

Kiley, Kevin

From: Barbara Waite <bawaite@assembly.pe.ca>
Sent: Tuesday, October 3, 2017 7:49 AM
To: Kiley, Kevin
Subject: RE: Interview Notes

Thanks for getting back to me.

Barbara

Barbara A. Waite, CPA, CA
Audit Director
Office of the Auditor General
Province of Prince Edward Island >>> "Kiley, Kevin" <kevin.kiley@mcinnescooper.com> 10/2/2017 9:26 PM >>>
Hi Barbara,

I reviewed our records and did not find contracts with Edelman or Murray Marshall.

Kevin

From: Barbara Waite [mailto:bawaite@assembly.pe.ca]
Sent: Tuesday, September 26, 2017 10:31 AM
To: Kiley, Kevin <kevin.kiley@mcinnescooper.com>
Subject: RE: Interview Notes

Good Morning Kevin;

I am following up to see if you have any further information on contracts for Murray Marshall and Edelman?

Thanks

Barbara

Barbara A. Waite, CPA, CA
Audit Director
Office of the Auditor General
Province of Prince Edward Island >>> "Kiley, Kevin" <kevin.kiley@mcinnescooper.com> 9/21/2017 1:01 PM >>>
Ok I will have a look.

From: Barbara Waite [mailto:bawaite@assembly.pe.ca]
Sent: Thursday, September 21, 2017 12:55 PM
To: Kiley, Kevin <kevin.kiley@mcinnescooper.com>
Subject: Re: Interview Notes

Hi Kevin;

I just have a point of clarification on your response to the interview.

In question 6(a) of our interview we asked if there were contracts signed with Edelman, Murray Marshall and Dickinson Wright. You responded that you were pretty sure there were contracts with Murray Marshall and Edelman. These contracts were not included in the information provided to us.

Could you please confirm whether contracts exist and if so, please provide a copy of each contract.

Thanks

Barbara

Barbara A. Waite, CPA, CA

Audit Director

Office of the Auditor General

Province of Prince Edward Island >>> "Kiley, Kevin" <kevin.kiley@mcinnescooper.com> 9/6/2017 1:36 PM >>>

Barbara,

Attached is a pdf of my comments in relation to the interview notes. If it would be helpful to have my response in word format, please advise.

Thanks.

Kevin



Kevin J. Kiley
Board Director/Partner
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From: Barbara Waite [<mailto:bawaite@assembly.pe.ca>]

Sent: Friday, June 2, 2017 2:13 PM

To: Kiley, Kevin <kevin.kiley@mcinnescooper.com>

Subject: Interview notes

Good Afternoon;

As indicated at our meeting on May 18, 2017, I am attaching the interview notes for your review. Please let me know if these notes adequately capture our discussion.

Thanks

Barbara

Barbara A. Waite, CPA, CA
Audit Director
Office of the Auditor General
Province of Prince Edward Island

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E-gaming/Financial Services Platform VFM 2016

Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

The purpose of this interview is to clarify documentation received from McInnes Cooper.

General Engagement Information

1. Based on our review of various documents, including invoices, and on discussions with others, it is our understanding that McInnes Cooper first began working with the PEI Government and MCPEI on the E-Gaming initiative in February 2010.

a. Is this correct or is there a different date?

Correct date February 2010.

b. How was this work initiated?

- Mike O'Brien and Kevin Kiley attended a meeting at the Delta with Wes Sheridan, Don MacKenzie, Chris LeClair and maybe others. Don MacKenzie discussed a possible retainer for the firm to work on a special project.
- Mike and Mr. Kiley signed non-disclosure agreements (NDA) with MCPEI before the meeting started.
- NDA to discuss potential business relationship.
- Mr. Kiley was provided with an overview of what transpired to date on the E-gaming initiative. MCPEI had approached government at some point earlier and dealt with Paul Jelley regarding a gaming initiative.

c. How were you engaged?

- They were engaged by MCPEI at this meeting at the Delta. There was no engagement letter.
- They don't usually have a written engagement letter.
- It is not typical to sign a retainer letter.
- There was no retainer letter signed for this file with MCPEI.

d. What was the time frame for this engagement?

- Mr. Kiley opened a file soon after this meeting in February 2010.

e. What was the purpose of the non-disclosure agreement between yourself and MCPEI? Would this relationship not be covered under solicitor client privilege? If not, why?

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Interview McInnes Cooper

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- It was unusual to sign an NDA. This discussion would not be covered under solicitor client privilege until they were engaged and agreed to take on the special project.

2. Given the various services that you provided as members of the working group why would you not have had an engagement letter or contract for the various professional services provided to the government of PEI and specifically the Minister of Finance?

- Mr. Kiley said they weren't providing services to government.
- Even as early as that first meeting, government indicated they would have their own legal counsel which he indicated turned out to be Carr Stevenson and MacKay.

3. In your letter dated September 22, 2016, you indicated that you acted as legal counsel to MCPEI and MCPEI and the government were working together on an initiative. However, in your correspondence to government you indicated you were retained to assist the Government of PEI and MCPEI. Further, McInnes Cooper was contracting third parties on behalf of government and was present at meetings and providing advice to all parties. Based on these arrangements there would be potential for conflict. Why would you not have documented these relationships to protect all parties involved?

- Mr. Kiley did not agree they were contracting on behalf of government rather they were contracting on behalf of the project. (Barb showed the correspondence of September 25, 2012)
- McInnes Cooper was engaged by MCPEI only. Whether they were talking to government or MCPEI the goal was completion of the project.
- There was an understanding that MCPEI would be made whole (by government). McInnes Cooper was advised of that by MCPEI and relied upon that.
- There was no question that McInnes Cooper was putting pressure on government to get paid but if they did not get paid by government they would be out of luck.
- The chances of a loss were slim with a government commitment to MCPEI.

a) Who gave the assurances to MCPEI?

Mr. Kiley was not sure.

4. Early on in the e-gaming initiative, Barb Stevenson was engaged by government and was present at some of the initial meetings in 2010. This relationship ended by the summer of 2010 and then the Minister did not have any legal counsel with the exception of internal lawyers that performed some work on the legislation/regulations. Former elected officials and other senior officials in government, including Wes Sheridan, indicated that at a minimum your firm was providing project management services to government. Other officials indicated that it was their understanding that McInnes Cooper was also providing legal representation

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Interview McInnes Cooper

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to government on this initiative. What discussions were had regarding the relationship between government and McInnes Cooper?

- Mr. Kiley indicated that he was advised Government's lawyer was Bill Dow as well as Barb Stevenson until about fall of 2010. They met with the working group from time to time.
- He indicated he was not sure who government was talking to at any point in time. Government has lawyers on staff as well as accountants, etc. He advised that government did bring accountants to meetings. McInnes Cooper was dealing with MCPEI and trying to advance a business deal for their client.
- There may not have been active communication at meetings with the Minister's legal people. McInnes Cooper did not know who government was talking to outside of the meetings.
- In his mind, it was clear McInnes Cooper was acting for MCPEI.
- Example - Revenue Sharing agreements. Mr. Kiley recalls saying at the meeting "we can put this together in a first draft, but government will have to get its legal counsel to look at it."
- He does not know what government did. No one ever questioned it.

5. We understand that McInnes Cooper sub-contracted various third parties to complete work for the initiative on behalf of government.

- a. **Who decided on the consultants to be engaged?**
- b. **How were they selected?**
- c. **Why did government not contract with them directly? (for example, Edelman was contracted to provide communications support to Government so why didn't government contract directly?)**

The working group would make these decisions together to hire a consultant. Recommendations came forward from different people and the group agreed that McInnes Cooper should reach out to them.

Patrick Orr - There was an understanding that regardless of which model was followed there would need to be legislation and regulations drafted. Frank Cantania started the work but he worked out of the U.S. so his regulation work was not relevant to Canada. The initial understanding was that the Legislative Counsel Office would do it. Shawn Flynn would do the drafting. MCPEI shared information with him but it did not go anywhere because he had no time. McInnes Cooper thought about drafting the legislation but did not feel they had the ability to produce what was needed.

Shawn Flynn recommended Patrick Orr as he had expertise in aboriginal governments and the Legislative Counsel Office had used his services in the past. McInnes Cooper reached out to him and he sent his CV. He had capacity to work on it so he was engaged.

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Interview McInnes Cooper

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Edelman – Is a public relations firm and it was engaged based on dealings over time with gaming companies and other provinces. The key person at Edelman had a lot of experience in the gaming field.

Murray Marshall - lawyer - Kahnawake

He was identified as someone who represented the Kahnawake Gaming Commission. Michael Tobin, of Continent 8, was an IT guy associated with Kahnawake. He brought Murray Marshall to them as a lawyer with particular relevant expertise.

Dickson Wright was engaged by MCPEI early on prior to McInnes Cooper's involvement to the best of his knowledge.

6. a. **Were there contracts signed for Edelman, Murray Marshall, Dickinson Wright?**

Yes to Patrick Orr.

Pretty sure to Murray Marshall.

Pretty sure to Edelman.

Dickinson Wright had been engaged early on by MCPEI so no contract with McInnes Cooper.

b. **What due diligence was performed on these contractors?**

McInnes Cooper did not vet anyone. They engaged consultants based on the decisions by the group after receiving recommendations.

- Mr. Kiley made a point to state that there was no E-gaming committee.
- The group met a lot together. Initially, agendas were prepared and a few point form minutes were recorded. After a time they stopped recording minutes.
- The group met to work on the file. To McInnes Cooper it was just a client file.

Murray Marshall's retainer was later in time towards the end due to Plan B becoming more the focus. He is an expert in aboriginal gaming law. Mr. Kiley indicated they would have probably sourced his information along the way but there was no specific due diligence report.

a. **Did you receive any final reports from Edelman or Murray Marshall? If so, could we be provided with copies?**

Mr. Kiley stated there was ongoing advice but no reports.

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Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

7. a. How did you come to enter into a consulting contract with Simplex? Who brought them forward to you?

Simplex – McInnes Cooper met with a number of online operators in the industry and suppliers to on-line operators. Through that, they became aware of Simplex's area of expertise in payment processing. They needed assistance in that area so Simplex was engaged.

- b. In your invoices, due diligence was performed on Simplex and Paul Maines in the Fall of 2011.

- i. Who asked you to perform this work? Why?
- ii. What did the due diligence consist of?
- iii. Did you prepare a report? Who was it provided to? What were the results?

- There were some inquiries made about Simplex on-line. They were providing services to several global banks.
- McInnes Cooper had meetings with Fintrac and they may have mentioned them.
- Simplex was identified as being able to give them the processing capability they needed.

Mr. Kiley asked to see the invoice where due diligence on Paul Maines was mentioned.

He stated Paul Maines attended a meeting out of nowhere. The working group was very sensitive about confidentiality. They really felt they had to protect first mover advantage. They thought they were ahead of the game. Confidentiality was critical to the success of the project. This was the atmosphere.

The minute the meeting was over everyone was wondering who this guy was. He seemed like a crook without opening his mouth.

- Mr. Kiley said Jenkins was there with Simplex which was odd.
- He never saw Paul Maines again. He remembers a meeting that it was reported to them that Paul Maines had a copy of the Simplex report and was trying to sell on it. The working group was very upset and contacted Phillip Walsh. Walsh said he would take care of it.
- Mr. Kiley stated after they found out he had the Simplex report they did some searches to get background. No report was prepared.

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Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

8. We were advised Paul Maines and Phillip Walsh were together at one meeting of the committee.

a. Did Paul Maines meet with the committee at other times?

As indicated above, the working group had nothing more to do with Paul Maines.

b. What was your understanding of the relationship between Maines and Walsh?

No understanding of the relationship between Maines and Walsh.

c. Paul Maines was in the community selling convertible debentures in CMT at this time. What knowledge did the committee have of this? What were the discussions?

Mr. Kiley stated they knew he had been a stock broker and to his recollection, that's all they knew.

9. a. It is our understanding that McInnes Cooper had dealings with Patrick Mason of Tech Markets? Can you describe the relationship?

No recollection - does not recall. Did not pay Pat Mason for anything but his name is familiar.

b. On July 19, 2011 we noted that the committee obtained and reviewed a copy of a report prepared by Pat Mason. Why? What was it used for?

Mr. Kiley could not recall.

10. a. Were you concerned about how these contractors would be paid given you indicate your relationship was with MCPEI and not government?

McInnes Cooper wasn't concerned about paying contractors but the contractors were concerned about getting paid. Some like Simplex were calling looking for their money.

11. We noted in the box of information there were some minutes prepared by Mike O'Brien for the meetings held in Montreal in 2010. Were any other minutes of meetings prepared? If no, why? If so, obtain copies.

There were only some point form minutes early in the process as indicated previously.

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Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

12. The loan for the project was not approved until November 14, 2011, and at that point in time you had incurred \$752,000, which did not include amounts owed to subcontractors.

a. Were you concerned that you may not receive the money owed to you or that the funding would not be approved?

Mr. Kiley stated they were not overly concerned. Worse came to worse, they thought they may have to write a cheque out of the general account of the firm.

- Getting paid for the year end was his concern because results reporting for the firm was on the calendar year.

b. Who provided you with assurances that you would receive payment for your work? Were these assurances provided in writing? Why or why not?

- Mr. Kiley wasn't concerned because government gave MCPEI assurances that they (government) will make them whole. There was nothing in writing.

13. There is evidence to suggest the original anticipated cost of the project were \$1,195,000. For the loan, the project costs were reduced to \$950,000.

a. Why were the projected costs reduced from \$1,195,000 to \$950,000?

b. What was the discussion regarding the shortfall of \$245,000 and how it would be funded or the costs reduced? (There is a memo between Mike O'Brien and Kevin Kiley which indicates that you were "advised that all accounts would be paid by government".)

c. Were you instructed to keep the anticipated costs under \$1 million?

d. Who advised of this?

He believes that the need to keep the project below \$1 million for IID's authorization level was indicated to MCPEI by IID. His contact was Don MacKenzie not government so he cannot speak directly to this.

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Interview McInnes Cooper

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14. Based on the invoices provided to government in support of claims made on the loan, we completed a summary of the costs incurred by McInnes Cooper. Can you provide more detailed information on the professional fees, specifically a breakdown of the legal fees vs the project management fees, hourly rates, time spent etc.? (A.40.C - Per their invoices the total is \$1,489,429.72 of which \$1,042,554.56 were for professional fees, \$74,740.25 for travel, \$366,611.50 for consultants and \$7,523.41 is for things like meals, copies, mail, board room)...

He stated they did not breakdown the professional fees by legal fees versus project management fees. This would not be available. He could provide a breakdown of per hour rates by the number of hours but he will need approval from his client.

Travel

15. By reviewing the time entries in the McInnes Cooper invoices we have noted that members of the committee attended the ICE Conference in London in both January 2011 and January 2012. Who from the e-gaming committee attended these conferences?

Mr. Kiley indicated he was going by memory but said:

ICE 2011 - attendees - Minister Wes Sheridan, Don MacKenzie, Kevin Kiley, Gary Scales
ICE 2012 - attendees Kevin Kiley, Don MacKenzie, Gary Scales and Mike O'Brien. The Minister did not attend.

16. Did anyone from the committee/McInnes Cooper go to Costa Rica in March 2011? If so, what was the purpose of this trip?

The Costa Rica trip did not happen.

17. In total \$72,740 of travel was billed for on McInnes Cooper invoices. The costs related to these trips are shown on your invoices as a separate line item under disbursements. Do these costs include expenses for the entire group or just McInnes Cooper staff (show invoices re: London X3 and Costa Rica)?

- In some instances, it would cover Minister Sheridan. They may not have charged for all of the McInnes Cooper people who attended.
- Don MacKenzie's costs were covered.
- There would not be a detailed breakdown of the travel.

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Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

Plan A, B and C

18. In the August 8, 2011 Strategy Session slide presentation provided, we noted there is descriptions provided for Plan A, Plan B and Plan C. This is the first reference we have to Plan C. Was Plan C the plan that was presented at the meetings in February 2012?

Plan A

- Compliant with the Criminal Code
- Gaming in PEI and MOU's to allow gaming in other provinces.

Plan B

- Aboriginal group asserting aboriginal rights under the constitution.
- Mr. Kiley stated that he wanted to be clear Plan B was not illegal. It was a constitutional challenge. If there was action initiated by another province to take them to court it would either stand, or it would be struck down and they would have to stop. They were not doing anything illegal.

Plan C

- International gaming.

Operators wished to be regulated to make more dollars by advertising that they were legitimate and to allow payment sources such as VISA.

- Mr. Kiley indicated they were back and forth with the provinces for a long time. There had to be enough volume with gaming to bring the gaming companies to PEI.
- Plan A was the goal but they always knew B was there. Not a lot of time was spent on C.
- Near the end they looked at whether they could get enough volume by having a few provinces along with the international component to get started and then continue to work on more provinces. They thought it would entice other provinces to join.

19. Based on various discussions and documents, some people felt that Plan A was never going to be viable. Were these discussions held with the committee? At what point did McInnes Cooper/Committee begin to pursue Plan B in earnest?

- A & B, parallel paths but most of the time was spent on A.
- He does not recall when they focused on Plan B in earnest.

20. Is there a breakdown available of the professional fees incurred for each Plan (A, B and C)?

- No breakdown of Professional fees between A and B. It was never segregated.

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Interview McInnes Cooper

Date: May 18, 2017

Present: Kevin Kiley, Barbara Waite, Jennifer Bowness

Work Subsequent to February Meetings

21. We understand that a decision was made on February 10, 2012 not to pursue the initiative. From your invoices we can see that McInnes Cooper's work on this file continued beyond the meeting until June 2012.
- a. What work was being done between February 10 and June 2012?
 - February 2012 - word came from government that they weren't prepared to support Plan B. Government had consulted with Tom Isaac. McInnes Cooper instructions came from MCPEI.
 - They first looked at responding to Tom Isaac and had Murray Marshall involved in these discussions. They found there was no actual opinion from Isaac only a telephone call.
 - They looked for a business model that could still make it happen. This is where they considered four provinces plus the international gaming side.
 - b. Under whose authority did the work continue? Government? MCPEI?

All their work was at the direction of MCPEI.
 - c. Was MCPEI still actively involved? Until what point?

As above, all their work was at the direction of MCPEI.
 - d. Did government know?

The Minister of Finance knew they were still working on the initiative.
22. From review of your invoices, we can see that you were in contact several times with Phillip Walsh during this time (Feb 10, 2012 – June 2012).
- a. Were you involved in discussing the establishment of a financial services hub with Phillip Walsh. If so, what was the nature of your involvement?
 - b. If so, under whose instruction were you pursuing the establishment of a financial services hub?

Anything they were in contact with Phillip Walsh would be regarding a platform for E-gaming only. They were not involved in anything other than E-gaming. Walsh could have been just calling trying to collect his money.

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Interview McInnes Cooper

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23. In June, McInnes Cooper met with Wes Sheridan which appeared to end any further activity.

- a. What was discussed?
- b. What was the discussion on the Atlantic Lottery Corporation involvement in the file?
- c. What was decided?
 - Mr. Kiley had no specific recollection of this meeting.
 - ALC – Mr. Kiley said the Minister was exploring a mechanism where ALC could play a role in this. He was not sure of the details.

24. In what capacity was Chris LeClair involved with the e-gaming file after October 2011?

- Pretty much no involvement.
- He was not hired by McInnes Cooper to work on the E-gaming file.
- MCPEI was sensitive to a former government person being involved in this file, so they kept his role minimal.
- He did a small amount of work on a presentation.

Settling of the McInnes Cooper Account

25. In October 2012, McInnes Cooper still had \$390,000 in outstanding invoices related to the project. Neil Stewart was contacted by you to collect on the account.

a. What were the discussions with MCPEI with regards to settling the account?

No specific recollection. McInnes Cooper wrote off some of the bills.

b. What discussions were had with government to secure payment of this balance?

No specific recollection.

c. What discussions were had regarding the sale of a legal report to Atlantic Lottery Commission to pay some of the outstanding balance?

Mr. Kiley did not think they were involved in any of the discussions around obtaining financing from government.

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Interview McInnes Cooper

Date: May 18, 2017

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Loan / Grants:

26. The loan agreement between IIDI and MCPEI states that loan funds will be issued on the basis of paid invoices. This was not what actually occurred and instead unpaid invoices were accepted for the claims. What were your discussions with IIDI when submitting these unpaid invoices in the claims? Who advised you to submit unpaid invoices?

Just mailed bill to MCPEI only, they were not involved in preparing the submission to IIDI.

27. When we reviewed the claims made by MCPEI for drawdown on the loan from IIDI to your internal memo in September 2012 regarding invoices outstanding, we note discrepancies (for example some contractors showing as being paid more or less than previously claimed) Can you explain these discrepancies? Were all contractors paid the amounts they were owed (for example Patrick Orr and Murray Marshall? Also Simplex claim for full amount in December 2011, but \$30,000 was outstanding until early 2013?

Maybe it was the timing of how the invoices were submitted.

McInnes Cooper sent their invoices to MCPEI as they would in any engagement.

At the end of the day, everyone got paid.

DRAFT

With respect to the notes that you have provided to me, the following are my comments in relation to same utilizing the numbering set out in the questioning.

1. (a) No further comments.
 - (b) The Non-Disclosure Agreement was not to discuss a potential business relationship. Rather, we were asked to execute the Non-Disclosure Agreement prior to being provided with information concerning which we were being approached to provide legal services to MCPEI.
 - (c) While we sometimes enter into retainer letters with clients, it is more common to not have a retainer letter.
 - (d) No further comments.
 - (e) The Non-Disclosure Agreement was prepared by MCPEI in advance of, and presented to us at, the first meeting. You would need to ask Don MacKenzie of MCPEI of his purpose in asking us to enter into a Non-Disclosure Agreement. However, I assume we were asked to sign it in case we subsequently declined to act for MCPEI with respect to the matter.
2. We provided legal services to MCPEI, and any other services were ancillary to our legal services to MCPEI. We did not provide professional services to government in relation to the e-gaming initiative ("initiative"), so there was no reason to have an engagement letter or contract with government. While there was a commonality of interest between MCPEI and government, and the two parties worked towards common goals, we were never engaged by the Minister, nor his department, to provide services to government in relation to the initiative. Government subsequently confirmed with us on or about March 10, 2010 that they had retained the law firm of Carr, Stevenson & MacKay ("CSM") to represent it in the initiative.
 3. See my comments in #2 above.

The memorandum dated September 25, 2012, which you referred me to at our meeting was not correspondence to government. It was an internal memorandum prepared to allow for a discussion with government to provide a breakdown of the unpaid legal invoices issued to MCPEI and unpaid project costs.

It was always clearly understood by MCPEI and the former Minister of Finance on behalf of government that MCPEI was our client. It was also clearly understood that funding would be provided by government to MCPEI to satisfy our invoices for professional services and project costs.

As indicated in my letter of September 22, 2016, the Minister did not enter into a relationship with our firm concerning the initiative. Rather, government entered into a relationship with MCPEI to explore the regulation of online gaming, and our firm acted as legal counsel to MCPEI. While the initiative was being pursued by MCPEI, there were a number of communications between, and meetings involving, our firm and representatives of government and third parties, and in all such communications and

meetings, McInnes Cooper was representing and acting upon the instructions of MCPEI to assist it in advancing the initiative.

When we were retained by MCPEI with respect to the initiative, MCPEI and government had been working on the matter for some time. Soon after our retainer by MCPEI for the initiative, MCPEI and our firm were advised by government that it had retained CSM to provide it with advice and represent its interests in pursuing the initiative. During the course of the initiative, we understood that government sought legal advice, both internally and externally, beyond CSM. We understood that government sought and obtained legal and other professional advice at such times as it deemed necessary. We had no knowledge as to how, why or when the requests by government were made for legal or other advice.

While we were retained to assist in the pursuit of the e-gaming initiative by MCPEI and government, it was MCPEI, not government, who retained us. We were advised by government at the original meeting that it was retaining CSM. If we had been retained at the outset to represent government, then there would have been no reason for government to retain CSM. We were never advised that CSM ceased to act for government with respect to the initiative (nor was that our experience), or that we were being asked by government to take over representation of it from CSM.

We were not contracting with third parties on behalf of government. It was necessary to contract with third parties as part of the initiative. Neither MCPEI, nor government, wished to contract with third parties directly. Rather, we were asked as legal counsel to MCPEI to contract with third parties. As stated above, it was clearly understood that government would be providing funding to MCPEI for all such expenses. The language "made whole" was language I used at our meeting, but those exact words were not used by MCPEI or government.

(a) Don MacKenzie would be the person with that information.

4. Barb Stevenson and Bill Dow of CSM were retained by government with respect to the initiative while we were retained by MCPEI. There were a number of direct meetings and exchanges of emails involving/with them as a result of CSM's representation of government. Your suggestion that CSM's representation ended by the summer of 2010 is not consistent with our dealings with them in relation to the initiative. For example, I believe that CSM had direct communications on behalf of government with MCPEI and our firm into late October of 2010 dealing with the amendments to the *Lotteries Commission Act* and later when that firm acted for IIDI concerning the financing provided to MCPEI. Furthermore, it was never indicated to us, nor am I of the view, that the Minister was ever without external legal counsel or that CSM did not remain retained by government. In our meeting, I indicated that at one point in time MCPEI and government were discussing the preparation of a revenue sharing agreement. At a meeting, we were asked if we would be able to draft a template for such an agreement with MCPEI and government left to negotiate the terms directly with one another. We advised MCPEI and the Minister that we would be able to draft a template, but that government would need to have it reviewed by its legal counsel, CSM. It was

acknowledged by the Minister that government would need to do so. It was never suggested that CSM was no longer representing government.

We do not know what transpired between CSM and government between these periods of time. However, we believe that government sought and obtained legal and other professional advice at such times as it deemed necessary. We have no knowledge as to how, why or when the requests were made by government for legal or other representation. It was always our understanding that the Minister and government were consulting with CSM and other professional advisers as and when deemed advisable.

5. McInnes Cooper did not contract with third parties on behalf of government. McInnes Cooper contracted with third parties to provide services to advance the initiative.

(a) No further comments.

(b) No further comments.

(c) Neither MCPEI, nor government, wished to contract with third parties directly. There was concern by MCPEI and government that to do so would increase the risk of the initiative becoming public before it was far enough advanced to prevent the loss of "first mover advantage". They were concerned that if a larger province such as Ontario was aware of the level of advancement of the initiative in PEI, then that province would move forward ahead of MCPEI and PEI.

Edelman was contracted to provide a communications strategy for the initiative which included communications which would come from MCPEI and government in announcing the initiative.

6. (a) No further comments.

(b) Those working on the initiative would have spoken over the course of the initiative to people in the industry who were knowledgeable of service providers who were relevant to the initiative. Members of the group would contact such people for feedback on potential service providers and made decisions after considering such feedback.

(c) I believe that Edelman produced either a draft or final form of a communications strategy and that it was provided by us to your office.

7. (a) The reference in the notes provided should be to "The group met..." rather than "McInnes Cooper met...". Although the group became aware of Simplex, I believe that a representative(s) of Simplex may have attended a meeting of the group without MCPEI, our firm, and perhaps even the Minister knowing in advance that they would be attending. If this correct (and I am not certain), then I don't recall who would have brought the Simplex representative(s) to the

meeting. I don't believe that the group made an initial contact directly with Simplex, but I am not positive.

- (b) The reference to "crook" was probably not my actual thought at the time. Rather, he seemed to be someone who was not genuine, and I was not left with a favourable impression of him. I only recall him attending one meeting.
8. As previously indicated, there was no "committee".
- (a) I only recall him attending one meeting.
 - (b) No further comments.
 - (c) We only were aware that he had gone to see a local investment adviser and had a copy of the Simplex report. When we did online searches concerning him after learning of the meeting, we learned that he had been an investment adviser who had gotten into trouble.
9. No further comments.
10. (a) It was understood from the outset that funding would be provided by government to MCPEI to fund the initiative.
11. I am not certain whether the point form minutes were circulated to others working on the initiative.
12. (a) We were not concerned because it was understood from the outset that funding would be provided by government to MCPEI to fund the initiative.
- (b) Same answer as #12(a) above.
13. (a) This information would be available from MCPEI and government who would have negotiated the terms of the financing.
- (b) We were advised that funding would be provided by government to MCPEI to fund the initiative.
 - (c) No.
 - (d) N/A
14. We were providing legal services to MCPEI. We were not providing project management services separate and apart from legal services to MCPEI. It is common in large legal engagements for there to be a project management component to the legal services.

15. No further comments.

16. No further comments.

17. No further comments.

18. Plan B was the plan presented at the meeting in February 2012.

With respect to Plan B, the notes should read, "Aboriginal group asserting aboriginal rights under the Constitution which would supercede other legislation."

With respect to Plan C, it was the same as Plan A with the addition of jurisdictions outside of Canada where interactive gaming is not strictly prohibited by law.

19. No further comments.

20. No further comments.

21. In February of 2012, government advised MCPEI that it was not prepared to pursue Plan B.

(a) With respect to the model, MCPEI and government continued to collaborate on the possibility of proceeding with a scaled down version (with only a few provinces) of Plan A or Plan C (I cannot recall which).

(b) MCPEI was our client. Both MCPEI and government continued to collaborate to determine if the initiative could proceed with a few provinces.

(c) Same answer as #21(b) above.

(d) No further comments.

22. No further comments.

23. No further comments.

24. No further comments other than in reference to the line concerning sensitivity. It was our firm that was sensitive. We did not want to create any concern on the part of our client, MCPEI, by having a former government employee involved in its file.

25. (a) No further comments.

- (b) No further comments other than we had at the outset been advised that funding would be provided by government to MCPEI to fund the initiative.
 - (c) No further comments.
26. We submitted our invoices to our client, MCPEI, in the normal course when rendered.
27. No further comments.

SCHEDULE "B"

DOCUMENTS that are or were in my possession, control or power that I object to producing on the grounds of privilege.

(1) **Solicitor-Client Privilege:** Documents containing confidential professional communications passing between the deponent, or the deponent's agent and the deponent's legal advisers directly related to the seeking or receiving of legal advice or legal assistance; including the contents of the file of the Defendant, Gary Scales with respect to his representation of the MC PEI.

(2) **Litigation Privilege:** Documents comprised of notes, memoranda, reports, confidential correspondence, and copies thereof, prepared for the purposes of obtaining or providing advice concerning this litigation, of obtaining or providing information and evidence to be used in this litigation and preparing for and prosecuting this litigation; and
NIL

(3) **Without Prejudice Communication Privilege:** Documents containing or reflecting communications of a without prejudice nature concerning the matters in issue in this litigation.

NIL

SCHEDULE "C"

DOCUMENTS that were formerly in my possession, control or power but are no longer in my possession, control or power.

1. The originals of all letters and documents referred to in Schedule "A", and "B" which were sent or delivered by the Deponent to the person, firm and/or company to whom they were addressed.