their work in identifying and bringing forth their observations and recommendations to the attention of this Honourable House. This Government is committed to strengthening the way in which it manages and controls Bermuda's public finances and I have every confidence that continued improvements will be achieved.