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**COMMITTEE REPORT NO. 7 - 12(4) TABLED ON NOV 26 1993**

**12th Assembly**

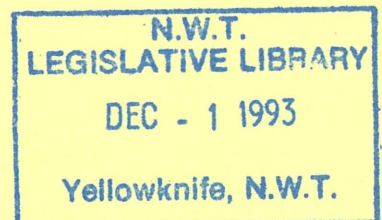


***Standing Committee  
on Public Accounts***

**Report on the**

**Committee Review of DeLury and  
Associates Limited Contracts**

Henry Zoe, M.L.A.,  
Chairman







**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**Report on the Committee Review of DeLury and Associates  
Limited Contracts**

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Northwest  
Territories Legislative Assembly / ᓄᓇᓕᓯᓪᓰᓂᓂ ᐱᓕᐱᓕᓲᓂᓂᓂ  
Standing Committee on Public Accounts  
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November 24, 1993

**THE HONOURABLE MICHAEL BALLANTYNE, M.L.A.  
SPEAKER, LEGISLATIVE ASSEMBLY  
NORTHWEST TERRITORIES**

Mr. Speaker:

The Standing Committee on Public Accounts is pleased to present its Report on the Committee Review of DeLury and Associates Limited Contracts.

A handwritten signature in cursive script that reads "Henry Zoe".

**HENRY ZOE, M.L.A.  
CHAIRPERSON**



**STANDING COMMITTEE ON PUBLIC ACCOUNTS**

**Report on the Committee Review of  
DeLury and Associates Limited Contracts**

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## BACKGROUND

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On September 14, 1992, the Standing Committee on Finance tabled its **Report on the Review of the 1992/93 Main Estimates** [Report No. 17-12(2)]. The following comments were included:

**DeLury and Associates Limited Contracts.** The Committee is concerned with three contracts spanning a two year period from November 1989 to December 1991 totaling \$530,279 that were sole sourced with DeLury and Associates Limited of Burns Lake, British Columbia. We were informed that Mr. DeLury was one of very few people with experience in the negotiation and implementation of a land claim settlement. The Committee questions the practice of sole sourcing and value for money in these circumstances. In addition, the amount reported by the Department did not agree with the GNWT Contract Listing.

**Recommendation 34** -- The Committee recommends that the Standing Committee on Public Accounts review the contracts awarded by sole source to DeLury and Associates Limited to ensure proper accountability and value for money in these circumstances.

This recommendation was subsequently passed by a Motion of the Legislative Assembly on October 2, 1992. Background materials were transmitted to the chairperson of the Public Accounts Standing Committee by the chairperson of the Standing Committee on Finance on November 17, 1992.

In following up on this recommendation, the Committee was advised of the following:

- That it would likely be necessary to draw on the expertise of an accounting professional with extensive experience in public administration audit.

- Consulting and Audit Canada could be retained to complete the review, through a Memorandum of Agreement with the federal government.
- The analyst would not have the usual authority that an auditor from the Territorial Audit Bureau or the Auditor General's Office would have in accessing government records. Accordingly, it would be necessary to rely on the "good offices" of the Department of the Executive to acquire and use information needed for the review.

### **MEMORANDUM OF AGREEMENT - CONSULTING AND AUDIT CANADA**

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The Public Accounts Committee, at a special meeting held on June 15, 1993 in Hay River, NWT, moved that Consulting and Audit Canada be contracted, through a Memorandum of Agreement, to conduct an independent review of the DeLury Contract.

A Memorandum of Agreement was negotiated with Consulting and Audit Canada and the consultants commenced their work in Yellowknife on July 19, 1993. The findings presented in the attached report are based primarily on interviews with, and documentation provided by, the Deputy Minister of Intergovernmental and Aboriginal Affairs.

The review conducted by Consulting and Audit Canada, was divided into two phases. The first phase that ended in the preparation of this Interim Report, included:

- Planning/orientation;
- Field work, which involved reviewing/analyzing documentation; and
- Interviewing appropriate individuals.

The Memorandum of Agreement with the consultants indicated that the second phase of the review, which would include preparation of a final report and attendance at meetings of the Standing Committee on Public Accounts, would be undertaken only if required. The Standing Committee on Public Accounts decided at a meeting in September 1993 that it would not be productive or necessary for Consulting and Audit Canada to undertake the second phase of the review.

**REVIEW OF DELURY AND ASSOCIATES LIMITED CONTRACTS  
INTERIM REPORT PREPARED BY  
CONSULTING AND AUDIT CANADA**

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Consulting and Audit Canada concluded that, although some deficiencies had been identified, the decision to award contracts by sole source to DeLury and Associates Limited was taken at the Executive Council level, and was in compliance with the applicable statutory authorities set out in the GNWT's *Financial Administration Act*.

However, several deficiencies, related to the administration of the contracts were identified, including:

- Procedures used for the reporting of contract details in the government's contract listing were inadequate.
- A post-contract internal evaluation of this large consulting contract was not carried out.
- The total contract costs reported to the LANWT were understated, in that certain travel costs were not reported.
- Consulting fees, paid by the GNWT, in the amount of \$8,780 which related to services provided to the Inuvialuit Regional Corporation by the Contractor, may not have been recovered.

Further, given the documentation made available, Consulting and Audit Canada was unable to assess or comment on whether adequate monitoring, supervision, or direction over the Contractor was maintained, or whether the GNWT obtained adequate value for money in terms of the services provided by the Contractor.

Finally, the consultants recommended that the second stage of this review; namely, the preparation of a final report, and their attendance at meetings of the Standing Committee on Public Accounts, be set aside, as this Interim Report provides all existing information from the documentation made available for review.

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REVIEW OF INTERIM REPORT PREPARED BY  
CONSULTING AND AUDIT CANADA**

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The Standing Committee called Mr. Lew Voytilla, Comptroller General and Mr. Bob Overvold, Deputy Minister, Intergovernmental and Aboriginal Affairs to discuss the findings of the Interim Report prepared by Consulting and Audit Canada. The issues raised and discussed with these witnesses include the following:

- the accuracy of the contract listing;
- the authority and obligation to produce the contract listing;
- the question of value for money for the whole of Mr. DeLury's work for the GNWT;
- accountability and the adequacy of contract monitoring; and

- the reason why the GNWT paid for work done by Mr. DeLury for the Inuvialuit Regional Corporation.

### **THE CONTRACT LISTING**

The contract listing can be an effective financial management tool. However, the Committee is not satisfied that the contract listing has provided the required degree of public accountability. Members noted that much of the controversy surrounding the DeLury contracts could have been avoided, had the contract listing been produced in a timely manner with clear, accurate information. Any questions about these contracts could have been asked and addressed long before the total expenditures amounted to over half a million dollars.

### **Recommendation # 1**

**Therefore, this Committee recommends:**

**That the Financial Management Board Secretariat formalize the process by which the contract listing is produced in order to ensure that accurate information is conveyed to the Legislative Assembly and the public in a timely fashion.**

### **VALUE FOR MONEY**

Consulting and Audit Canada reported that, based on the available documentation, they were unable to assess or comment on the value for money or the accountability and contract monitoring aspects of the DeLury contracts. The Standing Committee is not convinced, given the magnitude of the total expenditures for the DeLury contracts, that the GNWT received sufficient value for money.

**ACCOUNTABILITY AND CONTRACT MONITORING**

The Secretary to the Financial Management Board informed the Committee that a new Audit and Evaluation Division has been established in the Financial Management Board Secretariat, as part of the reorganization of Executive functions. The Audit and Evaluation Division is composed of the Territorial Audit Bureau, an Information Management section and an Evaluation section. The Secretary to the Financial Management Board suggested that the development of this in-house capacity to conduct program and project evaluations would hopefully address the concerns raised by the Committee with respect to contract monitoring. The Committee will be tracking the development of this organizational unit, with interest, to ensure that its concerns are addressed.

**Recommendation # 2**

**Therefore, this Committee recommends:**

**That the Government of the Northwest Territories, and in particular the Executive Department, document and monitor service contracts to ensure full accountability and the capacity to assess value for money. The Committee further recommends that the concerns identified, regarding contract monitoring, be addressed through policy development.**

**GNWT PAYMENT FOR SERVICES RENDERED TO THE INUVIALUIT REGIONAL CORPORATION**

Government officials did not provide a rationale to the Committee concerning the reason the Government of the Northwest Territories agreed to pay for Mr. DeLury's consulting services to the Inuvialuit Regional Corporation. In addition, no explanation has been provided regarding the government's apparent failure to recover the consulting fees for services provided to the Inuvialuit.

**Recommendation # 3**

**Therefore, this Committee recommends:**

**That the government review the payment of consulting fees to Mr. DeLury, for services provided to the Inuvialuit Regional Corporation, assess the feasibility of recovering these fees, and take appropriate action, as required.**







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*STANDING COMMITTEE ON PUBLIC ACCOUNTS  
LEGISLATIVE ASSEMBLY OF THE NORTHWEST TERRITORIES*

REVIEW OF DELURY AND ASSOCIATES LIMITED CONTRACTS

INTERIM REPORT

CONSULTING AND AUDIT CANADA

September 1, 1993





*STANDING COMMITTEE ON PUBLIC ACCOUNTS  
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REVIEW OF DELURY AND ASSOCIATES LIMITED CONTRACTS

INTERIM REPORT

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**REVIEW OF DELURY AND ASSOCIATES LIMITED CONTRACTS**

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**1. INTRODUCTION**

In October 1989, the Department of the Executive approved the award of a contract without tender (sole source), to a consulting firm, under the name of DeLury and Associates Limited (DeLury), of Burns Lake, British Columbia. The term of the contract was for the period November 27, 1989, to May 27, 1990. This contract was subsequently extended to November 27, 1990, and two additional contracts were awarded without tender, which extended this Contractor's term of engagement to December 31, 1991. The Contractor was required to perform a wide range of consultative duties, related to representation of the Government of the Northwest Territories (GNWT) in various land claim negotiations. The total amount of the contracts exceeded \$500,000.

Subsequent to the completion of the contracts, concerns were expressed by Members of the Legislative Assembly of the Northwest Territories (LANWT) regarding both the procedures used in determining that the contracts should be awarded without tender, and in the quality and volume of deliverables provided by the Contractor. As a result, the LANWT on October 2, 1992, passed a motion referring the matter for public review by the Standing Committee on Public Accounts. In preparation for the formal public review, the LANWT contracted with Consulting and Audit Canada, Alberta-British Columbia Regional Office, to conduct a review of the contracts with DeLury.

**2. REVIEW OBJECTIVE**

The objective of the review is to provide, to the LANWT Standing Committee on Public Accounts, the information that is required to review the DeLury and Associates Limited contracts.

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**3. REVIEW SCOPE**

The review included the following:

- (a) developing an outline of the process through which decisions were made to award the contracts to DeLury by sole source, including an indication of the level at which decisions were made, and their rationale;
- (b) conducting an examination of whether statutory authorities regulating sole source contracting were followed, with respect to the contracts awarded to DeLury;
- (c) assessing the adequacy of procedures used for reporting contract details within the government's "Contract Listings";
- (d) examining (1) the accuracy of accountability provisions included within the contracts; (2) the suitability of monitoring activities undertaken by the Department of the Executive; and (3) the level of adequacy of documentation prepared within the Department of the Executive relative to contracting with, and supervising, work performed by DeLury;
- (e) identifying whether satisfactory internal evaluation of this large consulting contract was undertaken within the Department of the Executive, the Comptroller General's office, or elsewhere within the GNWT, following contract expiry;
- (f) investigating whether instructions were provided to the Contractor, as required by the terms of the Contract, and examining compliance with any instructions;
- (g) determining whether sufficient economy in the allocation of government resources was achieved through these contracts, given the total cost of service (\$530,279), and the consulting market of the day; and
- (h) reporting on any other matters of interest to the Standing Committee that may come to light over the course of the review.

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**4. SUMMARY OF DELURY AND ASSOCIATES LIMITED CONTRACTS**

DeLury was awarded three contracts, covering the following periods and for the following authorized amounts:

CONTRACT NO. 1

*November 27, 1989, to May 27, 1990 (extended to November 27, 1990)*

- This contract was extended due to unresolved issues related to Dene/Metis negotiations, and the Inuvialuit settlement agreement.
- Initial authorized contract amount was \$95,000, excluding travel costs. The revised contract amount was \$252,000, excluding travel costs. The actual recorded contract costs were \$213,145, for consulting services only; travel costs were not recorded against this contract (refer to Section 6(h)(i) below).

CONTRACT NO. 2

*November 28, 1990, to November 27, 1991 (terminated June 28, 1991)*

- It was reported by the Deputy Minister of Intergovernmental and Aboriginal Affairs, that this contract was terminated because the contractor's role had changed from that of Chief Negotiator for the TFN and Dene/Metis land claims, to that of providing assistance to the GNWT in negotiating an access agreement to the Inuvialuit lands and resources.
- Authorized contract amount was \$228,000, excluding travel costs. The actual contract costs at the termination date totalled \$234,111, which included \$14,335 in travel expenses and \$219,776 for consulting services.

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CONTRACT NO. 3

*June 29, 1991, to December 31, 1991*

- Authorized contract amount was \$75,000, excluding travel costs. The actual contract costs totalled \$83,023, which included \$75,000 for consulting services and \$8,023 in travel expenses.

The reported contract costs totalled \$530,279, including \$22,358 in travel expenses (refer to Section 6(h)(i) below). Authorized contract amounts, noted above, did not specify an authorized amount for travel expenses, although the contracts provided that the Contractor be remunerated for the following expenses:

- reimbursement of meals and incidentals expense at normal GNWT rates;
- reimbursement for reasonable and actual costs of airfare to and from the Contractor's residence at Burns Lake, B.C., when not required to be in the Northwest Territories; and
- a one-bedroom furnished apartment, or other suitable accommodation.

The contracts did not limit the amount of expenses and therefore, the travel costs associated with these contracts were not adequately committed in the financial reporting system of the GWNT.



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**5. APPROACH**

The review was structured to consist of two phases. The first phase consisted of a planning/orientation phase, and the field work, which involved reviewing/analyzing documentation, and interviewing the appropriate individuals involved. Upon completion of this phase, this interim report is provided, indicating the extent to which the review objectives were attainable. The second stage of the review, which includes preparation of a final report, and attendance at meetings with the Standing Committee on Public Accounts, is to be undertaken only if required.

This approach was necessary, as the Standing Committee recognized that adequate documentation/records may not exist, or may not be made available for review. The interim report would therefore provide the opportunity to address the review objective in view of the documentation available.

The following review findings are based primarily on interviews with, and documentation provided by, the Deputy Minister of Intergovernmental and Aboriginal Affairs (MIAA). The Deputy Minister (Principal Secretary to the Government Leader during the period when the DeLury contracts were awarded), provided a number of files, reportedly containing all the existing and relevant information relating to the awarding of the DeLury contracts. Minutes of any Cabinet discussions were considered confidential, and were not made available to us for review.

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6. **FINDINGS**

(a) Decision Process/Rationale

The decision to award the contracts to DeLury was taken at the Executive Council level.

The Deputy Minister of MIAA indicated that the decision to engage a contractor to assist GNWT in land claim negotiations was a result of the collapse of the Dene/Metis negotiations in 1988. In order to take a new approach, raise the profile of the land negotiations, and resolve difficult land claim issues, the Executive Council, in the summer of 1989, discussed the notion of contracting for a "claims troubleshooter." Subsequently, a decision was reportedly taken by the Council to identify a suitable individual. In October 1989, the Political and Constitutional Development Committee (PCDC) met to review a draft terms of reference for a "Special Land Claims Facilitator," and it was agreed, in principle, to recommend that the Executive Council proceed with awarding a contract. We were informed that minutes, or a record of decisions for this particular PCDC meeting were not taken, as it was not considered an official meeting of the Committee.

On October 26, 1989, the Executive Council decided (Cabinet Record of Decision RD 89-18-4), that a sole source contract with DeLury and Associates Limited be approved for the provision of consulting services for land claim negotiation issues. The decision record indicates that the Minister of Aboriginal Rights and Constitutional Development (ARCD), would be responsible for implementing this decision. The initial contract was executed on November 17, 1989, over the Minister's signature. The extension to this contract, and the awarding of the final two contracts, were all approved by Executive Council decisions.

The rationale for awarding the contract to DeLury was based on Mr. DeLury's land claims knowledge and experience. Reportedly, Mr. DeLury was one of the very few available individuals with experience in land claims negotiations. Other negotiators with similar experience were under contract with either the Government of Canada, or

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with aboriginal groups. In addition, Mr. DeLury reportedly was one of the few individuals in Canada who had negotiated a completed and finalized land claim agreement, and therefore was considered, by the individuals we interviewed, to be an ideal candidate for the Special Land Claims Facilitator position.

(b) Statutory Authorities

The awarding of contracts to DeLury without tender (on a sole source basis), was in compliance with the GNWT's *Financial Administration Act*.

Section 4.(1) of the Government Contract Regulations under this *Act* details the paramount authority of the Executive Council in contracting matters. Specifically, the Executive Council may enter into, or direct a contract authority to enter into, a contract with any person, and shall record its reasons for entering into a contract. Section 4.(2) states that the Financial Management Board (FMB) may make a recommendation, including reasons for the recommendation, to the Executive Council, that a contract be entered into with a person other than a person who would otherwise (e.g., through invitation to tender, or request for proposals), be awarded a contract under these provision.

Our review of the documentation indicated that proper Executive Council records of decisions, FMB submissions and approvals, had been attained for all three DeLury contracts.

(c) Contract Listing

The procedures used for reporting contract details in the government's contract listing are inadequate.

We were advised by the Secretary to the Financial Management Board, that the Director of Supply Services, Government Services and Public Works, was responsible for

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producing the contract listing. It was reported that the information contained in the listing had evolved in response to requests from the Standing Committee on Finance, and a FMB directive. The applicable FMB directive was not made available for our review. The Director of Supply Services indicated that correspondence was received from the FMB, requesting that a contract listing be produced. However, this correspondence could not be located, and the Director was unaware of any procedures or regulations related to contract listing.

Detailed below are our comments relating to the existing contract listings (each listing reportedly covers a six-month period), which were provided by the Director:

*October 1, 1989 - March 31, 1990*

- The listing does not include any reference to the DeLury contract.

*April 1, 1990 - September 30, 1990*

- The listing does not include any reference to the DeLury contract.

*October 1, 1990 - March 31, 1991*

- The listing contains a reference to the first DeLury contract, which covered the period November 27, 1989, to November 27, 1990. The value of the contract was reported as \$216,654. However, the authorized revised contract value was \$252,000 (refer to Section 4, above).

*April 1, 1991 - September 30, 1991*

- The listing contains a reference to the first DeLury contract, which expired November 27, 1990. The value of this contract was now reported as \$280,312, and a reference to the second DeLury contract, which indicates the value of this contract was \$191,224. However, the authorized contract value was \$228,000.

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We were unable to obtain the contract listing for the period October 1, 1991, to March 31, 1992, and were subsequently advised that a contract listing was not produced for this period. Consequently, there was no public reporting of the third DeLury contract, which covered the period June 29, 1991, to December 31, 1991. We were advised by various Government Services and Public Works personnel that the contract listing generally contains duplicates, omissions, overstatement of contract values, and delays in reporting. These deficiencies are due to a lack of adequate procedures for preparing and verifying the completeness of contract listings, which may explain the discrepancies and apparent delays in the above-noted reporting of the DeLury contracts.

(d) Contract Monitoring/Supervision

Due to a lack of information, we are unable to comment on the suitability of monitoring activities, or the adequacy of documentation prepared within the Department of the Executive, relative to the supervision of the work performed by the Contractor.

Based on our review of the documentation made available, the Contractor received instructions from, and reported directly to, the Executive Council, through the Minister for ARCD (also the Chairman of the PCDC). Since the Contractor was reporting at the ministerial level, minutes to all meetings were designated "confidential documents," and were not made available. Monitoring and supervision of the Contractor's work by the Department was purportedly on an informal basis. The Deputy Minister of MIAA stated that the reporting between the Contractor and the Minister was not on an established schedule, but was informal in nature, with frequent contact being maintained. In addition, the Deputy Minister indicated that the Minister was satisfied with all correspondence received from the Contractor. We did note in the documentation provided that the Minister on two occasions over the two-year term of the contracts, requested and received activity reports from the Contractor.

(e) Post-Contract Evaluation

Based on our discussions with the Secretary to the Cabinet, the Deputy Minister of the Ministry of Intergovernmental and Aboriginal Affairs, and the Secretary to the Financial Management Board, an internal evaluation of the consulting contracts was not

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undertaken by any department, or agency, of the GNWT, subsequent to the contract expiry.

(f) Direction Over Contractor

Similar to item (d) above, we received insufficient information to determine whether instructions were provided to the Contractor, or the extent to which the Contractor may or may not have complied with such instructions. The Deputy Minister of MIAA advised that there were no specific written instructions to the Contractor per se; however, the Deputy stated that the Contractor worked very closely on a day-to-day basis with the Minister of ARCD, and that there were numerous telephone conversations and meetings between the two individuals during the term of the engagement.

(g) Value for Money

We were unable to determine whether sufficient economy was achieved through the contracts, as this would require a very subjective judgement or evaluation, due to the nature of the services provided, and the lack of information made available for review.

With respect to the consulting market of the day, it was reported by the Secretary to the FMB that the per diem rate, paid to the Contractor, was comparable to the rates paid to federal and other provincial land claim negotiators. In addition, it was reported that the Contractor's per diem rate of \$950 was approximately 20 percent lower than the rate he had received on his previous assignment with the Inuvialuit Regional Corporation (IRC).

On the other hand, we noted that the services provided under the third contract, related to negotiating GWNT access to, and use of, the Inuvialuit lands and resources. The Contractor was unable to reach an agreement, and the negotiations failed. Subsequently an agreement in principle was reached by in-house MIAA personnel with the Inuvialuit on the access issue. The salary rates paid to these employees are substantially lower than the rate assessed by the Contractor.

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(h) Other Matters

The following are other matters, related to the DeLury contracts, that may be of interest to the Standing Committee:

(i) Actual Cost of Contracts

The total contract costs, reported to the LANWT in the amount of \$530,279, did not include all costs associated with the contracts (refer to Section 4, above). Excluded from the reported amount was \$21,465 in travel expenses, incurred by the Contractor for the period May 13, 1990, to February 4, 1991. These expenses were not submitted by the Contractor until May 1992, and thus were paid out of the "new year" (1992/93 fiscal year) budget, and not from the budget year in which the expenses were incurred. In addition, as specified in the contracts, a furnished apartment in Yellowknife was provided to the Contractor. Department of Public Works personnel estimate the market value of this accommodation at \$770 a month (excluding utilities). The value of this accommodation over the term of the contracts is, therefore, estimated to be \$19,250.

(ii) Recovery of Costs

In May 1990, the Contractor requested approval from the Minister to provide services on a short-term basis, to the IRC. Commencing the week of May 28, 1990, a total of 69 hours (or \$8,740 in costs) were reported as work done for the IRC, and these hours were included in amounts invoiced and subsequently paid by the GNWT. The invoices indicated the hours that were applicable to the IRC, and contained a note, suggesting that these amounts could be charged back to the IRC. Based on the available documentation, it appears that these costs were not recovered from the IRC by the GNWT.

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7. **CONCLUSION**

The decision to award contracts by sole source to DeLury and Associates Limited was taken at the Executive Council level, and was in compliance with the applicable statutory authorities set out in the GNWT's *Financial Administration Act*.

Several deficiencies, related to the administration of the contracts were identified, including:

- Procedures used for the reporting of contract details in the government's contract listing are inadequate.
- A post-contract internal evaluation of this large consulting contract was not carried out.
- The total contract costs reported to the LANWT were understated, in that certain travel costs were not reported.
- Consulting fees, in the amount of \$8,740 paid by the GNWT, which related to services provided to the IRC by the Contractor, may not have been recovered.

In addition, based on our review of documentation made available, we were unable to assess or comment on whether adequate monitoring, supervision, or direction over the Contractor was maintained, or whether the GNWT obtained adequate value for money in terms of the services provided by the Contractor.

Finally, we recommend that the second stage of this review; namely, the preparation of a final report, and our attendance at meetings of the Standing Committee on Public Accounts, be set aside, as this Interim Report provides all existing information given the documentation that was made available for our review.





