



**HOUSE OF ASSEMBLY
NEWFOUNDLAND AND LABRADOR**

Office of the Official Opposition

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I write to you to request an examination of records related to exceptions to the Public Tender Act (PTA). As you know, the Public Tender Act governs the expenditure of public funds for the purchase of goods and services. While the PTA specifies public tenders or standing offers in the general case, it does allow for exceptions on very specific grounds with information on those exceptions reported to the House of Assembly by the Government Purchasing Agency on a regular basis.

Through an examination of those exception reports and through Freedom of Information requests to the Government Purchasing Agency, we have identified some peculiar specific exception examples and some disturbing overall trends.

It appears that there is abuse in the grounds provided for exceptions. Too many exceptions, for example, are on the grounds of "pressing emergency" or other grounds which appear spurious on the surface. On the face of it, many of these exceptions could have been avoided with some simple provisions for advance planning and proper management.

A cursory examination of the exception reports raises many examples. There are charges for sound equipment and technicians for royal events known well in advance which are excepted from the Public Tender Act on the grounds of "pressing emergency" (file # 9133, \$28,000). There are exceptions cited for hotel meeting rooms for training purpose on the dubious claim that there were no other available sources in the capital city region (file #90367, \$10,676.35). Eastern School District sole-sourced a salt supply (file #91348, \$12,441.88) due to "pressing emergency" when common sense would have pointed to the need for salt each and every year.

There are other items of concern. The intent of the exception reports are to advise the House and Members where an exception to the Public Tender Act was deemed warranted. Knowing how much was spent, for what, and to who is an essential part of House oversight of public spending. Yet we find cases where the Department of Justice (file #91397, \$14,778.76) and the Royal Newfoundland Constabulary (files #90957, \$25,000; #90867, \$25,000; #91387, \$30,000) has withheld vendor identifying information. It is impossible for MHA's to determine if these expenditures are legitimate if essential information is withheld.



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While an exception to the PTA on the grounds of economic development is legitimate, government's new ferry construction project appears to be availing of that exception where there seems no reasonable reason to do so. One glaring example is government's choice (File #90873) to sole-source \$298,372.00 in davits from British Columbia for Hulls 57 and 58.

More disturbing are the larger trends illustrated in the statistics. In a Freedom of Information request to the Government Purchasing Agency, the following table of information was provided:

Year	# of Exceptions Per Year	Total Exception \$ Value Per Year
January 1, 2003 - December 31, 2003	648	\$46,089,302.56
January 1, 2004 - December 31, 2004	560	\$33,795,595.12
January 1, 2005 - December 31, 2005	742	\$48,089,811.96
January 1, 2006 - December 31, 2006	838	\$64,528,822.21
January 1, 2007 - December 31, 2007	1263	\$103,845,329.02
January 1, 2008 - December 31, 2008	1304	\$87,738,670.27
January 1, 2009 - December 31, 2009	1379	\$88,167,583.06
January 1, 2010 - May 31, 2010	761	\$47,303,846.83
Total	7495	\$519,558,961.03

This information seems to indicate ever-increasing numbers of exceptions and total value by year. Further, our preliminary calculations for calendar year 2011 indicate that we are on track for exception numbers and value to be comparable to calendar year 2007: more than \$100M in exceptions. More to the point, it appears that numbers of exceptions and their value seems to spike in election years.

We believe it is time for the Office of the Auditor General to conduct an investigation into this matter. In the last eight years, there has been an estimated \$650M in exceptions to the Public Tender Act. We believe that this number is way too high and deserves a closer look. The trend of these numbers of exceptions and their value spiking during election years seem to indicate a politically motivated effort to subvert the strictures of the Public Tender Act.

I look forward to your response.

Best regards,

Yvonne Jones
Leader of the Opposition

Cc Jim Bennett, MHA,
Public Accounts Committee