Draft Opinion - Auditor General.rtf

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Subject: Draft Opinion - Auditor General
Date: Tuesday, September 20, 2016 11:24:46
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: 0997_001.pdf

Len,

Attached please find our draft opinion regarding the obligations of the Auditor General to audit the Public Accounts before they are tabled. We have provided it in draft in the event that you have questions or comments that would require it to be revised.

I'd be happy to discuss it with you at your convenience once you have had a chance to review it.

Best regards,

Jacqui

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PRIVILEGED AND CONFIDENTIAL

Mr. Len Hatzis
Deputy Director, Treasury Board Secretariat Legal Services
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Dear Sir:

Interpretation of *Auditor General Act*

You have requested our opinion regarding whether the Auditor-General of Ontario (the "Auditor General") is under a statutory obligation under the *Financial Administration Act* (Ontario) (the "FAA") and the *Auditor General Act* (Ontario) (the "AG Act") to audit the consolidated financial statements that form the basis for the public accounts of Ontario (the "Public Accounts") and to provide a report regarding this audit to the Government of Ontario (the "Government") prior to the deadline (the "Deadline") imposed under the FAA for the Government to table the Public Accounts before the Legislative Assembly (the "Assembly").

This opinion is requested in light of a statement by the Auditor-General that, due to a dispute with the Government regarding the application of accounting principles to a particular future benefit, the Auditor-General may decide not to provide the report that is required under the FAA in order to table the Public Accounts by the Deadline.

Summary of Opinion

For the reasons set out below, it is our opinion that, although the matter is not free from doubt, the better view is that both the FAA and the AG Act require the Auditor-General to conduct the audit of the consolidated financial statements and provide the report, including her audit opinion, prior to the Deadline.

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The FAA and the AG Act do not impose an express obligation on the Auditor-General to conduct the audit and provide her report prior to the Deadline. In our opinion, however, the wording of the applicable legislative provisions, interpreted in light of the statutory scheme as a whole, analogous case law and past administrative practice, provide the Government with a good argument that the Auditor-General is under an implied statutory duty to conduct the audit and provide the report, including her audit opinion, before the Deadline.

Scope of Review

In providing this opinion, we have reviewed:

- The FAA;
- The AG Act;
- Legislative history, such as Committee Reports;
- Samples of the Public Accounts; and
- Applicable legal authorities (case law and texts).

In addition, we have relied upon certain information provided in conversations with representatives of Government.

The remedies or steps that the Government might take in the event that the Auditor General is not complying with her statutory duties are beyond the scope of this opinion.

Analysis

FAA Requirement to Table Public Accounts

Section 1.0.26(1) of the FAA provides that the Public Accounts for each fiscal year shall be prepared under the direction of the Minister of Finance and that the Public Accounts shall include, among other items, the consolidated financial statements of the Province for the fiscal year and the report of the Auditor General concerning his or her examination of the consolidated financial statements.[1]

[1] *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, s. 1.0.26(2)(b) and (c) [FAA].

The FAA requires the Government, except in extraordinary circumstances,[2] to submit the Public Accounts for each fiscal year to the Lieutenant Governor in Council on or before the 180th day after the end of the fiscal year (the Deadline). The Lieutenant Governor in Council is then required to lay the Public Accounts before the Assembly if the Assembly is in session or alternatively, to make them public and then lay them before the Assembly on or before the 10th day of the next session.[3]

As set out below, the terms of the FAA, the AG Act, analogous case law and past administrative practice support our opinion that the better view is that (a) the Auditor General owes an implied statutory duty under the FAA to audit the consolidated financial statements and provide her report prior to the Deadline; and (b) that the "report" that is required to be provided in accordance with the FAA must contain the Auditor General's audit opinion.

A. Obligation to Audit and Report Prior to the Deadline

i. Implied Duty under the FAA

Although section 1.0.26(1) of the FAA requires the Public Accounts to include the Auditor General's report concerning her examination of the consolidated financial statements, neither section 1.0.26(1) of the FAA nor any other provision of the FAA imposes an express obligation on the Auditor General to conduct the audit of the consolidated financial statements and provide her report prior to the Deadline. We have also found no case law interpreting section 1.0.26 of the FAA.

The applicable provision of the FAA is drafted in the passive voice ("The Public Accounts shall be prepared under the direction of the Minister of Finance... and shall include...the report of the Auditor General"). As a matter of statutory interpretation, the word "shall" is presumptively interpreted as imposing a mandatory obligation.[4]

In the absence of any other statutory obligation for the Minister of Finance to direct the preparation of the Public Accounts, it is our view that this language would likely be read as imposing a positive obligation on the Minister of Finance to direct the preparation of the Public Accounts.

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2 Upon your instructions, we have not considered whether the Auditor General's failure to provide the report required under section 1.0.26 of the FAA would constitute "extraordinary circumstances".

3 FAA, s. 1.0.26(5).

4 *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721 at p. 737.

Equally, in the absence of an express statutory obligation for the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline, it is our view that section 1.0.26(1) of the FAA would likely be read as imposing an implied obligation on the Auditor General to audit the consolidated financial statements and provide the report regarding the examination of the consolidated financial statements before the Deadline. This implied obligation flows from the fact that the Public Accounts must include the Auditor General's report and the Government cannot table the Public Accounts without it,

It is our view that this implied duty arises not only from the purpose and wording of the FAA, but also by reference to the terms of the AG Act, which form part of the overall legislative scheme for ensuring that the Auditor General provides objective scrutiny of the Public Accounts.

ii. Obligations Under the AG Act

Section 9 of the AG Act imposes a statutory obligation on the Auditor General to audit, on behalf of the Assembly and in such manner as the Auditor General considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund.[5] The Auditor General has further audit or audit oversight obligations in relation to an "agency of the Crown" that is not audited by another auditor,[6] Crown-controlled corporations,[7] and certain broader public sector institutions or organizations.[8]

Although section 9 of the AG Act does not specifically mention the obligation to audit the Public Accounts, we understand that the Public Accounts subsume the audited financial information of the Government (including the Consolidated Revenue Fund) and the agencies and public sector bodies set out in section 9. Section 9 is the primary section in the AG Act that imposes the duty on the Auditor General to perform the audit function for which the Auditor General is appointed. In our view, section 9 supports the position that the Auditor General is under a statutory obligation to audit the consolidated financial statements that will form the basis for the Public Accounts that must be tabled in accordance with the FAA.

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5 *Auditor General Act*, R.S.O. 1990, c. A.35, s. 9(1) [AG Act].

6 AG Act, s. 9(2). "Agency of the Crown" is defined in section 1 of the AG Act.

7 AG Act, s. 9(3).

8 AG Act, s. 9(4).

Section 9 does not impose an express obligation on the Auditor General to conduct the audit by the Deadline or to provide a report regarding this audit. However, section 79 of the *Legislation Act* provides that "...duties that are imposed on a person shall be performed, whenever the occasion requires."[9] Although we have found no case law interpreting section 79, the wording of this provision supports the conclusion that the Auditor General's audit duties under section 9 should be interpreted as being required to be performed prior to the Deadline because this is required in order for the Government to comply with its obligations under the FAA to table the Public Accounts by the Deadline.

The Auditor General is required under section 12 of the AG Act to report annually to the Speaker of the Assembly. This annual report shall be made <u>after</u> each fiscal year is closed and <u>after</u> the Public Accounts are laid before the Assembly. The deadline for such report is no later than the 31st of December in each year, unless the Public Accounts are not laid before the Assembly by that day.[10] In the annual report, the Auditor General shall express his or her opinion as to whether the consolidated financial statements of Ontario, "as reported in the Public Accounts", present fairly information in accordance with appropriate generally accepted accounting principles and the Auditor General shall set out any reservations he or she may have.[11]

The wording of section 12 of the AG Act provides further support for the position that the FAA imposes an implied obligation on the Auditor General to audit the consolidated financial statements and provide a report prior to the Deadline. The requirements under both subsections 12(1) and (3) depend on the Public Accounts having been prepared and tabled in accordance with the FAA. The Auditor General's functions under these subsections cannot be performed in a scenario in which the Public Accounts have not been tabled because the Government's obligations under the FAA – including the requirement to include the Auditor General's report in the Public Accounts – cannot be satisfied.

In our view, therefore, interpreting the FAA as imposing an implied duty on the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline is consistent with the provisions and the scheme of the AG Act. The contrary interpretation would arguably allow the Auditor General to frustrate the scheme that the Legislature has implemented under the FAA and the AG Act to provide objective scrutiny of the Public Accounts.

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9 *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, s. 79.

10 AG Act, s. 12(1).

11 AG Act, s. 12(3).

iii. Applicable Case Law

Although we have found no case law interpreting either section 1.0.26 of the FAA or sections 9 and 12 of the AG Act, there is precedent in other cases for interpreting a statutory provision as imposing an implied duty on a statutory actor where the legislative scheme requires it. This case law, while not determinative when taken in isolation, provides general support for interpreting section 1.0.26 of the FAA as imposing an implied duty on the Auditor General to conduct her audit and provide a report before the Deadline.

For example, the Saskatchewan Court of Appeal has interpreted a statutory obligation to provide a claimant with a written decision to include an implied obligation to do so in a timely manner (i.e. sufficiently in advance of the expiry of a statutory appeal period). Such an implied obligation was held to arise from the scheme of the statute as a whole.[12] Similarly, under immigration law, an obligation by the Minister to process an application for refugee sponsorship has been held to include an implied duty to provide the necessary application to the potential immigrant.[13] Finally, child protection legislation has been interpreted to include an implied duty to investigate and present evidence to support a particular child placement.[14]

Moreover, although the Auditor General is not subject to an order of *mandamus*, it is instructive that, as a matter of administrative law, an order of *mandamus* – which compels a public official to perform a statutory duty – can be based on an implied duty.[15]

iv. Past Administrative Practice

Past administrative practice by the Auditor General, although not binding, can also be an aid to interpretation of a statutory scheme.[16] Administrative interpretation of a statute can be either express or implied.[17] The basis for accepting administrative practice as an aid to

[12] *Saskatchewan Government Insurance v. Schmidt*, 2008 SKCA 167 at para. 22.

[13] *Nguyen v. Canada (Minister of Employment & Immigration)*, 1993 CarswellNat 92 (F.C.A.) at paras. 28 and 34-36.

[14] *Children's Aid Society of Algoma v. R.M.*, 2001 CarswellOnt 2204 (C.J.) at paras. 63 to 65.

[15] Brown & Evans, *Judicial Review of Administrative Action in Canada*, Vol. 1 (Toronto: Thomson Reuters, 2016 (looseleaf)) at para. 1:3220.

[16] *Harel v. Quebec (Deputy Minister of Revenue)*, [1978] 1 S.C.R. 851 at p. 859; *Will-Kare Paving & Contracting Ltd. v. Canada* (2000), 188 D.L.R. (4th) 242 (S.C.C.) at p. 267.

[17] Cote, *The Interpretation of Legislation in Canada*, 3rd Edition (Scarborough: Thomson Canada Limited, 2000) at p. 547 [Cote]; *Sullivan on the Construction of Statutes*, 6th Ed (Markham: LexisNexis, 2014) at para. 23.118 [Sullivan].

statutory interpretation is two-fold: (a) the administrator of a statute develops expertise and perspective by administering legislation on a day-to-day basis; and (b) consistent administrative interpretation creates legitimate expectations and reliance.[18]

In our view, the Auditor General would likely be viewed as the "administrator" of the scheme established by the Legislature to scrutinize Government spending. This scheme includes both the FAA and the AG Act. As such, the Auditor General's historic interpretation of the obligations imposed on her under the FAA and the AG Act would likely be given some weight in ascertaining the interpretation of the applicable provisions under both Acts.

It is our understanding that since at least 1999, the Auditor General has audited the consolidated financial statements and provided his or her report prior to the Government's deadline for tabling the Public Accounts, as that deadline was prescribed at the relevant time.

The Auditor General's website also describes the Auditor General's role in performing an "Attest Audit" of the Public Accounts. The website indicates that after the audit, the Auditor General expresses an opinion on the financial statements of the province. The opinion is then reproduced in both the Public Accounts of the province and in the Auditor General's annual report.[19] While not determinative from a legal perspective, these public statements arguably demonstrate the Auditor General's own view that she is required to conduct her audit and provide her opinion prior to the Deadline so that the opinion can be reflected in the Public Accounts.

B. Obligation to Provide Audit Opinion

We have considered whether the "report" that is required to be provided under the FAA is required to include the Auditor General's audit opinion.

Section 1.0.26(1) of the FAA provides that the Auditor General is required to provide "the report of the Auditor General concerning his or examination of the consolidated financial statements of the Province." There is no express reference in this provision to an audit opinion.

The language of the FAA can be contrasted with the wording of section 12(3) of the AG Act. Section 12(3) expressly provides that the Auditor General, in her annual report, shall "express his or her opinion" as to whether the consolidated financial statements present

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18 Sullivan, above, at para. 23.111; Cote, above, at p. 549.

19 http://www.auditor.on.ca/en/content/aboutus/whatwedo.html: "The Kinds of Audits and What is Audited".

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fairly information in accordance with appropriate generally accepted accounting principles. Section 12(3) also contemplates that the Auditor General shall set out any reservations that he or she may have.

It could be argued that the explicit reference to the audit opinion in section 12(3), as contrasted with the reference to a "report" in section 1.0.26(1) of the FAA, means that the Auditor General is only required to provide her audit opinion in the annual report. Under section 12(1) of the AG Act, the annual report only has to be delivered after the Public Accounts have been tabled.

In our view, this is not the better interpretation of the FAA provisions. We have reviewed selected excerpts of the Canadian Auditing Standards (CAS), which indicate that an "auditor's report" is required to include the auditor's audit opinion.[20] Assuming that, as a matter of auditing standards, an audit necessarily entails an "auditor's report" and that an "auditor's report" is required to include the audit opinion, we believe the better view is that "report" in section 1.0.26(2) of the FAA would be interpreted to mean an auditor's report, including an audit opinion.

In our view, this interpretation is consistent with section 9 of the AG Act, which is the principal source of the obligation imposed on the Auditor General to "audit" the Public Accounts. Arguably, the Public Accounts have not been "audited" if the Auditor General has not expressed an audit opinion in respect of them.

Furthermore, the requirement to provide an audit opinion under the FAA prior to the Deadline for tabling the Public Accounts is consistent with the objectives of the FAA. If section 1.0.26(1) is interpreted as not requiring the Auditor General's report to include the audit opinion, the effect would be to require the Government to table the Public Accounts in an unaudited form. This appears contrary to the purpose for tabling the Public Accounts before the Assembly.

Finally, we understand that the Auditor General's own administrative practice – and the public statements on the Auditor General's website – indicate that the Auditor General's own view is that the audit opinion is required to be provided twice. It is required to be provided prior to the Deadline in order to include it with the Public Accounts and again in the annual report.

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[20] Canadian Auditing Standards CAS 700: Forming an opinion and reporting on financial statements, paras. 20-45.

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Although not free from doubt, therefore, it is our opinion that the better view is that section 1.0.26(1) of the FAA would be interpreted as requiring the Auditor General to provide a full auditor's report, including an audit opinion, prior to the Deadline.

Yours very truly,

Osler, Hoskin & Harcourt LLP
JC/JS:

Draft

Final Opinion.rtf

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Subject: Final Opinion
Date: Tuesday, September 20, 2016 12:47:07
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: 1001_001.pdf

Len,

Attached is the final opinion in electronic form. I've incorporated the minor changes we discussed.

Let me know if you need anything further.

Regards,

Jacqui

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September 20, 2016

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Mr. Len Hatzis
Deputy Director, Treasury Board Secretariat Legal Services
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Dear Sir:

Interpretation of *Auditor General Act*

You have requested our opinion regarding whether the Auditor-General of Ontario (the "Auditor General") is under a statutory obligation under the *Financial Administration Act* (Ontario) (the "FAA") and the *Auditor General Act* (Ontario) (the "AG Act") to audit the consolidated financial statements that form the basis for the public accounts of Ontario (the "Public Accounts") and to provide a report regarding this audit to the Government of Ontario (the "Government") prior to the deadline (the "Deadline") imposed under the FAA for the Government to table the Public Accounts before the Legislative Assembly (the "Assembly").

This opinion is requested by the Government in order to clarify the relationship between the Government's obligations under the FAA and the duties of the Auditor General under both the FAA and the AG Act.

Summary of Opinion

For the reasons set out below, it is our opinion that, although the matter is not free from doubt, the better view is that both the FAA and the AG Act require the Auditor-General to conduct the audit of the consolidated financial statements and provide the report, including her audit opinion, prior to the Deadline.

The FAA and the AG Act do not impose an express obligation on the Auditor-General to conduct the audit and provide her report prior to the Deadline. In our opinion, however, the wording of the applicable legislative provisions, interpreted in light of the statutory scheme as a whole, analogous case law and past administrative practice, provide the Government with a good argument that the Auditor-General is under an implied statutory duty to conduct the audit and provide the report, including her audit opinion, before the Deadline.

Scope of Review

In providing this opinion, we have reviewed:

- The FAA;
- The AG Act;
- Legislative history, such as Committee Reports;
- Samples of the Public Accounts; and
- Applicable legal authorities (case law and texts).

In addition, we have relied upon certain information provided in conversations with representatives of Government.

The consequences if the Auditor General is not complying with her statutory duties and the remedies or steps available to the Government in such circumstances are beyond the scope of this opinion.

Analysis

FAA Requirement to Table Public Accounts

Section 1.0.26(1) of the FAA provides that the Public Accounts for each fiscal year shall be prepared under the direction of the Minister of Finance and that the Public Accounts shall include, among other items, the consolidated financial statements of the Province for the fiscal year and the report of the Auditor General concerning his or her examination of the consolidated financial statements.[1]

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1 *Financial Administration Act*, R.S.O. 1990, c. F.12, as amended, s. 1.0.26(2)(b) and (c) [FAA].

The FAA requires the Government, except in extraordinary circumstances, to submit the Public Accounts for each fiscal year to the Lieutenant Governor in Council on or before the 180th day after the end of the fiscal year (the Deadline). The Lieutenant Governor in Council is then required to lay the Public Accounts before the Assembly if the Assembly is in session or alternatively, to make them public and then lay them before the Assembly on or before the 10th day of the next session.[2]

As set out below, the terms of the FAA, the AG Act, analogous case law and past administrative practice support our opinion that the better view is that (a) the Auditor General owes an implied statutory duty under the FAA to audit the consolidated financial statements and provide her report prior to the Deadline; and (b) that the "report" that is required to be provided in accordance with the FAA must contain the Auditor General's audit opinion.

A. Obligation to Audit and Report Prior to the Deadline

i. Implied Duty under the FAA

Although section 1.0.26(1) of the FAA requires the Public Accounts to include the Auditor General's report concerning her examination of the consolidated financial statements, neither section 1.0.26(1) of the FAA nor any other provision of the FAA imposes an express obligation on the Auditor General to conduct the audit of the consolidated financial statements and provide her report prior to the Deadline. We have also found no case law interpreting section 1.0.26 of the FAA.

The applicable provision of the FAA is drafted in the passive voice ("The Public Accounts shall be prepared under the direction of the Minister of Finance... and shall include...the report of the Auditor General"). As a matter of statutory interpretation, the word "shall" is presumptively interpreted as imposing a mandatory obligation.[3]

In the absence of any statutory obligation under the FAA for the Minister of Finance to direct the preparation of the Public Accounts, it is our view that this language would likely be read as imposing a positive obligation on the Minister of Finance to direct the preparation of the Public Accounts.

Equally, in the absence of an express statutory obligation for the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline, it is our view that section 1.0.26(1) of the FAA would likely be read as imposing an implied obligation on the Auditor General to audit the consolidated financial statements and

2 FAA, s. 1.0.26(5).

3 *Re Manitoba Language Rights*, [1985] 1 S.C.R. 721 at p. 737.

provide the report regarding the examination of the consolidated financial statements before the Deadline. This implied obligation flows from the fact that the Public Accounts must include the Auditor General's report and the Government cannot table the Public Accounts without it.

It is our view that this implied duty arises not only from the purpose and wording of the FAA, but also by reference to the terms of the AG Act, which form part of the overall legislative scheme for ensuring that the Auditor General provides objective scrutiny of the Public Accounts.

ii. <u>Obligations Under the AG Act</u>

Section 9 of the AG Act imposes a statutory obligation on the Auditor General to audit, on behalf of the Assembly and in such manner as the Auditor General considers necessary, the accounts and records of the receipt and disbursement of public money forming part of the Consolidated Revenue Fund.[4] The Auditor General has further audit or audit oversight obligations in relation to an "agency of the Crown" that is not audited by another auditor,[5] Crown-controlled corporations,[6] and certain broader public sector institutions or organizations and other grant recipients.[7]

Although section 9 of the AG Act does not specifically mention the obligation to audit the Public Accounts, we understand that the Public Accounts subsume the audited financial information of the Government (including the Consolidated Revenue Fund) and the agencies and public sector bodies set out in sections 9. Section 9 is the primary section in the AG Act that imposes the duty on the Auditor General to perform the audit function for which the Auditor General is appointed. In our view, section 9 supports the position that the Auditor General is under a statutory obligation to audit the consolidated financial statements that will form the basis for the Public Accounts that must be tabled in accordance with the FAA.

Section 9 does not impose an express obligation on the Auditor General to conduct the audit by the Deadline or to provide a report regarding this audit. However, section 79 of the *Legislation Act* provides that "...duties that are imposed on a person shall be performed, whenever the occasion requires."[8] Although we have found no case law

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4 *Auditor General Act*, R.S.O. 1990, c. A.35, s. 9(1) [AG Act].

5 AG Act, s. 9(2). "Agency of the Crown" is defined in section 1 of the AG Act.

6 AG Act, s. 9(3).

7 AG Act, s. 9.1.

8 *Legislation Act, 2006*, S.O. 2006, c. 21, Sched. F, s. 79.

interpreting section 79, the wording of this provision supports the conclusion that the Auditor General's audit duties under section 9 should be interpreted as being required to be performed prior to the Deadline because this is required in order for the Government to comply with its obligations under the FAA to table the Public Accounts by the Deadline.

The Auditor General is required under section 12 of the AG Act to report annually to the Speaker of the Assembly. This annual report shall be made after each fiscal year is closed and after the Public Accounts are laid before the Assembly. The deadline for such report is no later than the 31st of December in each year, unless the Public Accounts are not laid before the Assembly by that day.[9] In the annual report, the Auditor General shall express his or her opinion as to whether the consolidated financial statements of Ontario, "as reported in the Public Accounts", present fairly information in accordance with appropriate generally accepted accounting principles and the Auditor General shall set out any reservations he or she may have.[10]

The wording of section 12 of the AG Act provides further support for the position that the FAA imposes an implied obligation on the Auditor General to audit the consolidated financial statements and provide a report prior to the Deadline. The requirements under both subsections 12(1) and (3) depend on the Public Accounts having been prepared and tabled in accordance with the FAA. The Auditor General's functions under these subsections cannot be performed in a scenario in which the Public Accounts have not been tabled because the Government's obligations under the FAA – including the requirement to include the Auditor General's report in the Public Accounts – cannot be satisfied.

In our view, therefore, interpreting the FAA as imposing an implied duty on the Auditor General to audit the consolidated financial statements and provide her report prior to the Deadline is consistent with the provisions and the scheme of the AG Act. The contrary interpretation would arguably allow the Auditor General to frustrate the scheme that the Legislature has implemented under the FAA and the AG Act to provide objective scrutiny of the Public Accounts.

iii. Applicable Case Law

Although we have found no case law interpreting either section 1.0.26 of the FAA or sections 9 and 12 of the AG Act, there is precedent in other cases for interpreting a statutory provision as imposing an implied duty on a statutory actor where the legislative

[9] AG Act, s. 12(1).

[10] AG Act, s. 12(3).

scheme requires it. This case law, while not determinative when taken in isolation, provides general support for interpreting section 1.0.26 of the FAA as imposing an implied duty on the Auditor General to conduct her audit and provide a report before the Deadline.

For example, the Saskatchewan Court of Appeal has interpreted a statutory obligation to provide a claimant with a written decision to include an implied obligation to do so in a timely manner (i.e. sufficiently in advance of the expiry of a statutory appeal period). Such an implied obligation was held to arise from the scheme of the statute as a whole.[11] Similarly, under immigration law, an obligation by the Minister to process an application for refugee sponsorship has been held to include an implied duty to provide the necessary application to the potential immigrant.[12] Finally, child protection legislation has been interpreted to include an implied duty to investigate and present evidence to support a particular child placement.[13]

Moreover, although the Auditor General is not subject to an order of *mandamus*, it is instructive that, as a matter of administrative law, an order of *mandamus* – which compels a public official to perform a statutory duty – can be based on an implied duty.[14]

iv. Past Administrative Practice

Past administrative practice by the Auditor General, although not binding, can also be an aid to interpretation of a statutory scheme.[15] Administrative interpretation of a statute can be either express or implied.[16] The basis for accepting administrative practice as an aid to statutory interpretation is two-fold: (a) the administrator of a statute develops expertise

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11 *Saskatchewan Government Insurance v. Schmidt*, 2008 SKCA 167 at para. 22.

12 *Nguyen v. Canada (Minister of Employment & Immigration)*, 1993 CarswellNat 92 (F.C.A.) at paras. 28 and 34-36.

13 *Children's Aid Society of Algoma v. R.M.*, 2001 CarswellOnt 2204 (C.J.) at paras. 63 to 65.

14 Brown & Evans, *Judicial Review of Administrative Action in Canada*, Vol. 1 (Toronto: Thomson Reuters, 2016 (looseleaf)) at para. 1:3220.

15 *Harel v. Quebec (Deputy Minister of Revenue)*, [1978] 1 S.C.R. 851 at p. 859; *Will-Kare Paving & Contracting Ltd. v. Canada* (2000), 188 D.L.R. (4th) 242 (S.C.C.) at p. 267.

16 Cote, *The Interpretation of Legislation in Canada*, 3rd Edition (Scarborough: Thomson Canada Limited, 2000) at p. 547 [Cote]; *Sullivan on the Construction of Statutes*, 6th Ed (Markham: LexisNexis, 2014) at para. 23.118 [Sullivan].

and perspective by administering legislation on a day-to-day basis; and (b) consistent administrative interpretation creates legitimate expectations and reliance.[17]

In our view, the Auditor General would likely be viewed as the "administrator" of the scheme established by the Legislature to scrutinize Government spending. This scheme includes both the FAA and the AG Act. As such, the Auditor General's historic interpretation of the obligations imposed on her under the FAA and the AG Act would likely be given some weight in ascertaining the interpretation of the applicable provisions under both Acts.

It is our understanding that since at least 1999, the Auditor General has audited the consolidated financial statements and provided his or her report prior to the Government's deadline for tabling the Public Accounts, as that deadline was prescribed at the relevant time.

The Auditor General's website also describes the Auditor General's role in performing an "Attest Audit" of the Public Accounts. The website indicates that after the audit, the Auditor General expresses an opinion on the financial statements of the province. The opinion is then reproduced in both the Public Accounts of the province and in the Auditor General's annual report.[18] While not determinative from a legal perspective, these public statements arguably demonstrate the Auditor General's own view that she is required to conduct her audit and provide her opinion prior to the Deadline so that the opinion can be reflected in the Public Accounts.

B. Obligation to Provide Audit Opinion

We have considered whether the "report" that is required to be provided under the FAA is required to include the Auditor General's audit opinion.

Section 1.0.26(1) of the FAA provides that the Auditor General is required to provide "the report of the Auditor General concerning his or examination of the consolidated financial statements of the Province." There is no express reference in this provision to an audit opinion.

The language of the FAA can be contrasted with the wording of section 12(3) of the AG Act. Section 12(3) expressly provides that the Auditor General, in her annual report, shall "express his or her opinion" as to whether the consolidated financial statements present fairly information in accordance with appropriate generally accepted accounting

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17 Sullivan, above, at para. 23.111; Cote, above, at p. 549.

18 http://www.auditor.on.ca/en/content/aboutus/whatwedo.html: "The Kinds of Audits and What is Audited".

principles. Section 12(3) also contemplates that the Auditor General shall set out any reservations that he or she may have.

It could be argued that the explicit reference to the audit opinion in section 12(3), as contrasted with the reference to a "report" in section 1.0.26(1) of the FAA, means that the Auditor General is only required to provide her audit opinion in the annual report. Under section 12(1) of the AG Act, the annual report only has to be delivered after the Public Accounts have been tabled.

In our view, this is not the better interpretation of the FAA provisions. We have reviewed selected excerpts of the Canadian Auditing Standards (CAS), which indicate that an "auditor's report" is required to include the auditor's audit opinion.[19] Assuming that, as a matter of auditing standards, an audit necessarily entails an "auditor's report" and that an "auditor's report" is required to include the audit opinion, we believe the better view is that "report" in section 1.0.26(2) of the FAA would be interpreted to mean an auditor's report, including an audit opinion.

In our view, this interpretation is consistent with section 9 of the AG Act, which is the principal source of the obligation imposed on the Auditor General to "audit" the Public Accounts. Arguably, the Public Accounts have not been "audited" if the Auditor General has not expressed an audit opinion in respect of them.

Furthermore, the requirement to provide an audit opinion under the FAA prior to the Deadline for tabling the Public Accounts is consistent with the objectives of the FAA. If section 1.0.26(1) is interpreted as not requiring the Auditor General's report to include the audit opinion, the effect would be to require the Government to table the Public Accounts in an unaudited form. This appears contrary to the purpose for tabling the Public Accounts before the Assembly.

Finally, we understand that the Auditor General's own administrative practice – and the public statements on the Auditor General's website – indicate that the Auditor General's own view is that the audit opinion is required to be provided twice. It is required to be provided prior to the Deadline in order to include it with the Public Accounts and again in the annual report.

---

[19] Canadian Auditing Standards CAS 700: Forming an opinion and reporting on financial statements, paras. 20-45.

Although not free from doubt, therefore, it is our opinion that the better view is that section 1.0.26(1) of the FAA would be interpreted as requiring the Auditor General to provide a full auditor's report, including an audit opinion, prior to the Deadline.

Yours very truly,

Osler Hoskin & Harcourt LLP.

Osler, Hoskin & Harcourt LLP
JC/JS:

RE_ Draft Opinion - Auditor General.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject: RE: Draft Opinion - Auditor General
Date: Tuesday, September 20, 2016 12:00:38

Yes, that's fine.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 12:00 PM
To: Code, Jacqueline <JCode@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: Re: Draft Opinion - Auditor General

Sorry - can we make it at 1215 if possible

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Code, Jacqueline
Sent: Tuesday, September 20, 2016 11:58 AM
To: Hatzis, Len (TBS)
Cc: Steele, Jana
Subject: RE: Draft Opinion - Auditor General

Yes, I can be.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 11:52 AM
To: Code, Jacqueline <JCode@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: Re: Draft Opinion - Auditor General

Thanks - will review - are you free to chat at 1230 if possible.

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Code, Jacqueline
Sent: Tuesday, September 20, 2016 11:25 AM
To: Hatzis, Len (TBS)
Cc: Steele, Jana
Subject: Draft Opinion - Auditor General

Len,

Attached please find our draft opinion regarding the obligations of the Auditor General to audit the Public Accounts before they are tabled. We have provided it in draft in the event that you have questions or comments that would require it to be revised.

I'd be happy to discuss it with you at your convenience once you have had a chance to review it.

Best regards,

Jacqui

[cid:image001.gif@01D21331.91764C20]

Jacqueline Code

416.862.6462

DIRECT

416.862.6666

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jcode@osler.com

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada   M5X 1B8

[cid:image002.gif@01D21331.91764C20]<http://www.osler.com/>

RE_ TBS - Opinion re AG Act.rtf

From: Dyczkowski, Marilyn (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Code, Jacqueline [JCode@osler.com]
CC: Callaghan, Patrick [PCallaghan@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]
Subject: RE: TBS - Opinion re AG Act
Date: Friday, September 16, 2016 12:26:15
Attachment 1: image001.gif
Attachment 2: image002.gif
Attachment 3: image003.png

Sent out

Marilyn Dyczkowski

EA to the Legal Director

Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat

9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3

Phone: 416-326-8385 Fax: 416-325-9404

From: Hatzis, Len (TBS)
Sent: September 16, 2016 12:18 PM
To: Code, Jacqueline

Cc: Callaghan, Patrick; Kaufman, Paul (TBS); Dyczkowski, Marilyn (TBS)
Subject: RE: TBS - Opinion re AG Act

Will send out call for 1245

Marilyn pls send out

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 16, 2016 12:12 PM
To: Hatzis, Len (TBS)
Cc: Callaghan, Patrick; Kaufman, Paul (TBS)
Subject: RE: TBS - Opinion re AG Act

Yes. I'm available until 1:45, though would prefer to speak after 12:30, if that works at your end.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Friday, September 16, 2016 12:10 PM
To: Code, Jacqueline <JCode@osler.com>
Cc: Callaghan, Patrick <PCallaghan@osler.com>; Kaufman, Paul (TBS) <Paul.Kaufman@ontario.ca>
Subject: RE: TBS - Opinion re AG Act

Hi

Can we have a call today as we think there are a couple of nuances to this opinion we would like to discuss with you. Thanks

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 15, 2016 4:48 PM
To: Hatzis, Len (TBS)
Cc: Callaghan, Patrick
Subject: RE: TBS - Opinion re AG Act

Hi Len,

I left you a message. We'll answer the question you pose below. If there is any further factual context that you feel would be helpful to us, I'm available to discuss for the next short while, and then again in the morning.

Regards,

Jacqui

Jacqueline Code

416.862.6462

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416.862.6666

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jcode@osler.com

Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 4:36 PM
To: Code, Jacqueline <JCode@osler.com>
Cc: Callaghan, Patrick <PCallaghan@osler.com>
Subject: RE: TBS - Opinion re AG Act

Hi

Not sure if you called (on a call with Jana steele right now) but the question is: can the AG refuse to issue an opinion on the public accounts. We think the answer is no.

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 15, 2016 3:59 PM
To: Hatzis, Len (TBS); Steele, Jana
Cc: Callaghan, Patrick
Subject: RE: TBS - Opinion re AG Act

Hi Len,

I will call you shortly.

Jacqui

Jacqueline Code

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada M5X 1B8

http://www.osler.com/

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Thursday, September 15, 2016 3:58 PM
To: Steele, Jana <JSteele@osler.com>
Cc: Code, Jacqueline <JCode@osler.com>; Callaghan, Patrick <PCallaghan@osler.com>
Subject: RE: TBS - Opinion re AG Act

Thanks Jana

Jacqueline/Patrick

Can I please speak with one of you – I'm at my desk.

Len Hatzis

Deputy Director

Legal Services Branch | Treasury Board Secretariat

77 Wellesley Street West, 9th Floor, Toronto ON M7A 1N3

416.327.6393

From: Steele, Jana [mailto:JSteele@osler.com]
Sent: September 15, 2016 3:41 PM
To: Hatzis, Len (TBS)
Cc: Code, Jacqueline; Callaghan, Patrick
Subject: TBS - Opinion re AG Act

Hi Len:

Confirming our conversation that we can assist on this second opinion.

I am copying my partner, Jacqui Code, and our colleague, Patrick Callaghan, (both from our research group) who will be assisting on this matter so that you can correspond directly.

Best regards,

Jana

Jana Steele

416.862.6625

DIRECT

416.862.6666

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jsteele@osler.com

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http://www.osler.com/

http://www.pensionsbenefitslaw.com/

https://twitter.com/pensionsjana

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image003.pdf

RE_ Update and Question.rtf

From:	Code, Jacqueline [JCode@osler.com]
To:	Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
Subject:	RE: Update and Question
Date:	Monday, September 19, 2016 12:33:01
Attachment 1:	image001.gif
Attachment 2:	image002.gif

Ok.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 12:32 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: RE: Update and Question

Will call you at 1240

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 19, 2016 12:27 PM
To: Hatzis, Len (TBS)
Subject: RE: Update and Question

Could be free in about 10 mins. I have a meeting at 1 so if we need longer than that, I could call you after my meeting.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 12:25 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: RE: Update and Question

It may be helpful to have a call with you – are you free shortly by any chance

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 19, 2016 11:23 AM

To: Hatzis, Len (TBS)
Subject: Update and Question

Hi Len,

We are working on drafting something for you by the end of the day. If you need some idea of where we think it comes out in advance of the end of day, let me know and we'll give you an oral report when it's convenient for you.

In the meantime, we note that s. 9(1) of the Auditor General Act imposes a duty of the AG to "audit … the accounts and records of the receipt of public money forming part of the Consolidated Revenue Fund". As a factual matter, we are not sure whether this is a narrower obligation and could not be interpreted as an obligation to audit the Public Accounts (a term which doesn't appear to be defined anywhere), or whether this provision could provide some additional support for a positive obligation on the Auditor General to audit and report on the Public Accounts before they are tabled.

Since this appears to be a largely factual question about the relationship between the Consolidated Revenue Fund and the Public Accounts that insiders would understand, we are hoping you could clarify whether you would view s. 9(1) as applicable in this scenario or not. It is not critical to the opinion that we be able to rely on s. 9(1), but it would provide some additional support if we could.

Regards,

Jacqui

Jacqueline Code

416.862.6462

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http://www.osler.com/

image001.pdf

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image002.pdf

osler.com

RE_ update re opinion.rtf

From: Kaufman, Paul (TBS) []
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]; Code, Jacqueline [JCode@osler.com]
CC: Smook, Nick (TBS) [Nick.Smook@ontario.ca]; Petsche, Nadine (TBS) [Nadine.Petsche@ontario.ca]; Veinot, Cindy (TBS) [Cindy.Veinot@ontario.ca]
Subject: RE: update re opinion
Date: Monday, September 19, 2016 19:07:29

Jacqueline - from Nadine. Nadine - feel free to add.

Definition: An audit report is a written opinion of an auditor regarding an entity's financial statements. The report is written in a standard format, as mandated by generally accepted auditing standards (GAAS).

Paul Kaufman
Counsel
Ministry of the Attorney General | Legal Services Branch |Treasury Board Secretariat
9th Floor, 77 Wellesley Street West, Ferguson Block, Toronto, ON M7A 1N3
Phone: 416-327-7012 Fax: 416-325-9404

RE_ update re opinion.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]
Subject: RE: update re opinion
Date: Tuesday, September 20, 2016 11:20:50

Hi Len,

You should be getting it within the next five minutes or so.

Jacqui

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Tuesday, September 20, 2016 11:20 AM
To: Code, Jacqueline <JCode@osler.com>
Cc: Steele, Jana <JSteele@osler.com>
Subject: Re: update re opinion

Hi jacqueline
Can you provide an update re: when I can expect a draft of the opinion pls. Thanks

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Code, Jacqueline
Sent: Monday, September 19, 2016 6:41 PM
To: Hatzis, Len (TBS)
Cc: Smook, Nick (TBS)
Subject: RE: update re opinion

I am here and could speak at 7.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 6:33 PM
To: Code, Jacqueline <JCode@osler.com>
Cc: Smook, Nick (TBS) <Nick.Smook@ontario.ca>
Subject: Re: update re opinion

We are reviewing this issue currently and hope to be back to you shortly. It may be a benefit if we can have a short call at 7 if you're free to nail this down. Not sure if you can accommodate that.

Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Code, Jacqueline
Sent: Monday, September 19, 2016 6:19 PM
To: Hatzis, Len (TBS)
Subject: RE: update re opinion

Well, the FAA requires a report of the AG "concerning his or her examination of the financial statements". I'm not an accountant so I'm not sure whether that could be anything other than an audit opinion. Has the AG ever provided a report in this context that is not an audit opinion?

That said, the requirements of s. 12(3) are more explicit regarding the need for an opinion regarding the compliance with GAAP, but s. 12(3)'s obligations apply after the Public Accounts have been tabled.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 6:14 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: Re: update re opinion

Apologies but one last point from my clients:

It will be important to know whether that report has to be in the form of an audit opinion. Or in other words, can the AG withhold her audit opinion (because in her view the gov't has done something she does not agree with), but still provide some sort of report? I don't think this latter situation would help us much.
Sent from my BlackBerry 10 smartphone on the Rogers network.
Original Message
From: Code, Jacqueline
Sent: Monday, September 19, 2016 5:50 PM
To: Hatzis, Len (TBS)
Subject: RE: update re opinion

I think it does.

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 5:39 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: RE: update re opinion

Hi
Quick question re the draft: can it pls opine on the obligation to provide a review within the time necessary for the Minister to comply with the FAA obligations re disclosure/tabling? Happy to discuss

-----Original Message-----
From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 19, 2016 4:38 PM
To: Hatzis, Len (TBS)
Subject: RE: update re opinion

ok

-----Original Message-----
From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 4:36 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: Re: update re opinion

Can we chat at 5 pls

Sent from my BlackBerry 10 smartphone on the Rogers network.
From: Code, Jacqueline
Sent: Monday, September 19, 2016 3:20 PM
To: Hatzis, Len (TBS)
Subject: RE: update re opinion

I think the written draft will not be done before 4:15 or so.   I can give you a preview of what it will say whenever it's convenient.

From: Hatzis, Len (TBS) [mailto:Len.Hatzis@ontario.ca]
Sent: Monday, September 19, 2016 3:17 PM
To: Code, Jacqueline <JCode@osler.com>
Subject: update re opinion

Hi Jacqueline
Can we chat about this oral report option or do you feel the draft will done in short term.   Thank you.   I am back in my office at 415

Thanks

Len Hatzis
Deputy Director
Legal Services Branch | Treasury Board Secretariat
77 Wellesley Street West, 9th Floor, Toronto ON M7A 1N3
416.327.6393

From: Code, Jacqueline [mailto:JCode@osler.com]
Sent: September 19, 2016 11:23 AM
To: Hatzis, Len (TBS)
Subject: Update and Question

Hi Len,

We are working on drafting something for you by the end of the day.   If you need some idea of where we think it comes out in advance of the end of day, let me know and we'll give you an oral report when it's convenient for you.

In the meantime, we note that s. 9(1) of the Auditor General Act imposes a duty of the AG to "audit . the accounts and records of the receipt of public money forming part of the Consolidated Revenue Fund". As a factual matter, we are not sure whether this is a narrower obligation and could not be interpreted as an obligation to audit the Public Accounts (a term which doesn't appear to be defined anywhere), or whether this provision could provide some additional support for a positive obligation on the Auditor General to audit and report on the Public Accounts before they are tabled.

Since this appears to be a largely factual question about the relationship between the Consolidated Revenue Fund and the Public Accounts that insiders would understand, we are hoping you could clarify whether you would view s. 9(1) as applicable in this scenario or not.   It is not critical to the opinion that we be able to rely on s. 9(1), but it would provide some additional support if we could.

Regards,
Jacqui

[cid:image001.gif@01D21289.59B06E40]

Jacqueline Code

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jcode@osler.com<mailto:jcode@osler.com>

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Box 50, 1 First Canadian Place
Toronto, Ontario, Canada   M5X 1B8

[cid:image002.gif@01D21289.59B06E40]<http://www.osler.com/>

Re_ Update -- Auditor General Opinion.rtf

From: Code, Jacqueline [JCode@osler.com]
To: Hatzis, Len (TBS) [Len.Hatzis@ontario.ca]
CC: Steele, Jana [JSteele@osler.com]; Kaufman, Paul (TBS) [Paul.Kaufman@ontario.ca]; Kearney, Sean (TBS) [Sean.Kearney@ontario.ca]
Subject: Re: Update -- Auditor General Opinion
Date: Friday, September 16, 2016 19:14:51

Hi Len

Thanks for clarifying the question, which corresponds with what we took away from our call earlier today.

While I understand your internal constraints, the earliest I could possibly provide a written draft is the end of day Monday, and at that point it would still be subject to our internal review and confirmation before it would be final.

We would be pleased to provide you with an oral report of what the conclusions are likely to be by midday on Monday.

Thanks
Jacqui

Sent from my iPad

> On Sep 16, 2016, at 6:51 PM, Hatzis, Len (TBS) <Len.Hatzis@ontario.ca> wrote:
>
> Jacqueline
> Further to our chat, just to confirm the narrow question bring asked surrounds the AG's obligations (if there are any) to submit an opinion/report as part of the public accounts process as detailed in the FAA. We require an explanation of the legal landscape in terms of whether there is a requirement for the AG as part of the public accounts process. We presume that as part of this analysis, the AG Act will also need to be reviewed.
> In terms of timelines, sorry but we are facing an statutory deadline and an internal decision making timeline as well, so I am requesting if there is a way to expedite so that we can have something in writing by Monday (even a draft). Thanks
> Sent from my BackBerry 10 smartphone on the Rogers network.
> From: Code, Jacqueline
> Sent: Friday, September 16, 2016 5:17 PM
> To: Hatzis, Len (TBS)
> Cc: Steele, Jana
> Subject: Update -- Auditor General Opinion
>
>
> Hi Len,
>
> As requested, I'm providing you with an update as to our timing for an opinion on the auditor-general issues.
>
> We've discussed the issues and done some preliminary digging. I think with the benefit of some further time on Sunday to review the authorities and consider their implications, we should be in a position to provide at least a preliminary view on Monday by late morning. This will not be the written opinion but an oral view as to where the written opinion is likely to end up.
>
> Assuming you still want the written opinion after our conversation, we would then draft it and get it to you as soon as possible after that. I believe Jana mentioned to you that we need to get internal sign-off on the opinion. It may therefore be a day or two before we can provide the written product.

>
> Let me know if you would like to discuss further,
> Jacqui
>
> [cid:image001.gif@01D2103C.0F8FA500]
>
> Jacqueline Code
>
>
>
> 416.862.6462
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> DIRECT
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> 416.862.6666
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> ________________________________
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