

# Memo

<b>Date:</b>	October 15, 2013
<b>To:</b>	CBC/Radio-Canada internal audit file
<b>From:</b>	CBC Internal Audit Team
<b>Subject:</b>	Review of Expenses of the President and CEO

## Background Information

Internal Audit was requested by the Chair of the Audit Committee of CBC/Radio-Canada (or "Corporation") to review Management's response to matters arising regarding the treatment of travelling expenses of the President and Chief Executive Office (CEO) of the Corporation, in the context of his living allowance and the by-laws of the Corporation.

To ensure a fulsome understanding of the situation, discussions were held with the following individuals along with a review of the documentation as noted below:

- Maryse Bertrand, Vice-President, Real Estate Services, Legal Services and General Counsel;
- Suzanne Morris, Vice-President and Chief Financial Officer;
- Michael Mooney, Executive Director, Corporate Finance and Administration;
- Suzanne Moss, Director of Budgeting and Forecasting, Finance and Administration;
- Sylvia Hums McStravick, Senior Advisor, Executive Compensation;
- Roula Zaarour, Vice-President, People and Culture;
- Peter Charbonneau, Chair of the Audit Committee; and,
- Hubert T. Lacroix, President and CEO.

Documentation reviewed:

- Memorandum from the CBC/Radio-Canada Vice-President, Real Estate Services, Legal Services and General Counsel dated Oct 1, 2013;
- Order-in-Council P.C. 2007-1658 (dated October 31, 2007);
- CBC/Radio-Canada Bylaws for Director Compensation – Schedule K (dated March 2006);
- Cheque dated September 30, 2013 from Mr. Lacroix, payable to CBC/Radio-Canada; and,
- Various related memos and correspondence (e.g. external legal letter, correspondence during employment negotiations).

Based on our discussions with Management and documentation review, the following summarizes our understanding of the situation:

- By Order-in-Council dated Oct 31, 2007, Mr. Hubert Lacroix was appointed President and CEO of the Corporation effective as of January 1, 2008. The President and CEO was entitled to receive a "living allowance of \$1,500 per month, net after tax, in lieu of reimbursement of relocation expenses".
- As per General Counsel's memo, it was noted that before Mr. Lacroix's appointment, he expressed a desire not to have a residence in Ottawa, and in an email from Mr. Lacroix dated

October 14, 2007, he noted that he would prefer to use the living allowance to stay in a regular hotel instead.

- The General Counsel's memo notes that correspondence does not provide clarification as to the treatment of travelling expenses beyond the availability of a car and chauffeur. In a draft letter dated October 30, 2007 from the Chair of the Board (Tim Casgrain), it was indicated by Mr. Casgrain that the then Vice-President of People and Culture would provide Mr. Lacroix with the details of the Corporation's current practices relative to this benefit.
- The General Counsel's memo notes that Mr. Lacroix has indicated that he was verbally advised by the Corporation's then Vice-President, People and Culture that "he would be reimbursed for all his travelling expenses, including while travelling to Ottawa, in addition to the amounts paid to him for his living allowance".
- The General Counsel's memo goes on to say that this description would be consistent with the Corporation's practices in 2007, as evidenced by the treatment of the former President and CEO's expenses. As per the General Counsel's memo, as of the date of Mr. Lacroix's correspondence with Mr. Casgrain (October 30, 2007), the Corporation's practice with regard to its then President and CEO, Mr. Robert Rabinovitch, was to reimburse him for his hotel, meals, incidentals and duty and entertainment expenses while travelling to Ottawa. The memo goes on to note that the Corporation's financial records indicate that prior to October 2006, Mr. Rabinovitch was not reimbursed for hotels or meals while travelling to Ottawa but was reimbursed for duty and entertainment and certain incidental expenses.
- CBC's *Bylaws for Director Compensation – Section 9 of Schedule K* (dated March 2006) states that "The President is entitled to be paid reasonable travel and living expenses incurred by him/her while engaged on the business of the Corporation at any place other than the Head Office of the Corporation".
- In the General Counsel's memo, it was noted that Mr. Lacroix indicated that he was not aware of the governing instruments in 2007, and the executives and managers currently charged with reviewing the President's expenses indicated that they were not aware of Schedule K or of the contents of the Order-in-Council.
- Internal Audit was also not aware of Schedule K or of the contents of the Order-in-Council when it conducted its quarterly reviews of the proactive disclosure of executive expenses.
- The General Counsel's memo and Management's analysis documentation indicate that, from January 1, 2008 to August 31, 2013, Mr. Lacroix had claimed and has been reimbursed for his travelling expenses to Ottawa including hotels, meals and incidentals for a total of \$29,192.41 including all GST, HST and other taxes.
- The Corporation also obtained a legal opinion on August 13, 2013 from independent outside counsel which noted that the practice followed by the Corporation (since 2006) is not in accordance with the governing instruments of the Corporation. It went on to say that it would be difficult for the Corporation to justify a claim from Mr. Lacroix for amounts that had already been reimbursed to him, given the precedent that the Corporation has created. The legal opinion continues to state that Mr. Lacroix should be provided with reasonable notice of this change in terms of employment, and if the Corporation wishes to amend the practice going forward, Mr. Lacroix should be provided with reasonable notice.
- Through a letter dated August 29, 2013, the Chair of the Board confirmed that the President and CEO had voluntarily agreed to repay the above amount in order to avoid any public misperceptions and to demonstrate his desire that the Corporation be in full compliance with governing instruments. The letter also confirmed that as of Sept 1, 2013, the practice of reimbursing the President and CEO for living expenses while in Ottawa would cease. A cheque payable to CBC/Radio-Canada dated Sept 30, 2013 was provided by Mr. Lacroix to the Corporation for the above amount.
- The Corporation also obtained a legal opinion on August 13, 2013 from independent outside legal counsel that noted that the President and CEO is entitled to reasonable living expenses for travel outside of Ottawa (i.e. hotel and meal expenses) upon presentation of an appropriate

claim; and while on Corporation business in Ottawa, he is entitled to the "living allowance" of \$1,500 per month provided in the Order-in-Council.

- The General Counsel's opinion (as stated in her memo) is that the expenses under review should not, based on the above legal opinion and the governing instruments, include duty and entertainment expenses incurred on behalf of third parties for the benefit of the Corporation or travelling expenses to and from the Ottawa head office to another location.
- As per General Counsel's memo, it was noted that Management's go-forward recommendation is to ensure that the Corporate Secretariat circulate the list of all such instruments to all senior executives together with a list of components that could reasonably be expected to be affected by each instrument. In addition, all future contracts between the Corporation and the President and CEO will be in writing, explicit as to the rules regarding all benefits, reviewed by the General Counsel prior to the new President and CEO taking office, and included in the employment file. Finally, Management has recommended that the Human Resources and Governance Committee review the opportunity to amend or seek changes to the governing instruments at a later date.

## Objective of Review

The purpose of Internal Audit's review was to determine concurrence with Management's findings and recommendations regarding this matter, specifically including the accuracy and completeness of the total dollar amount of living expenses that should be repaid, if any, by Mr. Lacroix in order to comply with the governing instruments (i.e. 2007 Order-in-Council and the CBC Bylaws for Director Compensation – Schedule K, and other related documentation provided to us).

## Scope

The scope of our review included all travel costs claimed by Mr. Lacroix and reimbursed by the Corporation from the date of Mr. Lacroix's appointment as President and CEO of the Corporation to present day (i.e. Jan 1, 2008 to October 9, 2013).

## Approach

Through documentation review and discussions with General Counsel, the CFO, and the Chair of the Audit Committee, we assessed the reasonableness of Management's definition of the scope of expenses to be covered by the living allowance (i.e. hotel and meals but not intercity travel) and reviewed Management's application of this definition when calculating the dollar amount of travel costs, if any, that should be reimbursed by Mr. Lacroix.

Management prepared a spreadsheet listing all travel costs relating to trips to/from Ottawa from January 1, 2008 to September 24, 2013. To confirm the completeness and accuracy of this spreadsheet, the following documentation was reviewed:

- **SAP Vendor Report** for H. Lacroix (report #AHR\_61016402, vendor #235831): This report shows all payments made to the employee via SAP for the period January 1, 2008 to October 9, 2013 (note we were informed through discussions with the Director of Budgeting and Forecasting, Finance and Administration that this report captures all payments to Mr. Lacroix). This report included:
  - "ZT" transactions which refer to travel claim reimbursements made through the Corporation's travel management system (TEMS);
  - "KR" transactions which refer to non-travel claims; and,
  - "KT" transactions which refer to travel claims that were "pre-TEMS".
- **TEMS Report** from the Corporation's travel system which was used by Management to develop its spreadsheet to compile the relevant travel expenses. This TEMS report lists all trips taken by



H. Lacroix for the period January 1, 2008 to Oct 2, 2013, including any Ottawa trips. A breakdown of travel costs (e.g. transportation, meals, incidentals, etc.) was provided for each trip; and,

- **On-line Travel Claims from the TEMS system:** provides a breakdown of travel costs and whether the trip included a stopover in Ottawa for the period January 1, 2008 to October 9, 2013.

A comparison was made between Management's spreadsheet, the SAP vendor report, and the TEMS report to ensure that all trips to/from Ottawa (including stopovers) were included in Management's spreadsheet. The breakdown of Ottawa trip costs outlined in the TEMS report was agreed to the spreadsheet to ensure that all costs were completely and accurately reflected.

As the cut-off date of Management's spreadsheet was September 24, 2013, we also performed roll-forward procedures to ensure that any Ottawa travel claims up to Oct 9, 2013 were included in the spreadsheet, as required.

In addition, we reviewed all travel claims in the TEMS system for the period January 1, 2008 to October 9, 2013 to ensure that all trips with stopovers in Ottawa were included in Management's spreadsheet.

As well, all expense claims relating to the KR and KT transactions in the SAP vendor report were reviewed on-line in TEMS to assess whether any expenses should be included in the spreadsheet.

Interviews with various individuals (i.e. the Executive Director, Corporate Finance and Administration; Director of Budgeting and Forecasting, Finance and Administration; and, the Senior Advisor, Executive Compensation) were conducted to understand how Mr. Lacroix's living allowance is treated for tax purposes.

## Findings and Conclusions

Based on discussions with the President and CEO, he confirmed to us that, until this matter was raised in July 2013, he was not aware of the *CBC Bylaws for Director Compensation – Section 9 of Schedule K* (dated March 2006). He also confirmed that, following the email he sent to the Chair of the Board dated October 14, 2007, which noted that he would prefer to use the living allowance to stay in a regular hotel instead of obtaining a residence in Ottawa, that he was verbally advised by the Corporation's then Vice-President, People and Culture that "he would be reimbursed for all his travelling expenses, including while travelling to Ottawa, in addition to the amounts paid to him for his living allowance". As such, he confirmed that he was, in good faith, following the generally accepted practice of the Corporation in claiming travel expenses for Ottawa travel.

### 1. Reimbursement of Travel Costs

From January 1, 2008 to August 31, 2013, Management established that Mr. Lacroix had claimed and had been reimbursed for, his travelling expenses to Ottawa including hotels, meals and incidentals for a total of \$29,192.41 including all GST, HST and other taxes. Internal Audit reviewed Management's calculations in comparison to SAP vendor reports and travel claims in the TEMS system (as described above) and concurs with Management's conclusions, with the exception of approximately \$500 of additional items noted by Internal Audit – based on discussions with Management, these items were not omitted intentionally but were an oversight in compiling the totals. Following identification of these additional items, we confirmed with the Corporation that Mr. Lacroix issued an additional payment to the Corporation to cover these amounts.

### 2. Tax Treatment of Living Allowance

By Order-in-Council dated Oct 31, 2007, the President and CEO is entitled to receive a "living allowance of \$1,500 per month, net after tax, in lieu of reimbursement of relocation expenses". Based on

discussions with Management, we understand that the grossed-up amount (using the relevant marginal tax rate) of the living allowance is reported on the President and CEO's T4 (Box 14 for the federal tax return and Box A for the Quebec tax return). We did not seek to review a copy of the T4 to confirm this.

### **3. Exclusion of Transportation Costs**

CBC's Bylaws for Director Compensation – Section 9 of Schedule K (dated March 2006) state that "The President is entitled to be paid reasonable travel and living expenses incurred by him/her while engaged on the business of the Corporation at any place other than the Head Office of the Corporation".

The General Counsel's opinion (as stated in her memo) is that the expenses under review should not, based on the legal opinion received by the Corporation and the governing instruments, include duty and entertainment expenses incurred on behalf of third parties for the benefit of the Corporation or travelling expenses to and from the Ottawa Head Office to another location. As such, the President and CEO has repaid travel costs relating to meals, accommodation and incidentals while in Ottawa.

Internal Audit concurs with the exclusion of duty entertainment expenses incurred in Ottawa, as they form part of the President and CEO's employment responsibilities. For travel costs to/from Ottawa, the interpretation to exclude these costs, based on discussions with General Counsel, would be based on:

- the understanding that the intent of the living allowance was to cover hotel/rental accommodation costs in Ottawa (as opposed to travel to/from Ottawa);
- the Corporation's by-laws stating that the President and CEO is not entitled to expenses incurred "at" the Head Office of the Corporation (i.e. meals, accommodation and incidentals while in Ottawa) – as opposed to expenses incurred travelling "to/from" the Head Office of the Corporation; and
- the fact that any contrary interpretation would yield a result incompatible with the President and CEO's role and function.

While this interpretation was not further clarified/documentated in any supporting materials provided to us, given these underlying assumptions, the exclusion of travel costs to/from Ottawa is in alignment with that logic.

### **4. Go-forward Management Action Plan**

Management's go-forward recommendation is to ensure that the Corporate Secretariat circulate the list of all such instruments (i.e. Order-in-Council, Schedule K, etc.) to all senior executives together with a list of components that could reasonably be expected to be affected by each instrument. In addition, all future contracts between the Corporation and the President and CEO will be in writing, explicit as to the rules regarding all benefits, reviewed by the General Counsel prior to the new President and CEO taking office, and included in the employment file, and communicated to all executives charged with monitoring compliance with same, as well as to the internal auditor. Finally, Management has recommended that the Human Resources and Governance Committee take the opportunity to amend or seek changes to the governing instruments at a later date. Internal Audit concurs with Management's go-forward action plan.

## **Recommendations**

In addition to Management's go-forward action plan noted above, we understand that the Corporation is (in consultation with its Board of Directors) in the process of finalizing its strategy regarding communication of this matter to key stakeholders (i.e. Minister, Office of the Auditor General). We concur with the intent to finalize and execute on an appropriate communications strategy on a timely basis.

Finally, we offer the following additional recommendation:

- To ensure that there is a clear understanding of compensation practices for key executives, it is recommended that the Human Resources and Governance Committee of the Board (or the Chair of that committee), as part of its ongoing oversight activities, review the total compensation package (including salary, benefits including items such as pension, allowances, etc.) for the President and CEO, as well as continue to review the total compensation packages for the other senior executives of the Corporation, to ensure there is familiarity with all components of the compensation packages, which would be of benefit to the Board in fulfilling its role in processes such as recommending President and CEO bonus payments, involvement in President and CEO and executive search processes, etc.