

***THE EXECUTIVE GOVERNMENT ADMINISTRATION ACT (BILL 31)  
AND  
THE EXECUTIVE GOVERNMENT ADMINISTRATION CONSEQUENTIAL  
AMENDMENTS ACT (BILL 32)***

**MEMORANDUM OF ADVICE  
August 2008**

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**Vision**

We envision effective, open, and accountable government.

**Mission**

We serve the people of Saskatchewan through the Legislative Assembly by fostering excellence in public sector management and accountability.

## **Bills 31 and 32**

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## Introduction

The Minister of Justice and Attorney General introduced Bills 31 and 32 in the Legislative Assembly (Assembly) on April 17, 2008. Bill 31 is *The Executive Government Administration Act*. Bill 32 is *The Executive Government Administration Consequential Amendments Act*.

Bill 31 proposes to consolidate and amend certain legislation into a single Act, *The Executive Government Administration Act*. This legislation includes:

- ◆ Part V, Executive Council, sections 85 to 95 of *The Legislative Assembly and Executive Council Act, 2007*
- ◆ *The Government Organization Act*
- ◆ *The Tabling of Documents Act*
- ◆ *The Federal-Provincial Agreements Act*

As well, Bills 31 and 32 (Bills) include consequential amendments for several other Acts.

*The Government Organization Act* requires a minister to receive Cabinet approval (i.e., Order in Council) before making contracts or grants that exceed \$50,000. Regulations under this Act provide that the Order in Council (OC) requirement does not apply to contracts for the provision of goods and services that are routinely required for normal operations of a ministry. As a result, many contracts over \$50,000 made by ministries do not require OC approval. Examples of contracts over \$50,000 that require OC approval include contracts for reforestation, contracts for construction projects in provincial parks, and contracts for provision of tourism services.

Bill 31 increases the contract threshold requiring an OC to over \$350,000 (with a few exceptions noted below). As well, Bills 31 and 32 remove the requirement to obtain OCs for grants for most agencies. Exhibit 1 provides more detail on the changes to thresholds requiring OC approval.

The Bills do not affect many laws governing individual agencies that require prior OC approval for transactions such as purchasing real property, making investments or loans, borrowing money, forgiving debts owed to the Government, etc. However, some of the laws governing

individual agencies will be changed as a result of the Bills. For example, where an Act allows the establishment of out-of-province offices, the threshold has changed from \$50,000 to \$150,000.

Opposition Members of the Legislative Assembly (MLAs) expressed concerns in the Assembly<sup>1</sup> that the Bills would reduce the Government's public accountability. Accountability would be reduced because contracts under \$350,000 and grants would no longer be made public at the time the payments are made. These payments would not be made public until the payee lists (i.e., listing of payments for salaries, supplies, and grants) are published, which could be as long as 18 months after the agency made the payment.

Government MLAs responded that the proposed legislative changes are meant to improve the Government's efficiency and are not intended to reduce the Government's accountability. The estimates process will remain the same and payments no longer requiring OC approval will continue to require Ministerial approval<sup>2</sup>.

After continued debate in the Assembly, the Government stated that it would postpone enacting Bills 31 and 32 until it has received advice from our Office on spending thresholds and proper accountability. On May 8, 2008, the Minister of Justice and Attorney General wrote our Office to seek this advice. We accepted the Minister's request on May 13, 2008.

The remainder of this memorandum contains our analysis, conclusions, and recommendations to the Minister of Justice and Attorney General.

## **Our approach**

To prepare this memorandum, we did the following:

- ◆ reviewed Bills 31 and 32 to determine what changes are proposed compared to current legislation
- ◆ obtained an understanding of the process followed by the Government in developing the Bills by reviewing key documents and meeting with government officials

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<sup>1</sup> Legislative Assembly of Saskatchewan, Debates and Proceedings (Hansard), April 23, 2008, p. 1067.

<sup>2</sup> Legislative Assembly of Saskatchewan, Debates and Proceedings (Hansard), April 24, 2008, p.1094.

- ◆ obtained an understanding of the Cabinet approval spending limits and public accountability in certain other jurisdictions
- ◆ confirmed our conclusions and key findings with the Government

We also enquired about whether Cabinet carried out a risk analysis to determine the proposed approval limits in the Bills. The Government remains accountable for all spending regardless of delegation. The Government makes millions of payments each year. Cabinet cannot possibly examine and approve all payments. Accordingly, Cabinet needs to do a risk assessment to determine which payments are significant enough that it needs to review and approve. No one else, including our Office, can decide what is significant to Cabinet.

## Findings and conclusions

### Spending thresholds

In our parliamentary system of government, governments are expected to be open and accountable to the citizens they serve. Part of being open and accountable is ensuring appropriate limits are in place to monitor and control government spending and there is timely public disclosure of key government decisions and spending.

Governing bodies, such as Cabinet, oversee the organizations they manage by setting direction (i.e., financial and operating plans) and regularly reviewing reports showing planned and actual results and explanations of differences between results and plans.

In addition to reviewing plans and reports that summarize many transactions, governing bodies need to review and approve large, complex, or sensitive transactions before they occur. Governing bodies cannot examine all transactions.

Well-functioning governing bodies decide the nature and extent (thresholds) of transactions (e.g., purchases, borrowing, investments) that they want to give prior approval. Cabinet uses Orders in Council to give its prior approval for such transactions.

For other transactions, Cabinet delegates the review and approval primarily to two Cabinet committees as well as boards of directors and

managers of individual agencies. The Cabinet committees are Treasury Board and the Board of Directors of the Crown Investments Corporation of Saskatchewan (CIC). Treasury Board oversees most government agencies. CIC oversees its subsidiary Crown corporations such as SaskPower. Legislation delegates the oversight of certain agencies to a Minister. For example, the Minister of Health is responsible for regional health authorities.

Well-functioning governing bodies determine their thresholds based on a risk assessment of the significance of transactions. Significance is determined based on the magnitude, impact, and sensitivity<sup>3</sup> of the transaction.

- ◆ **Magnitude:** large expenditures carry the risk of large losses/waste of public money if the transaction does not achieve the intended result
- ◆ **Impact:** transactions relating to, for example, construction projects, information technology projects, or equity investments are often complex, difficult to manage successfully, and affect Government's operations, positively or negatively, for many years
- ◆ **Sensitivity:** certain payments are unusual or may be viewed negatively by the public if not handled appropriately (e.g., land expropriations, grants, untendered contracts, forgiveness of public debt, and dispositions of public assets)

The Government could not provide us with a complete and documented risk assessment supporting the payment thresholds set out in Bills 31 and 32. As a result, if these Bills become law, Cabinet may be at risk of ministers or government agencies making payments that Cabinet considers significant without its prior knowledge or approval.

1. **We recommend that the Government do a formal risk assessment to set the thresholds for Order in Council approval for payments.**

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<sup>3</sup> Based on The Canadian Institute of Chartered Accountant's Handbook section PS 6410.



## Public accountability

As noted earlier, governments are expected to be accountable to the Assembly and the public for their key decisions and spending. Governments should promptly make the decisions and spending public.

In Saskatchewan, there are numerous ways the Government makes key decisions and spending public. As noted earlier, certain decisions must be authorized by Cabinet. These decisions are made public in an OC. OCs are public documents. The Ministry of the Executive Council's website at [www.gov.sk.ca/Default.aspx?DN=fc23b48d-655a-4659-924e-2227b70a86e0](http://www.gov.sk.ca/Default.aspx?DN=fc23b48d-655a-4659-924e-2227b70a86e0) describes how to view or obtain copies of OCs, which are available within a week after approval. CIC subsidiary Crown corporations must publicly report all significant transactions (e.g., acquisition of a major investment or asset, assumption of a major liability, material change in the terms and conditions governing an existing investment or asset, or divestiture of a major investment or asset) within 90 days of the transaction.

Quarterly, the Government publicly reports all financial losses of public money greater than \$500. Annually, the Government publishes payee lists for most of its spending. Generally, these payee lists disclose payments made by the Government to employees and suppliers where total payments exceed \$50,000. For General Revenue Fund payments, the payee list is included in *Public Accounts – Volume 2* ([www.finance.gov.sk.ca](http://www.finance.gov.sk.ca)). For CIC and its subsidiary Crown corporations, the payee list is included in the *Payee Disclosure Report* ([www.cicorp.sk.ca](http://www.cicorp.sk.ca).)

We reviewed what governments in certain other jurisdictions do to set spending thresholds for Cabinet approval and to achieve proper accountability. We gathered this information on the governments of Ontario, Manitoba, Alberta and British Columbia. We found that the Government of Saskatchewan currently does as well or better than these jurisdictions in both approvals by Cabinet and accountability. See details in Exhibit 2.

As noted earlier, raising the OC threshold for contracts and eliminating OCs for grants will result in reduced accountability because less information will be public at the time Cabinet makes spending decisions.

The Minister of Justice stated in the Assembly<sup>4</sup> that the expenditures no longer requiring OC approval will still require ministerial approval. This means that while Cabinet (i.e., the Premier and all ministers) will no longer collectively approve payments exceeding \$50,000 (but under \$350,000), the Minister responsible will approve the payments. However, this does not resolve the issue of fewer spending decisions being made public at the time the spending decisions are made. The Government should replace the current public document (OC), no longer required for payments over \$50,000, with another public document (Minister's Order). A Minister's Order would have two effects. First, it would demonstrate the Minister's approval and accountability. Second, it would maintain the current level of public accountability for the Government.

The Government should revise Bills 31 and 32 to require a Minister's Order for contracts and grants exceeding \$50,000 (but under \$350,000). The Government should make the Minister's Order public promptly by, for example, publishing them in the Saskatchewan Gazette ([www.qp.gov.sk.ca](http://www.qp.gov.sk.ca)) or making them available to the public at the Ministry of the Executive Council, similar to the current process for OCs.

- 2. We recommend that the Government amend Bills 31 and 32 to require a Minister's Order for all payments related to contracts and grants that currently require Order in Council (OC) approval (i.e., payments between \$50,000 and \$350,000).**
- 3. We recommend that the Government make Minister's Orders for contracts and grants public promptly by, for example, publishing them in the Saskatchewan Gazette or making them available to the public at the Ministry of the Executive Council, similar to the current process for OCs.**

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<sup>4</sup> Legislative Assembly of Saskatchewan, Debates and Proceedings (Hansard), April 24, 2008, p.1094.

## Exhibit 1 – Summary of threshold changes

Current requirements	Proposed amendment (Bills 31 and 32)	Acts impacted
<u>Grants</u>		
-Requires Order in Council approval for grants greater than \$100,000 in any fiscal year	-Remove requirement to obtain Order in Council approval for grants	<i>The Saskatchewan Water Corporation Act</i>
-Requires Order in Council approval for grants greater than \$100,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Irrigation Act, 1996</i>
-Requires Order in Council approval for grants greater than \$50,000 in any fiscal year	-Remove requirement to obtain Order in Council approval for grants	<i>The Government Organization Act</i>
		<i>The Legislative Assembly and Executive Council Act, 2007</i>
		<i>The Archives Act, 2004</i>
		<i>The Assessment Management Agency Act</i>
		<i>The Correctional Services Act</i>
		<i>The Department of Justice Act</i>
		<i>The Department of Rural Development Act</i>
		<i>The Department of Social Services Act</i>
		<i>The Economic and Co-operative Development Act</i>
		<i>The Energy and Mines Act</i>
		<i>The Public Service Act, 1998</i>
		<i>The Public Works and Services Act</i>
		<i>The Residential Services Act</i>
<i>The Telephone Department Act</i>		
<i>The Alcohol and Gaming Regulation Act, 1997</i>		
-Requires Order in Council approval for grants greater than \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Crown Corporations Act, 1993</i>
		<i>The Saskatchewan Heritage Foundation Act</i>

**Appendix 4**

<b>Current requirements</b>	<b>Proposed amendment (Bills 31 and 32)</b>	<b>Acts impacted</b>
-Requires Order in Council approval for grants greater than \$10,000 in any fiscal year	-Remove requirement to obtain Order in Council approval for grants	<i>The Legal Aid Act</i>
<b><u>Agreements</u></b>		
-Requires Order in Council approval of agreements where expenditures exceed \$100,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Irrigation Act, 1996</i>
-Requires Order in Council approval of agreements where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$350,000	<i>The Government Organization Act</i>
		<i>The Federal-Provincial Agreements Act</i>
		<i>The Correctional Services Act</i>
		<i>The Department of Justice Act</i>
		<i>The Economic and Co-operative Development Act</i>
		<i>The Public Service Act, 1998</i>
-Requires Order in Council approval of agreements where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$250,000	<i>The Telephone Department Act</i>
		<i>The Traffic Safety Act</i>
-Requires Order in Council approval of agreements where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Parks Act</i>
-Requires Order in Council approval of agreements where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Forest Resources Management Act</i>
		<i>The Natural Resources Act</i>
		<i>The Saskatchewan Heritage Foundation Act</i>
<b><u>Loans</u></b>		
-Requires Order in Council approval of loans where expenditures exceed \$100,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Irrigation Act, 1996</i>

<b>Current requirements</b>	<b>Proposed amendment (Bills 31 and 32)</b>	<b>Acts impacted</b>
-Requires Order in Council approval of loans where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$350,000	<i>The Assessment Management Agency Act</i>
-Requires Order in Council approval of loans where expenditures exceed \$50,000 in any fiscal year	-Change threshold for Order in Council approval to \$150,000	<i>The Saskatchewan Heritage Foundation Act</i>
<b><u>Out-of-province offices</u></b>		
-Requires Order in Council approval for any acquisition or disposition of property for out-of-province offices if the value of the property exceeds \$50,000	-Change threshold for Order in Council approval to \$150,000	<i>The Legislative Assembly and Executive Council Act, 2007</i>
-Requires Order in Council approval for any acquisition or disposition of property for out-of-province offices if the value of the property exceeds \$10,000	-Change threshold for Order in Council approval to \$150,000	<i>The Economic and Co-operative Development Act</i>

**Exhibit 2 – Summary of other jurisdictions**

<b>Saskatchewan - current requirement</b>	<b>British Columbia</b>	<b>Alberta</b>	<b>Manitoba</b>	<b>Ontario</b>
Cabinet approval of grants greater than a specified threshold (prior to payment)	No such requirement	No such requirement	No such requirement	No such requirement
Cabinet approval of non-routine contracts greater than a specified threshold (prior to payment)	No such requirement	No such requirement	No such requirement	No such requirement
Cabinet approval of specified payments (e.g. purchase of real property, borrowing, loan forgiveness, etc)	No such requirement	Yes	Yes	Yes
Public disclosure of Cabinet decisions for items noted above	No such requirement	Yes	Yes	Yes
Public disclosure of payments greater than a certain threshold (payee lists)	Yes	Yes	Yes	Yes