

In the matter of the Commission of Inquiry appointed pursuant to section 1A of the Commission of Inquiry Act 1935 dated 24 February 2016

Witness Statement of Lucia Peniston

1. I am Lucia Peniston | a and I am currently the Tax Commissioner. I make this witness statement in response to the request of the Commission of Inquiry duly appointed by the Premier on 24 February 2016 to inquire into the findings of the Auditor General's report on the Consolidated Fund for the Financial Years 2010, 2011 and 2012.

Inadequate provisioning

2. I agree with the Auditor General's observation that the 2011 provision for doubtful accounts for taxes which were more than 90 days outstanding was inadequate. Records indicate that the original provision was subsequently increased to comply with changes in the Canadian Public Sector Accounting Standards for tax revenue recognition and allowance for doubtful accounts.
3. As to the assumptions underlying this provision not being reasonable, I am not able to comment beyond what I can confirm from the records/documentation for the 2010-2011 fiscal year end accounts since I was not the Tax Commissioner at the time nor was I employed in the Public Service. Records in the Office of the Tax Commissioner ("OTC") indicate that the adjustment to increase the 2011 provision was made as a result of a meeting on 30 August 2011 which included David King of the Accountant General's Office, Claude Nantel and Denise LeCompte of the Office of the Auditor General "OAG" and Richard Fox of the OTC. See page 1 of my Annex I (original provision) and page 2 of my Annex I (adjustment entry).
4. I have reviewed the binder containing the Auditor General's working paper files however there is no documentation specific to the OTC and the observation of "Inadequate Provisioning".

5. Regarding the Auditor General's observation that "a well-founded plan of action for collection was not provided given the historical and statistical record of collection", I am aware that the existing Debt Management Section ("**DMS**") of the **OTC** was formed by the Auditor General when she was the Tax Commissioner. The **DMS** consists of three posts whose primary focus is the collection of tax arrears. The **DMS** has established policies and procedures which have been modified as required. The **DMS** also sets annual target and performance measures and they work with the Debt Enforcement Unit ("**DEU**") of the Attorney Generals' Chambers on matters which have been referred to the Unit for collection. I am aware that the **DMS** has continued to focus on their objectives in an effort to achieve the best collection results despite the economic climate and inability of companies to settle tax arrears which have built up over years of non-compliance. Over the past few years, the **OTC** has also increased the level of "Smart Cooperation" with other Government departments and agencies. For example, the Department of Immigration Work Permit Policy now includes the requirement that employers applying for a work permit, must include confirmation that the employer is in good standing with the **OTC**. The same policy applies to the relicensing of company vehicles and taxi licenses. The **DMS** also completes vetting requests for Government departments seeking to engage the services of a vendor which is a policy outlined in section 8.2 of Financial Instructions. These enforcement tools may not result in 100% collection of tax arrears, but they force a non-compliant tax payer to make contact with the **DMS**, make a payment, set up a payment plan and avoid the lengthy and costly court process for collection.
6. Since I was not in the **OTC** during the time of the 2011 audit, I cannot comment on any discussions which may have been held between the **OTC** and the **OAG** regarding "a well-founded plan of action for collection". I can only provide the preceding comments on what the **OTC** is doing now to address debt collection.
7. A copy of the **DMS** policies and procedures have been attached for reference at pages 3 – 48 of my Annex I.
8. Regarding the recommendation that the **OTC** implement a sound methodology for estimating the provision for doubtful taxes, please see my answer to question 2 below.

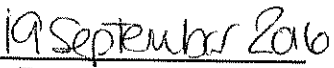
- (i) For the last and current financial years, what are the totals owed in taxes? May we please have a list of all those who are currently owing taxes in excess of \$25,000, both individuals and companies, and the total owed in each case.
9. For the last financial year ended on 31 March 2016, the reported total tax receivable is \$219m however it should be noted that this figure is unaudited and subject to adjustment. It is also important to note that, due to year end being 31 March and the tax filing deadline being 15 April, the total tax receivable at 31 March includes an accrual for taxes which are collected in April. Subsequent collections in April 2016 exceeded \$101.5m.
10. As to the second limb of the question regarding the Commission's request for a list of all individuals and companies owing taxes in excess of \$25,000.00, I respectfully decline on the grounds that to do so would be a breach of the provisions of section 4 of the Taxes Management Act 1976.
11. The current financial year ends on 31 March 2017, therefore I am unable to provide the totals owed in taxes.
- (ii) What is the current provision for doubtful taxes? How was/is that figure arrived at i.e. what methodology is employed?
12. The most current provision for doubtful taxes is the amount included in the unaudited Financial Statements dated 31 March 2016. The provision is \$81.6m.
13. The methodology used to arrive at that figure is set out in the Accounting Policy: Doubtful Account Provision/Bad Date dated 18 July 2016 [pages 49 – 50 of my Annex I].
- (iii) What arrangements, if any, are in place for the repayment of taxes owed? How many individuals/businesses are subject to schemes for payment?
14. The **DMS** policies and procedures describe the various methods used by the **DMS** team to collect tax arrears however a simplified description is as follows:
- (a) identify tax payers who are in arrears;
 - (b) contact tax payers in arrears with a view to negotiating a suitable payment arrangement; and
 - (c) if the payment arrangement is not adhered to, issue court proceedings.
- Currently, there are 736 individuals/businesses in active payment schemes.
- (iv) What criteria is employed to determine what qualifies and disqualifies a delinquent taxpayer for a scheme of repayment?

15. As a matter of policy the **OTC** does not disqualify anyone from a repayment scheme. The **OTC** attempts to secure a payment plan which will accomplish the debt being settled as quickly as possible preferably with an initial payment of 1/3 of the debt and monthly payments not exceeding 18 months for the balance. However, this is often not feasible since it will likely result in bringing the business to its knees and loss of jobs. Experience has also proven that court ordered payment plans are often less fruitful. Therefore the **DMS** will establish a six month plan so that it can be reviewed with the intent of increasing the monthly payment amount.
16. When all attempts by the **DMS** have failed and there is no response from the tax payer to the final letter before action, the matter is referred for court proceedings.
- (v) Who monitors repayments and when is a delinquent taxpayer referred to the Attorney General's Chambers for collection? From whom, for instance, does the Office take instructions, if any, on whether and how to proceed with respect to the collection of outstanding and/or unpaid taxes?
17. The **DMS** monitors the repayment plan. There is no existing policy or directive for when a matter is referred to the **DEU** for collection. When the **DMS** have exhausted all means of collections, the matter is referred to the **DEU** for collection through the Supreme Court or progressed by the **DMS** through the Magistrates' Court. The **OTC** does not take instructions on how to proceed with respect to collection of outstanding taxes. Once a matter has been referred to the **DEU**, they have conduct of the matter.
- (vi) What effort is made to identify whether delinquent companies are also offenders when it comes to pension and health insurance deductions from their employees?
18. The **OTC** does not have the authority to demand information from the Pension Commission, nor the Bermuda Health Council regarding pension and health insurance contributions made by employers on behalf of employees.
19. For the sake of completeness, I am aware that the **DEU** which is responsible for the collection of taxes and social insurance does consolidate the amounts owed from the tax payer and arrange a negotiated payment plan for the combined total when appropriate.
- (vii) Is there a current and maintained list of delinquents so that Government is aware in the event any offenders bid for or seek work from the Government, and how does that work?

20. The **OTC** does have a list of tax delinquents, however that list is not published because to do so would be a violation of section 4 of the Taxes Management Act 1976. That said, there is a process in place to identify any offenders who bid for or seek work from the Government. The process is governed by section 8.2 of the Financial Instructions which requires that the **OTC** be contacted for clearance and/or information regarding Government indebtedness before the contract is awarded. Accordingly, if the **OTC** receives a specific request for information from any Government Department for the purposes of vetting a prospective vendor, the **OTC** will provide the necessary information.
21. I believe that the facts stated in this witness statement are true to the best of my knowledge and belief.



Lucia Peniston



Date