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Report of the Auditor General on the *MV Veteran* and *MV Legionnaire*
(Continued from March 22, 2022)

PUBLIC ACCOUNTS COMMITTEE

Report of the Auditor General on the *MV Veteran* and *MV Legionnaire*

Chair: Tony Wakeham, MHA

Vice-Chair: Sherry Gambin-Walsh, MHA

Members: Scott Reid, MHA
Lucy Stoyles, MHA
Brian Warr, MHA
Helen Conway Ottenheimer, MHA
Jordan Brown, MHA

Clerk of the Committee: Kim Hawley George, Evan Beazley

Appearing:

Department of Transportation and Infrastructure

Jamie Chippett, Deputy Minister, 2011-2013

Department of Tourism, Culture, Arts and Recreation

Alastair O’Rielly, Deputy Minister, 2013-2016

Office of the Auditor General

Sandra Russell, Deputy Auditor General

Trena Keats, Audit Principal

Lindy Stanley, Audit Manager

Also Present

Mark Jerrett, Policy, Planning and Research Analyst

The Committee met at 1 p.m. in the House of Assembly Chamber.

CHAIR (Wakeham): Welcome everybody.

Thank you for your appearance today at this hearing. I'll just read out our mandate for the record.

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to achieve consensus in its decision whenever possible and Members take a non-partisan approach to their work on this Committee.

There are some housekeeping remarks I need to make. I remind participants that this is a public meeting and their testimony will be part of the public record. Live audio will be streamed on the House of Assembly website at assembly.nl.ca and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly website once it's finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely and what you say in this parliamentary proceeding may not be used against you in civil proceedings.

Now, we're going to move into the format. I will ask the Clerk to administer the oath and affirmations to the witnesses. The witnesses will be invited to make an opening statement, maybe two or three minutes, if you wish to do so. Committee Members will pose questions to witnesses in turn for 10-minute periods.

I will now ask the Clerk to proceed to administer the oath or affirmation, and we will begin.

Swearing of Witnesses

Mr. Jamie Chippett

CHAIR: Before we get started, Jamie, I'd just like to introduce the Committee or have them introduce themselves to you.

Obviously, my name is Tony Wakeham. I'm the Chair of the Public Accounts Committee. I'll start to my left

J. BROWN: I'm Jordan Brown. I'm the MHA for Labrador West.

L. STOYLES: I'm Lucy Stoyles. I'm the Member for Mount Pearl North.

S. REID: Scott Reid, the MHA for St. George's - Humber.

B. WARR: Hi, I'm Brian Warr, the MHA for Baie Verte - Green Bay.

H. CONWAY OTTENHEIMER: Helen Conway Ottenheimer, Member for Harbour Main.

S. GAMBIN-WALSH: For the record, Sherry Gambin-Walsh, MHA for Placentia - St. Mary's.

CHAIR: I should have mentioned. I'm proud to be the Member for the District of Stephenville - Port au Port.

We're here today with follow-up hearings on the Auditor General's report on the purchase and acquisition of the *MV Veteran* and the motor vessel the *Legionnaire*.

So now I will turn it over to the Committee Members to proceed and I'll start with the – sorry, before I do that, I forgot, my apologies, first we'll hear from Mr. Chippett, if you would like to make an opening remark.

J. CHIPPETT: I'll just introduce myself.

I'm Jamie Chippett, Deputy Minister of Fisheries, Forestry and Agriculture. I was Deputy Minister of Transportation and Works from April of 2011 to April of 2013.

CHAIR: Thank you, Jamie.

I'll now turn it over to the Vice-Chair.

S. GAMBIN-WALSH: Thank you, Chair.

Jamie you just answered my first question, actually. I was going to ask the exact dates that you were the deputy minister of Transportation and Works and you said April 2011 to April 2013, correct?

J. CHIPPETT: That's correct.

S. GAMBIN-WALSH: Okay, I'm going to read something from page 15 of the Auditor General's report and my questions are going to be around what I'm about to read. So I'll just give you a chance to get it out. The top of the page on page 15.

"At the time of signing the amendment to the contract in December 2013 to add the construction of the *MV Legionnaire*, the shipbuilder submitted a commitments letter, which outlined the business development initiatives that they would explore with the assistance of the Department of Industry, Energy and Technology (the former Department of Industry, Business and Rural Development).

"These commitments were not formalized in a legal document." Nevertheless it indicates here that they were commitments.

So I want you to tell us what your involvement was in this amendment; the negotiations that happened prior to the amendment; who negotiated it, the industrial development agreement; and the provisions – like everything that you can remember about this particular paragraph here.

J. CHIPPETT: So I would have not been the deputy when this would have occurred

because I finished in April, I think April 30, 2013, was my last day as deputy minister of Transportation and Works and the following day, I guess, I would have been the deputy of Environment and Conservation.

So I was not there for any of those decisions or any of those negotiations. The RFP that was issued in January of 2013 was the last thing in terms of, I think, the timeline that's constructed in the Auditor General's report. The issuance of the RFP for an 80-metre and a 42-metre vessel, or vessels, would have been the last significant point, I think, in the chronology that the Auditor General talks about in its report.

S. GAMBIN-WALSH: So you're saying that there was no conversation and no discussion had about this amendment or anything, absolutely nothing to do with the industrial benefits agreement during your time.

J. CHIPPETT: No. I did review the RFP from 2013 just to refresh my memory and, in particular, Annex A which speaks to the evaluation criteria. There would have been no discussion during my time on anything other than what was in that evaluation criteria and industrial benefits were not noted in that Annex of the RFP.

S. GAMBIN-WALSH: Okay.

Just one more question. So the decision to purchase the second vessel –

J. CHIPPETT: So when I left the department, the request for proposals talked about the replacement for the *Earl Winsor* in Fogo and a third 42-metre vessel. Members of the Committee would probably recall the *Grace Sparkes* and the *Hazel McIsaac* ferries. So they were delivered during my time in Transportation and Works. The plan, when the RFP was issued, was for a replacement for the *Earl Winsor* and a third 42-metre similar to those previous two ferries.

S. GAMBIN-WALSH: Okay. Thank you.

J. BROWN: Mr. Chippett, during your time in there – so at that time, when I guess the amendment to the original contract was there, there were no discussions at that time in your department of any benefits agreement to be attached to the amended contract, to add the *Legionnaire* to the current (inaudible) – there were no discussions. There was no talk of it at all at that time.

J. CHIPPETT: I don't recall any discussions, but part of my answer to MHA Gambin-Walsh is based on my re-review of the January 2013 RFP, and certainly there were no provisions included on industrial benefits in that RFP.

J. BROWN: All right.

During the releasing of the RFP at that time, before this amended contract, was it already determined at that time that Damen would do this work, or you were open to more –?

J. CHIPPETT: So when I left the department – I won't say when I left the department. When that RFP was issued while I was in the department, there was specific attention paid to the fact that we were going to accept bids on both vessels separately and then also do an analysis on any bidders who had said they could build both.

So there was no discussion on – in fact, it would have been inappropriate at that point to really discuss who would build it, because we were waiting for bids to come in. So I think the RFP was originally supposed to close at the end of April, and I read in the AG report that it actually closed in June. So when I left, there was no company selected; in fact, no bids had been received by the department for those vessels.

J. BROWN: Thank you, Mr. Chippett.

Moving on, another question I have, too: During your time in that department, were you aware of any project manuals being developed for the management of the project for these two vessels, or was there any talk of developing a new process for oversight of the management of these two vessels during the construction and acceptance periods?

J. CHIPPETT: So I do recall a briefing first when I got into the department about the project manual that is referenced in the Auditor General's report. Actually, I recognized the diagram in the Auditor General's report. I don't recall any details beyond knowing I was briefed on project management and that particular chart was a part of that briefing.

J. BROWN: Perfect.

Thank you, Mr. Chippett.

L. STOYLES: Thank you for coming. As we all know, this was such an important and expensive project for the province.

Like you said, you left before most of the company was hired or anything. Was there anybody in your department besides you handling this file? Did you assign it? I know when one of the other deputies spoke back when we did the hearings before, she had turned it over to an assistant deputy minister. I'm just wondering, when you were deputy minister, did you handle the file yourself? Did you have hands-on with this?

J. CHIPPETT: So I wouldn't have been involved. I signed off on the RFP being issued. Certainly not from the perspective of design drawings and so on that were attached. I have no expertise in marine matters. There was an assistant deputy minister – actually, there was the span of two, I think, while I was in Transportation and Works who held responsibility for the Marine Division. So they would have developed the RFP. But before the RFP

went out, certainly I would have signed off on that.

L. STOYLES: Okay. Of course, we know there have been many deputy ministers went through – I guess four or five different deputy ministers and ministers through the life of the project. So because you were there from the beginning, where you had been part of the RFP in the beginning, would any of them have contacted you for any information or anything related to the project?

J. CHIPPETT: Not that I recall. I remember when somebody told me, for example, that we were building two of the larger vessels, and not the 80 metre and 40 metre, and being surprised because that wasn't what the RFP had asked for. But I don't think there were any discussions I recall on the negotiations with proponents on the vessels.

L. STOYLES: So I guess through it all, you've heard the concerns of everything that has happened and the cost and timelines and everything.

I mean, you're still in a role here in government as the DM. What advice would you give? Because we're looking at moving forward and hoping, if there was any bad decisions made, that they wouldn't happen again. What advice would you give to us moving forward and what do you think went wrong? I don't know if you can answer the question; I'm just wondering if you have any advice for us.

J. CHIPPETT: I guess my general observation in thinking about it since I've been asked to appear before the Committee is that the procurement landscape and framework is very different now than it was then. So at the time, it would've been very commonplace to go out and have vessels designed, receive that design, go out and do an RFP to have vessels – well, not only vessels. It could be vessels; it could be construct buildings or what have you.

So that was a traditional mode of procurement. Obviously, things have changed. There's new procurement legislation and government has explored different kinds of procurement rather than design RFP builds. So it wasn't really the environment for that but there may have been opportunities to use different methods for procurement. I think you've seen the Department of Transportation and Infrastructure go down that road very much as procurement legislation and so on has changed. But it's hard to call that advice because the procurement landscape was so different in 2011 than it is today.

The focus of the department, I can honestly say when I was there, was on how could we most quickly put new vessels in service that would mean there was less downtime for residents. I think everybody knows vessels were extremely old at the time and vessels were going into refits and you could not predict when they would come out. So the focus was on trying to get new vessels on those runs so that the people of the province wouldn't have to deal with vessels that were either out for longer than planned and, in the interim, have swing vessels and so on that were much lower capacity than the vessels that were normally on those runs.

L. STOYLES: So we didn't have the technology, I guess, in Newfoundland to build ships to this magnitude, that's why we went overseas?

J. CHIPPETT: I think there were two things happening. One was consideration around what could be built locally, what the capacity of local shipyards were and, in particular, we know 42-metre vessels could have been built here because two had just been delivered. Then there were questions, I recall, around, you know, in terms of that 80-metre vessel. My recollection is there was significant upgrades needed to facilities around the province if we were going to try to look at those types of constructions here.

At the end of the day, in order to give everybody a fair shot at what they were capable of doing, we went with the RFP that had two different sized vessels and you could bid on one of those or you could bid on both.

So that is how we tried to ensure local companies could be involved. Yet, if there were much greater capacity, if vessel could be delivered a lot faster, then you would have everybody in being able to bid. So that's – I can't speak to what the individual proposals were because I never ever saw those, but that was the idea behind being able to bid separately on both vessels.

L. STOYLES: All right.

Thank you.

I pass it on.

S. REID: Yeah, so I guess one of the things that we've been looking at, and as a follow-up to the previous hearings that we had, is in relation to industrial benefits from this project and how, you know, there seemed to be an agreement there that the province would – you know, things like a service centre, an Arctic research centre and there would be involvement of local companies.

I guess one of the general questions that I have relates to the transition between deputy ministers. You've been a civil servant a long while and you've moved around from various departments so I'm first going to ask a general question, I guess: What is the transition process when a deputy or an assistant deputy minister moves from one department to the other? Do they meet with the previous deputy minister? Do they meet with the previous ADM? Do they meet with – how is that done? Could you give us some insight into that process? Is there an established process or does it depend on the individuals involved? Could you tell us a bit about that?

J. CHIPPETT: My experience has been it depends on the individuals involved. There are kind of two sides to that coin. One is what a department that knows a new deputy is coming would do and what the new deputy coming in would ask for by way of briefings or briefing materials or what have you.

It really depends on the individual. I've transitioned at times when I've had lengthy meetings with the person who had just left. Other times that person has left me materials. Some other times it might not have been that extensive and I might have relied on the officials in the department I went in to, to provide me briefings on various things.

I think it depends on something as practical as whether the deputy before a deputy is leaving the public service or is just moving to another deputy position in the public service. So some of it is circumstance based, that specific point in time, but normally there's some discussion, particularly if somebody moves to a different deputy job in the system and you're coming behind them. There would normally be some discussion on that.

S. REID: So I guess a little more specific in terms of the process when you became the DM in Transportation, I believe.

So who was there before you and who is there after you left? What was the sort of interaction as you came in and as you left specifically to this case? I guess, as well, you've said that the industrial benefits agreement didn't come until after, but was there any discussion during that whole process, as you were coming in, especially, I guess? Was there any talk of industrial benefits or in a general sense; although, you say it wasn't in the agreement until afterwards?

Could you just tell us a little bit about that?

J. CHIPPETT: Sure. So I probably remember my appointment to Transportation and Works more than any other because it was my first deputy minister appointment. The deputy before me was actually leaving government. So Robert Smart would have been the deputy minister before I became the deputy minister. I do remember meeting with Bob and being a little scared by the volume of the briefing book he gave me in terms of all the issues that were in Transportation and Works at the time.

Then on the other end, when I left, Brent Meade became the deputy minister, I believe, and I moved to the Department of Environment and Conservation. I don't remember a lot of discussions with Brent, but I know there would have been, you know, I treat it no differently than when I moved at the end of September to Fisheries. I have talked to my colleague who is now in Labrador in Indigenous Affairs, off and on, since then on individual files. I don't recall, specific, what those discussions would have been with Brent.

Industrial benefits, you raise that, I don't recall specific discussions on that. I'm not saying there weren't any but I don't recall those. I do know, having reviewed the RFP again, obviously, it was pretty simple in terms of the traditional things that you would do to evaluate proponents who do shipbuilding as a matter of course.

You know, the things I remember about the vessel fleet in Transportation and Infrastructure, discussions I do remember, are when we had refits that went long, when we had refits that took longer than we had anticipated and then, obviously, you were hearing fairly regularly from communities who had vessels that did not have the capacity to keep up with the demand.

I should have said, when I was going into Transportation, government had already decided on a vessel replacement strategy in

terms of the budgets and the orders in which certain vessels would be procured.

Those are the discussions I remember the most. It was about the needs in the communities, the issues communities were experiencing, and obviously we were well aware we had assets that were, in many cases, getting to the end of their natural life, if not already past it.

S. REID: I just want to continue on, and as someone who has moved around in various departments over a period of time, I'm just wondering – one of the things that seem to have happened here in terms of the industrial benefits was that something was sort of missed, or at least that's what it seems at this point. But I'm sort of wondering, as an experienced career civil servant, do you have any insights or advice you could offer in terms of the transition process, how it could be made better and things like that? Any sort of things that could be done differently or more formalized, or is it better left in an informal matter?

J. CHIPPETT: I think it's difficult to prescribe exactly what should happen because the circumstances are always different. But, in the meantime, there are deputy ministers who go into appointments and they have access to all of the assistant deputy ministers in that department, obviously, as the direct reports of the deputy, and they have access to all of the senior management staff in the division.

I think, as a matter of course, in one way or another, a deputy would normally be briefed by those people on their branches and then either by ADMs or directors on individual divisions. It depends I guess on how people best learn and retain information and so on.

S. REID: Okay, thank you.

B. WARR: Thank you, and welcome, Jamie.

I guess the first thing I want to start off with is probably more so out of a bit of fun, but a

serious bit of fun. You mentioned earlier on about the *Earl Winsor* and I want to let you know that the *Earl Winsor* is tied up to the government wharf in Springdale. I take phone calls from it every day about – government should be trying to establish some sort of form of guarantee as to what we're doing with these old assets. Because right now that it's tied up at our wharf and, like I said, my phone is inundated with calls of disgust.

But having said that, I just want to go back over – Jamie, you were the deputy minister of Transportation and Works from April of 2011 to April of 2013?

J. CHIPPETT: That's correct.

B. WARR: Okay.

Obviously, you were involved in the RFP which was issued, you said, in January of 2013?

J. CHIPPETT: That's correct.

B. WARR: You mentioned the fact – I'm interested around dates. The RFP was due at the end of April and then it got closed at the end of June, or sometime in June, and there were no bids. Did you say there were no bids?

J. CHIPPETT: No, I didn't say that. I said I didn't see any bids and I wouldn't have in that instance. So I don't remember the actual discussion, but I'm sure somebody would have asked myself whether or not we could extend the RFP.

B. WARR: Okay.

J. CHIPPETT: That's fairly common. I've been asked that question a lot of times in my career over different projects. I don't recall the discussion or maybe it was an email around extending it from the end of April, but I assume that would have happened and it would have been extended. Whether there were bids in

before the end of April, the original date in the RFP, I can't remember that detail.

B. WARR: That's fair.

Jamie, do you feel that there may have been a disadvantage in the procurement of these two vessels? Do you think there might have been a disadvantage in the RFP, whether it's around the design – you talked about the fact that our fleet was aging and timelines are important in RFPs; I get that. But do you think that we were disadvantaged in any of our local companies or companies that were closer to the Province of Newfoundland and Labrador? Do you think that we were disadvantaged in any of them in the procurement of these vessels?

J. CHIPPETT: My answer to that would be no, because as I said, my recollection is there was a very definitive kind of conclusion to our work on the RFP whereby we asked for the two sizes of boats that we were going to procure at that time, and said people could bid separately. I mean, I think it was very public. Again, I remember this probably because it's one of the files earliest in my deputy career that was in the media a fair amount, that there had been some disagreement with Peter Kiewit Sons over the two 42-metre vessels that were built.

B. WARR: Yeah.

J. CHIPPETT: So that was a very public thing and some of that negotiation and –

B. WARR: So you're referring to the *Grace Sparkes* and *Hazel McIsaac*?

J. CHIPPETT: I am, yeah.

B. WARR: Yeah, okay.

J. CHIPPETT: So, you know, there was obviously knowledge that those types of vessels could be built in the province. The RFP, I think, was an opportunity to, as I

said, allow yards with certain capacity in the province to be involved, if they so choose to be. But also open it up then to anybody, whether it's the companies that were eventually involved in the RFP or the conclusion and got contracts, or anybody in between.

So I think from my perspective, and when I left, it was a fair process and having looked back through the RFP and in particular, Annex A, that talks about evaluation criteria, it was pretty standard and there wasn't really anything in there that disadvantaged people unless – not unless but yards have physical capacity for certain sized vessels. So obviously on bigger vessels, if you didn't have the capacity to build one, then you wouldn't bid on the larger one, but you did have the opportunity to bid on the 42-metre vessel.

MHA Reid had talked to you about, you know, I guess, when you are being transferred from department to department and, obviously, an opportunity to share important files with – either you're going into a new department and getting that information or leaving a department and offering the same information.

Do you feel that, when you have multiple departments – I am just asking for your personal opinion – when a file as big as this one here, you know, you're spending lots of public money and multiple departments are involved in a file like this, do you feel that something gets lost or is there good communication? Is there something that gets lost in multiple departments involved in one file?

J. CHIPPETT: It is always more difficult to maintain seamless communication when more departments and entities are involved.

B. WARR: That's the questions for me, Chair.

Thank you.

H. CONWAY OTTENHEIMER: Thank you.

Thank you very much, Mr. Chippett, for being here today.

I'm going to go back to, first of all, the question that Member Gambin-Walsh had asked with respect to the industrial benefits. I'll direct you to the Auditor General's report, page 15. I know that you answered that in essence you had really no discussions or not – I think you stated you don't remember a lot of discussion with Deputy Minister Brent Meade regarding industrial benefits.

Now, I just want to bring you, though, to this page 15 because it is important for my assessment of the report, and you've reviewed the report as well, you've indicated. This goes to one of the Auditor General's recommendations, number 3, that we are to ensure opportunities for the potential industrial benefits are identified, pursued and documented.

Now, the beginning sentence there says: "At the time of signing the amendment to the contract in December 2013 to add the construction of the *MV Legionnaire*, the shipbuilder submitted a commitments letter, which outlined the business development initiatives that they would explore with the assistance of the Department of Industry, Energy and Technology (the former Department of Industry, Business and Rural Development)."

Now, with respect to that I just want to understand, so you didn't have any specific – you don't recall any specific discussions about them, but would it not be, you know, likely that there would have been negotiations that would have taken place prior to the actual signing in December of 2013?

Now I know that your term was from April 2011 to April 2013, correct?

J. CHIPPETT: Mm-hmm.

H. CONWAY OTTENHEIMER: So I'm just trying to understand the process when you have the signing of a commitment letter, which outlines important business development initiatives, would it not be expected that there would have been some negotiations that would have taken place within the department prior to the actual signing of that letter?

J. CHIPPETT: I'd have to say that would be the case.

H. CONWAY OTTENHEIMER: Mm-hmm.

J. CHIPPETT: But there would have been – so just to go back to the overall timeline, if I could.

H. CONWAY OTTENHEIMER: Yes.

J. CHIPPETT: We issued that RFP in January of 2013. The RFP was supposed to close on April 30; it did not and I think in response to one of the Member's questions, you know, it would have been extended. Obviously, it would have been extended when I was there because I'm pretty sure it wouldn't have been decided on April 30 to extend, there would have been notice.

I guess the key date for me in answering that question is June of 2013. The RFP did not close until June of 2013. So up until that point, normally in the process, there would not be any discussion with proponents because you might get a bid, I don't know, in early June or late May to go into that process.

While I was there, there would have been no identification of proponents and there certainly wouldn't have been a decision, because according to the RFP, the January 2013 RFP, it talks about that after bids are in that government can engage with particular proponents to negotiate. Then it talks about the potential, if it doesn't go well with the highest bidder, that the second – or the highest score, I should say, not highest

bidder – then you can move on to the second scored proponent.

So if the RFP didn't close until June 2013, government wouldn't have been at a spot where it could negotiate with any of those proponents because they would have had to evaluate after the RFP closed, do the rankings and then decide which proponent was on the top and start that negotiation.

We wouldn't have had, I wouldn't have had the matrix of companies who had bid and the scores and so on and the relative benefits and so on. I would have never seen that because I would have left in April.

H. CONWAY OTTENHEIMER: Okay.

Can you just tell me what your understanding, just for the benefit of clarification, what is exactly your understanding of industrial benefits agreements? Because we've heard – well I haven't heard, I'm new to the Committee, actually, but reviewing the previous testimony of some of the other witnesses – that the industrial benefits agreements are, I believe, according to Brent Meade, he had indicated in previous testimony that actually he believed that industrial benefits agreements were novel at the time, I believe, when he first joined Transportation and Works. It was not normally part of procurement, but I understand that obviously has changed in recent years.

What is your understanding, just of industrial benefits agreements, because it appears that this has been a huge gap from the Auditor General's recommendations? We need to ensure that these are identified, pursued and documented and this has not happened. In fact, it's missing entirely in what we're trying to find. We really are at a loss to find even documentation and information about the industrial benefits agreement, which would have been very, very beneficial to the province.

I just want to understand, what do you feel, in terms of the industrial benefits agreement, happened here? Do you have any understanding?

J. CHIPPETT: I have no specific knowledge of what happened here. I will say that I agree with Mr. Meade in that it was a new or emerging area of discussion, I think, for government projects.

I think Members would be familiar with projects that go through environmental assessment, for example, major projects that government might approve. Sometimes there are agreements associated with some of those projects, whether they're industrial in nature or gender-equity plans in terms of labour and so on. There are often numerous agreements associated with those types of projects.

But in terms of government projects, I think it was a bit of a – this might have been one of the first projects where something was being built for government and there were industrial benefits agreements attached to it. So I think that would be an accurate statement, that it was kind of a new approach for things like that.

H. CONWAY OTTENHEIMER: So it appears, for example, when we're looking at this, that there really wasn't any interdepartmental coordination, there's lack of documentation and it seems that we don't understand why it basically fell off the table, that this occurred. So can you comment on that?

J. CHIPPETT: I'll make two comments on that, one is from a documentation perspective. It's a bit like the comment I made on the procurement landscape. Records management has improved significantly in government over that period of time. I would say in 2011 there were strides towards that, but different departments were advanced to different levels in terms of information management practices.

In terms of the discussion with other departments, like this particular piece here, I have no knowledge of how the discussion on industrial benefits came about, or I think what you referred to as the Auditor General speaking to the fact that this wasn't captured in an agreement. I have no knowledge of why that would be the case either.

H. CONWAY OTTENHEIMER: Okay.

Thank you.

CHAIR: Hi, I'm going to finish up questions with a few that I have.

The first one goes back to timeframes again. You mentioned you left the department on April 30, I believe, of 2013. But Mr. Meade didn't arrive until July of 2013 from what we've been told. So there's a gap there of two months. Do you know – was there an ADM as acting deputy when you left who actually assumed your role?

J. CHIPPETT: I thought Mr. Meade went in there right after I did but maybe I'm mistaken. The reason I know the dates so well is because I read them off the certificates they give you when you go to a department and leave a department. That's how I could be so specific on the dates is they're in my office and I had a look at them but I'm not sure what the gap was.

CHAIR: Okay. So we'll see if we can follow up and find out what happened to the gap.

Who was your assistant deputy minister in charge of this particular file?

J. CHIPPETT: So there were three assistant deputy ministers for Marine Branch when I was there.

CHAIR: Right.

J. CHIPPETT: Paul Alexander would have been my ADM when I got there for Marine.

CHAIR: Who was that?

J. CHIPPETT: Paul Alexander would have been the first ADM that was there.

CHAIR: 2011?

J. CHIPPETT: 2011. Sometime, I don't know the exact date or what year, it would have changed to be Weldon Moores and, at some point again before April 30, Max Harvey would have been appointed as an ADM in the department.

CHAIR: Was there a project team assigned to this particular project?

J. CHIPPETT: There were a small number of staff in Transportation and Works at the time who focused on these types of issues. There was a director who had been in government for a long time; Tom Prim was the director responsible for vessel replacement. Then the gentleman actually who is listed on the RFP is the contact, Stephen Mulrooney, I think, was his name. He was there as the architect, I believe, working with the ADM and the director.

CHAIR: So when we interviewed Mr. Moores and asked him about his role as an ADM, he told us that he was actually filling that particular role on an acting basis because he was also responsible for Strategic and Corporate Services. He basically said, and I quote: "Much of the involvement on the new vessels, because where it was an acting role, was done by the deputy and I was more involved with the operations of the existing fleet."

In terms of the preparation of the RFP, getting it ready, while I'm sure you didn't actually prepare it, you would've reviewed it and it would've been signed off by your minister of the day before it was issued, is that correct?

J. CHIPPETT: Absolutely.

CHAIR: Okay.

The RFP gets issued and it's closing in April. The RFP specifically only talked about the construction of one 80-metre vessel and one 40-metre vessel.

J. CHIPPETT: That's correct.

CHAIR: Somewhere between, before you left, there was a decision made to extend the RFP until June. The closing date got moved from what was supposed to have been April to June of 2013.

Who would've been involved in that decision to extend the RFP?

J. CHIPPETT: Like I said, I don't remember the discussion.

CHAIR: Right.

J. CHIPPETT: But I have to assume that I was involved somehow in that extension. Given my last day was April 30, I don't think somebody would've asked on April 30 to extend the RFP. I don't remember why we did it, nor would I say it's uncommon to extend an RFP for any number of reasons.

CHAIR: Right.

Normal process in government, I would think there would be somebody would have to sign off on the extension. There has to be a record that says this RFP is now extended to June 2013 and somebody would've had to do that.

J. CHIPPETT: Right.

CHAIR: Is that correct?

J. CHIPPETT: Yes.

CHAIR: There would be some kind of briefing note or something prepared for the minister?

J. CHIPPETT: There would be – I don't know if it would be a briefing note prepared necessarily, but I would've expected

communication to come up through to the deputy level. Normally, those types of things would happen at that level, or the deputy would at least be informed.

CHAIR: Right.

J. CHIPPETT: I don't remember, but assume I was somehow a part of that decision.

CHAIR: Right, so based on what we know now or what we've been able to see is that the RFP got extended to June; no decision at that time would've been made, obviously, to order a second vessel. So the RFP would've come in, it would've been evaluated and then sometime between June and December, based on what we've read in the AG's report, there was a commitment made to purchase a second vessel and to enter into this benefits agreement that we can't seem to find any information on.

J. CHIPPETT: Right.

CHAIR: That's what we're looking at here. So, clearly, we don't know why the RFP was extended and we don't know yet why or what happened to the benefits agreement.

So that pretty much concludes what I would have to say, in terms of trying to understand the processes of how it went about and stuff. I just want to thank you again for making yourself available to us. I appreciate that and our Committee Members certainly do.

That's what we're trying to do, is just finalize where we go, the process that was followed and how do we make sure that we improve on it in the recommendations. So, again, if you have any closing remarks you'd like to make, by all means.

J. CHIPPETT: Nothing, other than to say I think the important things about these exercises are that you do learn from them. I regret that I couldn't remember more details

in terms of answers to questions, but it was a long time ago.

CHAIR: Yeah.

Well, maybe we can do some inquiring and get some of the records.

J. CHIPPETT: There you go.

CHAIR: That will help.

Thank you so much again.

J. CHIPPETT: Thank you.

CHAIR: We'll take a short recess.

Recess

CHAIR: Thank you.

Welcome back to our Public Accounts hearing on the Auditor General's report on the *MV Veteran* and *MV Legionnaire*.

The Committee just received an email from former Deputy Minister Meade concerning his time of when he actually started as deputy minister of Transportation. We had been discussing the previous testimony where it had been identified that he started in July. He actually just confirmed now, by email, that in fact he was mistaken and he actually started on May 1, which lines up with the previous deputy minister who had left the department on April 30.

So before I get started I'd welcome Mr. Alastair O'Rielly to our hearing. Thank you, Sir, for making your appearance here today and being with us. There are some things I need to do, to read into the record, so I'll do that first.

The Standing Committee on Public Accounts is dedicated to improving public administration in partnership with the Auditor General. The Committee examines the administration of government policy, not the merits of it. The Committee strives to

achieve consensus in its decisions whenever possible. Members take a non-partisan approach to their work on this Committee.

From a housekeeping perspective, I have to remind all participants that this is a public meeting and their testimony will be part of the public record. There is a live audio that is being streamed on the House of Assembly website at assembly.nl.ca and an archive will be available following the meeting. *Hansard* will also be available on the House of Assembly website once it is finalized.

Witnesses appearing before a Standing Committee of the House of Assembly are entitled to the same rights granted to Members of the House of Assembly respecting parliamentary privilege. Witnesses may speak freely and what you say in this parliamentary proceeding may not be used against you in civil proceedings.

So in terms of process, I will ask the Clerk to administer an oath or an affirmation to the witnesses. The witnesses will be invited to make an opening statement, two to three minutes, if they wish to do so. Our Committee Members will pose questions to witnesses in turn for about 10-minute intervals each.

I would now ask the Clerk to proceed to administer the oath or affirmation and we will begin.

Swearing of Witnesses

Mr. Alastair O’Rielly

CHAIR: Thank you.

Before we get started, Mr. O’Rielly, I will ask the Members of the Committee and the Auditor General’s department to introduce themselves to you. I will start to my immediate left.

J. BROWN: Thank you.

I’m Jordan Brown; I’m the Member for Labrador West.

L. STOYLES: Lucy Stoyles, I’m the Member for Mount Pearl North.

S. REID: Scott Reid, I’m the MHA for St. George’s - Humber.

B. WARR: Hi, it’s Brian Warr, MHA, Baie Verte - Green Bay.

H. CONWAY OTTENHEIMER: Helen Conway Ottenheimer, Member for Harbour Main.

S. GAMBIN-WALSH: Sherry Gambin-Walsh, MHA for Placentia - St. Mary’s.

CHAIR: Tony Wakeham, MHA for Stephenville - Port au Port.

We’ll ask the Auditor General’s staff to identify themselves now.

S. RUSSELL: I’m Sandra Russell, Deputy Auditor General.

L. STANLEY: Lindy Stanley, Assistant Auditor General.

T. KEATS: Trena Keats, Assistant Auditor General.

CHAIR: Thank you, all.

Mr. O’Rielly, if you would like to start with an opening statement, we’d love to hear from you.

A. O’RIELLY: Thank you.

I’ll only offer a few introductory comments about who I am. I’m currently executive director of an entity called Northern Coalition, which is a fishing-based organization in Canada’s North; all Indigenous, all community based and throughout Nunavut, Nunavik, Nunatsiavut and Southern Labrador.

Prior to doing this, I was deputy minister of the Department of IBRD, INTRD and so on. Most of my recent career in government had been as deputy minister with the Department of Fisheries and Aquaculture. So I had, prior to that, about 18 years in the fishing industry in various capacities. Then, prior to that, I was with the Department of Fisheries.

So I have had an interesting career, inasmuch as I started out in government and fisheries, and then I left it for 18 years and came back for a while. So most of my career has been in fisheries, but it has all been related to business development and so on, which I guess is what induced me to end up in the business department of government.

That's just by way of introduction. Obviously, with this topic, I have been out of government now since 2016, so you're relying on my memory and engagement. I will do my best to recall as accurately and as completely as possible to the questions you may have.

CHAIR: Again, thank you so much for making yourself available to us. We really appreciate it.

I'll turn it over now to my right, Ms. Gambin-Walsh, to start the questioning. As I said, we'll go around to all the (inaudible).

A. O'RIELLY: Okay.

S. GAMBIN-WALSH: Thank you, Alastair. Nice to see you again.

I have a question as pertaining to a specific period of time; it's from June 2013 to December 2013. It's also regarding on page 15 of the Auditor General's report and I'll just read it out again: "At the time of signing the amendment to the contract in December 2013 to add the construction of the *MV Legionnaire*, the shipbuilder submitted a commitments letter, which outlined the business development initiatives that they

would explore with the assistance of the Department of Industry, Energy and Technology (the former Department of Industry, Business and Rural Development).

"These commitments were not formalized in a legal agreement."

It's those specific commitments and the fact that the Department of Transportation and Works was going to work with the former Department of Industry, Business and Rural Development about this benefits agreement. What can you tell me about this agreement that came out of this signing?

A. O'RIELLY: During that period – I joined the department May 1 of 2013. Sometime before that second contract was completed later in 2013, I recall having some general conversations with my counterpart, Brent, who had been in the department obviously before I joined. He just generally discussed that there was an undertaking on the part of Damen to work with our department in pursuing opportunities for business development in the province.

We weren't involved – at least I wasn't involved and I'm not aware that anybody in our department was involved – in the discussions with Damen leading into the contract or the awarding of that contract for the second vessel. Our engagement was to facilitate what had been offered and/or agreed to or requested, however that was achieved, with Damen, between Damen and the Department of Transportation and Works.

S. GAMBIN-WALSH: Okay.

So what did come of it? What came back to your department to discuss, to facilitate, to talk about, after the agreement was signed, what do you recall?

A. O'RIELLY: Yeah. I wasn't directly involved in that. I do recall having been in a meeting with some of the Damen officials and I think there was one other occasion

when I may have had a brief interaction with one of them, but I wasn't really involved in the day to day or that element of this arrangement.

The context and recollection was that this was an undertaking which was not obligatory. It was kind of like a best efforts. Damen had agreed that they would work with us and as a department we would work with them to explore opportunities for supplier development, provision of goods and services from Newfoundland-based firms. They had a couple of other things that they had spoken about: establishing a Damen-certified service centre facility and also there was discussions about an investment in an Arctic research initiative.

So over the course of time, I recall being apprised of or aware of what was happening in each of those three areas. I can speak to that now if you – sort of sequentially.

S. GAMBIN-WALSH: Yes, please.

A. O'RIELLY: In the case of the supplier development one, that was pretty straightforward. It wasn't unique or a special kind of a thing, that was normally what our department did anyway. So we had contacted people in the supply community and in the marine sector that would have an interest or capacity to participate in this work and invited them to a supplier – I forget what we called it – maybe a supplier day event. But the point was, we had an event that had as many people who were potentially interested attend meetings that were in the held in the city, one of the hotels, I think it might have been the Fairmont but I'm not certain about that.

In any event, it was well attended, as I recall. There was a fair bit of interest. Damen provided very thorough details about the kind of equipment and supplies, materials that were going to be needed. Then subsequent to that, for those that had, I guess, a real interest, once they actually saw what Damen was looking for and they

had a capacity or felt they had a capacity to respond and an interest in responding, there was a second phase to that where each of the firms that expressed that interest or Damen had expressed interest in them, however that mutually was achieved, the Damen folks went and visited firms, locally visited their facilities, looked at what their equipment and supplies and materials and their capacities were and began that dialogue.

I don't recall the timeline on this one, but subsequent to that, there was a mission to the Netherlands where firms from the province attended the headquarter offices of Damen and visited some of their shipyards and engaged in further dialogue and discussions about how they might be able to do business together. So those were the key elements that were executed at the time.

It seemed from recollection and so on that it all went well. I don't recall any particular angst or distress about the process or did everybody get involved, was everybody apprised, did everybody have an opportunity, that kind of thing.

There were two elements of it that didn't – I don't know what business came of it. I do know there was – at least I understand – at least one contract that was acquired on lighting systems and so on, but I don't recall if there was anything beyond that.

So I'm not sure if that had materialized much in the way of any significant business opportunity for Newfoundland-based firms.

There was also one other thing that comes to mind, is that there were people – I think there were two, I believe, firms – who had expressed reservations about the process because they were led to believe or they misunderstood, I think, in thinking this was kind of an industrial benefits agreement and that there was an obligation on the part of Damen to acquire goods and services in the province. They felt then that they perceive –

and our department may have a responsibility to enforce that and to advise Damen that they should purchase these particular services that those firms were offering.

But that wasn't the case. There was no obligation on Damen's part to do that. We, as our department, had no contractual undertaking with Damen or capacity to require that they do this. So I think that came – it was an understandable misunderstanding, I think, because the whole business of let's explore what the opportunities are, that's all it really was. It was nothing beyond that.

Again, maybe it's some conjecture on my part, but I think at the time it was somewhat analogous, or perceived to be somewhat analogous, to what you had with the offshore oil and gas sector where the offshore oil and gas industries were obligated to purchase certain services or certain volumes of business in the province. I think that these firms thought this was of that ilk. They made those representation to us and, of course, we explained to them that wasn't the case. But I'm not sure that they were happy with that outcome but that was the reality of it.

So that's about tops of the trees about the detail in terms of that particular element of it. I can go on to the others if you wish?

S. GAMBIN-WALSH: Yes.

A. O'RIELLY: So the two other things that came up, one was the establishment of a supply facility that Damen would – a certified supply-service facility rather in the province. This was something they were going to explore and investigate and the undertaking was they would either set one up themselves, or they anticipated setting one up themselves, or working with a local firm and entering some sort of a business partnership or deal to provide those services.

So I don't think there was anything formal executed or carried out at the end of the day. I do recall, though, that it was largely contingent on other considerations, not the two ferries. It was contingent on other business that Damen was pursuing, particularly with respect to the construction of offshore supply vessels.

Their thought was that if they could – if they were successful at getting this other book of business for a number of other supply vessels than that might be enough volume of business to warrant setting up their own facility and their own service centre in the province. That did not materialize to my understanding and recollection. As a result, there was no initiative carried out there.

The other thing, again, just from memory, is that at some point in time Damen were indicating that they were close to doing a deal with somebody locally and they were going to – they hoped to announce something soon. We weren't aware of who that firm may have been, but I don't think it ever happened. So that was that particular element of it.

The third element was really interesting, at least it was something we were keenly interested in, was the idea of this Arctic research initiative. In part because it was fairly substantial as a piece of business, as an investment in the province, but also it tied in with our responsibility as a department for Arctic development. So we were kind of hopeful that would have manifested in something more tangible than it did.

All the discussions on that were related to a proposal to establish an Arctic research facility in collaboration with Memorial University. It was going to be located at Memorial in the new Core Science complex on the top floor, as I recall. It was sizeable inasmuch as there was – the plan was to do a deal. What we were advised, and my recollection at the time, was that it was

contingent on five corporate entities forming a partnership to participate in this activity.

Each of the partners would invest \$5 million for a period of five years, so a \$25-million initiative. The last recollection I have is that there were three firms that committed to do this. I'm not aware that they ever were successful at finding the remaining two that they sought. Most of the initiative was led by – it was an engagement primarily between Memorial University and subsidiary firms of J. D. Irving.

There were two firms that were involved: Atlantic Towing and fairway, I think, was the name of the other company, which was a research – Fleetway. I'm sorry; Fleetway was the name of the second firm. So they were in negotiations with the university on one level, but I understand that it also tied in with offshore oil and gas activities in relation to this other business I mentioned of vessel construction.

They were not explicit about this, but it seemed that the intent had been that if these investments had manifested, if this business had materialized, they would make these investments. That would, I think, not only respond to their undertakings with respect to the ferries, but it would also tie in to their undertakings or the responsibilities of some of the oil and gas companies who were acquiring these supply vessels.

Unfortunately, that initiative didn't materialize. I don't know if it was because the other business didn't happen with the construction of the ferries, or if there were other factors at play, like finding the five partners instead of three that we were apprised of. One of the three was Damen, who we understood had committed to be a partner in that project. So that's, again, my high-level recollection of what transpired in that.

S. GAMBIN-WALSH: That is really good. Thank you very much. You have certainly

filled a huge gap for myself and the others – a massive gap.

Just before I go on – just before I go off this, your memory is pretty good and your detail is good. I'm just wondering, lessons learned before we move on. From your department, you take that significant amount of experience in this area with the formulation of agreements or plausible agreements and different things. Right off the bat you said something about folks probably thought it was one thing and it wasn't – you know, communication maybe. Where did we go wrong?

A. O'RIELLY: I'm not sure that there was anything that went wrong other than maybe communications with people because this wasn't a binding agreement. I don't think it actually could have been a binding agreement because it was done, it was negotiated after the first contract had been completed. This was to add on the second vessel.

I suspect that if you're going to have something binding or of significance that may have interfered with the whole bidding process in the awarding of those contracts in the first instance, I suspect there could have been issues there. But aside from that, the other issue was that in the discussions with Damen, when government had decided to proceed with the second vessel, I think at the core – again, just a recollection – I mean the obsession was getting the second vessel and not incurring additional costs, keeping the cost in line with the cost of the first one.

So there wasn't a whole lot of latitude there to go and negotiate other kinds of benefits or obligations. These seem, to me, to be undertakings that were like best efforts and all Damen was agreeing to do was to work with our department or any others with the local community to explore and pursue these things.

I would add to it, I don't really have any reason to think that Damen weren't sincere about that because they fully participated in the supplier development-style training, the trade missions. It was never indicated to me that there was any reluctance on their part to share information, or to give fair opportunities for access, that kind of thing.

The other thing they had said in the conversation I did have with the person who was leading their business initiative here – it was interesting to me and caused some level of enthusiasm on my part – was that Damen are obviously a huge organization and they're into billions of dollars and euros a year in activity. I think there are 150, 175 ships they build a year. This is a small piece of business for Damen, which caused me to wonder why are they so excited about it or so interested.

But they did indicate – and it is still the case, I believe – Damen doesn't have a presence in North America. They're on five continents, I think it is like 35 countries or somewhere; they're everywhere except North America. They did indicate that part of their objective then was to create a foothold in North America. They were hoping that the ferry business, plus the supply vessels and so on, would give them enough momentum, enough of a base to get started. So I don't have any reason to think they weren't sincere in that. It sounded plausible and they acted in that fashion inasmuch as they were co-operative and so on.

When I think about it, I don't really know that there was anything more they could have done or that we could have done or should have done. It's a different issue, I think, before you built the first vessel and you decide, okay, now, in our RFPs or tendering documents we're going to be seeking an industry benefits component. We specify what that might look like or we indicate what it might look like or we make provision for it, so there's a fair opportunity for bidders. You negotiate that process, similar to what oil

and gas benefits are negotiated with the oil and gas companies.

But where this occurred, we were halfway through the process, and it was like, okay, are you prepared to help out in trying to find some benefit opportunities. They indicated they were and they did, within reason, from my recollection anyways.

S. GAMBIN-WALSH: Okay. Thank you.

I'm finished. Thank you very much for elaborating; I appreciate it.

J. BROWN: Thank you, Mr. O'Rielly.

I just have a question. From your experience in your time in the public service and that, communication between departments – we've seen a few instances so far through this that sometimes there's some issue communicating different departments when they're handling this strange kind of file, where this started over in Transportation and Works and moved its way over to your shop.

Did you ever find, in your experience, issues when you're communicating between different departments on files like this?

A. O'RIELLY: Yeah, I think this goes to some of the references to documentation and tracking what transpired here.

In this case, this is a pretty soft kind of a piece of business. There was no obligations, I guess, on the part of the parties other than to expend its best efforts. That doesn't, I don't think, exonerate any of us from the requirement or the obligation to go and track that and follow through and report on what transpired.

Outside some of the initial discussions with Brent about where this was, this opportunity was there and so on, there wasn't a whole lot of interaction, to my recollection, not for me but also with my staff, ADMs and directors and so on, there wasn't a whole lot

of tracking and interaction with Transportation and Works. They seemed to be fully engaged in making sure they got the vessels built and they weren't really to much – they had kind of left it to us to say okay, well, that's your responsibility, go talk to these guys, see what you can get out of them, see if there's an opportunity here and explore it. They kind of left it at that.

So I think that came into play here in terms of what was recorded, what was documented and what was reported back and so on.

J. BROWN: Perfect.

That's my only comment on this.

Thank you so much, Mr. O'Rielly.

L. STOYLES: Thank you again for coming.

No doubt this was a major project for the province and, as you said, for Damen, maybe not as big as a project because as you said they build lots of ships.

One of the questions I was wondering is: We were supposed to have a lot of people from Newfoundland go to work on the project and from reading the reports and the AG reports, there were times we couldn't get anybody to be on the ground there where the ship was being built to give us reports back and forth. That seemed to be a major problem.

As the deputy of the department, especially when it went through this whole business department, wouldn't that be a priority? I mean, so many people looking for work; then we're hearing that we couldn't get anybody to go and we couldn't get anybody to stay, to be there when the job was completed.

A. O'RIELLY: Our department didn't have any engagement in that element of it because that would have been like tracking the construction and the engineering and

compliance with all the specifications and that kind of thing during the construction. It didn't enter into the business of the economic benefits or even employment benefits.

But, I think, on your question, the marine industry has – well, in today's world, we're all mindful, I guess, of shortage of all kinds of skills and there's really a skills imbalance that's occurring in the world right now with respect to various kinds of expertise and competencies, but the marine engineering has had a serious deficiency for quite a long period of time. There's been a world shortage for as long as I can remember in that whole domain of marine engineering and naval architecture.

So it's not surprising, in that sense, that it would have been – that's just a personal observation – difficult to find people.

Again, I talked a little bit about my fishing industry exposure over time, and currently, and I can tell you that that's still a challenge to find and recruit people into that sector.

L. STOYLES: So some of the remarks we heard from other people was that it was like a treadmill, you couldn't stop. They didn't really know the full extent of the project because to us, I guess, it was a big ship for us to be building. So we didn't have the expertise to send and we couldn't get anybody to send and it wasn't your department.

Was there anybody in your department or that you dealt with at Transportation and Works that worked with you on any of that information and –?

A. O'RIELLY: No, they didn't really – we would not have had an engagement with them on that particular element of it. I'm just making my own sort of personal comments on that, but they would not have had any engagement with us on that. I don't know that we could have done much to help them because our – the only thing we would have

been able to direct them to is other firms that might have the expertise that they could go and try and attract somebody from or retain them from, but I'm not aware that there was anything of that nature.

L. STOYLES: So lessons learned in moving forward, I guess, is the biggest picture of what we're looking for. I know you've already given us some information and highlighted some of the things that you felt.

Is there anything else that we've missed on this project moving forward?

A. O'RIELLY: No, but I think, on your point, I mean, it is obviously and even in retrospect, but even without being in retrospect, if you're doing a significant piece of business you have to make sure you have the right resources in place to do the management and the monitoring to ensure that full compliance and proper use of funds is carried out.

In this case, I mean – again, it's just a general observation – I think the project was within budget and on time, but the issues that arose, I think, are whether or not there were deficiencies or shortcomings and would they have been addressed if you had better project management or project monitors and so on. I really can't comment much on that to be honest.

L. STOYLES: Okay.

Thank you.

S. REID: Thank you for coming.

I'm finding the information you're providing very helpful. I want to continue with a point that Lucy made in terms of lessons learned here and how we go forward.

I guess during the time when these ferries were being done there was a bit of, I guess, to the extreme position of industrial benefits would've been to have the ferries built here, right? I guess from that extreme position,

there's others where you would have guarantees that there would be certain benefits if they were built somewhere else or possible partnerships. There might have been some things that could've been done here in this province.

I'm just wondering in terms of lessons learned and in terms of industrial benefits going forward. You've got considerable experience in the private sector and also you've had some time in government. So I'm just sort of wondering what are your thoughts on how we've done as a province in terms of capturing any industrial benefits from the large projects like this and also industrial benefits in the oil and gas industry is somewhat – people have told me they're somewhat lacking as well.

So I'm just wondering what advice someone with your experience would be able to give us, as a province, as we move forward in terms of how we capture those industrial benefits for large purchases and resource developments.

A. O'RIELLY: This is a complicated matter because it runs against some of the procurement practices of getting the best goods and services at the best price. If you're imposing a requirement for industrial benefits, it's implicit that you're asking the supplier to provide something they would not normally provide. Otherwise, you wouldn't need to specify it; they would do it anyway because this would be the best location to acquire those services. If that's not the case, you're asking them to incur some additional expenditures.

So you're going to use your procurement policies to induce economic activity. That's not a bad thing to do, but it takes a lot of analysis and a lot of caution, I think, in how you approach it. One is all the legalities in the issue and making sure there's nothing untoward there. But from a public policy point of view, are these benefits significant, are they worth the additional costs and, most importantly, are they sustainable?

If it's a one-off kind of project that you demand or you acquire some opportunity for local inputs but they're never used again, you have to wonder whether or not that's a really wise thing to be doing. If, on the other hand, it's a sector that you see strategically as an opportunity for the province, such as oil and gas, then, yes, it has made eminent sense, I think, to require that there be development of local capacity here to capture some of the benefits, the employment benefits and the business development benefits. Even now, when I think about the oil and gas sector, there are some export benefits because some of the oil and gas supply and service companies here are doing business outside of Canada, particularly in South America, these days.

There are strategic opportunities in using industrial benefits, but it can't be done ad hoc and it can't be done on some sort of an individual departmental basis. I think you'd have to have a much more holistic, deeper review of your whole purchasing areas and areas that you think are strategic to the province's interest, and you think there's an opportunity for incremental benefits to exceed the incremental cost you may incur in inducing those commitments from firms.

That's something that requires – to use the federal government expression – a whole-of-government approach, because it does require a whole degree of alliance between large procurement departments like Transportation and Works or Service NL and, of course, Finance and Treasury Board and so on. It would require looking at that in a much deeper fashion. Others do it.

I know the province, back around that period of '14-'15, put a lot of effort into looking at procurement practices. The Government Purchasing Agency went through a metamorphosis then, at that point, and looked at a whole change in strategies. One of the things they were looking at back then was doing collaborations across Atlantic Canada, to do joint purchasing for the benefit of getting either more activity in

Atlantic Canada or for getting better value in goods and services. But it's a great idea. It's very difficult to execute on.

So I can only suggest that in terms of lessons learned, if that's to be pursued – my bias would be that it should – it can't be on an individual basis and can't be ad hoc, it has to be something that really requires a lot of planning and a lot of analysis. Then, you should be able to decide right at the outset – when it is something that you're requiring, if it's something like furniture and you don't think it's a strategic advantage, then you don't pursue it. If it's something like aerospace and you do think that we have a foothold in that sector and can build upon it, then it would be eligible. I don't believe that kind of analysis has been done in the past across government. Maybe there are some learnings there.

S. REID: Just to be clear, you're suggesting there might be some benefits to doing an analysis of areas where we have strategic advantages as a province. For example, some people have said that ocean industries we should have an advantage. We have the educational institutions here, we have the research capacity and this is an area. Some people have said shipbuilding is an area where we should have a competitive advantage as well.

So I'm just trying to get at – you're saying that we should do more research, identify key areas and then try to find ways that we can work with other companies, or local companies, to find the way we can maximize the benefit and grow industries where there are opportunities, where we have strategic advantages, I guess.

A. O'RIELLY: Yeah. I think that when you're looking at something like the oil and gas sector or major mining developments, things of that nature, it's relatively straightforward to engage in negotiations for industrial benefit agreements and achieve as much as you possibly can, especially if it's a sector that you feel there's an

opportunity in for growth, development and for sustainability.

I'm thinking, though, about in the context of government procurement, to what extent in government procurement policies and practices do you want to get yourself as a government involved in industrial benefit agreements? In those areas I think they only do it when you're convinced or when your analysis shows that there's an incremental benefit to the province in achieving it, and that it is something that's strategic and aligned with where the province sees future economic opportunity.

If those conditions are not there, well, you just don't even engage in that. You just look at trying to achieve the best value for money, based on cost and value, the quality and those kinds of things.

S. REID: So these industrial benefits, were they something that the province was asking for or was it something that the company was putting forward, in this particular case, that helped to enhance their proposal they were making for building the ferries?

A. O'RIELLY: I really don't know, but given the context of having the first vessel already signed off and this being the second one was added on, I kind of suspect that it had – I don't know this, but I suspect that Brent Meade, having come from the Business Department over to Transportation and Works, opened up the conversation with Damen to see what could be done to achieve some benefits incidental to that. That's my perception of it because I don't think it was present in the acquisition of the first vessel. But I'm speculating, purely.

S. REID: Okay. Thank you very much.

It's very informative and nice to be able to ask you some questions and to get your opinions on this.

Thank you.

B. WARR: Good afternoon, Mr. O'Rielly.

Chair, there's been a lot of information shared here this afternoon and I really appreciate what you've offered to our Committee here. Really, as you started and you explained the process, as I was listening I felt when you look at Damen, there were a whole lot of promises that are not necessarily promises, but opportunities they felt were available in our province or that our province could engage or join forces with to help generate work for our province and for the people.

As I was listening to you, it seemed like it was a whole lot about nothing – nothing happened. Obviously, you talked about the firms. There were no firms that you were aware of when they had the get-together down at the hotel, only one contractor may have been engaged and then there were other firms that expressed reservations about it. Actually, as you said it, I was writing it, about the sincerity of Damen in what they were proposing here.

Like you've said, you've answered a lot of my questions. The one question – my observation of you, Sir, is that you have a brilliant business mind and I'm very appreciative of that. We've spent roughly around \$120 million procuring these two vessels here in the province and things that came with it. I guess it's all about the best bang for your buck when it comes to business.

A. O'RIELLY: Right.

B. WARR: And I'd like to have your observation, if we got the best bang for our buck and if we didn't, what was the biggest single issue why?

A. O'RIELLY: It's difficult to say for sure. Just in the context of \$120 million for the two vessels, which were delivered around '15, '16, somewhere around that time frame. It does sound like a lot of money and it is a lot of money, but it's kind of in the ballpark. I

mean, I have first-hand knowledge of a couple of fishing vessels that cost that much money –

B. WARR: Absolutely.

A. O'RIELLY: – in the province and they were actually the same size. They were 80-metre vessels.

Now, a fishing vessel is not a ferry vessel, so there are differences obviously. But on the face of it, it doesn't sound like it's outlandish. I've seen estimates for federal government procurement that are absolutely outlandish or incomprehensible. They could be that much more expensive than what people pay for vessels in industry, but, in this case, they seem to be in the ballpark in terms of value.

With that said, the part that I don't really know to comment on, I mean, I know there were problems afterwards with the vessels and what the reasons were and how it could have been avoided is something that you are focused on in the AG coverage.

I mean, problems with vessels initially is standard. There's a one-year shakedown. Everybody I know that's ever built a new vessel ended up with problems of one kind or another that had to be addressed and resolved over a short period of time. I don't know if this was extraordinary or if the problems could've been picked up earlier or addressed more expeditiously or more cost effectively, that kind of thing. That's something that your investigations will maybe shed some light on.

But in a broad sense, it sounded on the face of it – Damen is a huge company and obviously they have a very strong global presence. It is not as though you are dealing with an unknown quantity or a fly-by-night kind of an entity. So they had no reason for them to not want to deliver good quality at a reasonable cost. They had a reputation that they want to adhere to as part of their business and so on. I suspect in

that sense it was probably reasonable value.

But some of the incidental things, and I am just going from what I had read, you know, reading through the AG report, the preparatory issues for docking and there were some issues related to keeping the vessel over there until we could get it over to use. I mean, maybe better planning could be done to facilitate those kinds of things or better responses to the initial problems or glitches that occurred.

I suspect there maybe some lessons there, but that all goes to questions weren't being asked about adequate management, monitoring of the projects, training of personnel and so on. So there are a number of things to be learned from the experience, but in a broad context, on the face of it, it doesn't look like these were out of sync with value.

B. WARR: Thank you.

I'm good, Chair.

H. CONWAY OTTENHEIMER: Thank you, Mr. O'Rielly.

I'm just going to refer to Mr. Meade's evidence that he gave at the hearing, at which time he basically said that, "Innovation, Business and Rural Development would have been seen as the lead department on anything around Industrial Benefits Agreements." He then went on to say, "... the understanding would have been that Innovation, Business and Rural Development should have been the department that would have facilitated the ongoing relationship with Damen in relationship to the delivery on those commitments."

You, in essence, said that previously in response to, I think it was Member Gambin-Walsh's questions, that your role was to facilitate the discussions with the Department of Transportation and

Infrastructure and Damen. Would that be correct? Because I'm just wondering, I know that there were, as you described, these initiatives didn't really materialize and they could have potentially been of great benefit to the province.

So is there anything that you would suggest perhaps that could have been done differently in your department to facilitate the discussions between perhaps the Department of TI and Damen? Or just to encourage and ensure that these initiatives did materialize, because you did also comment that this was not a binding agreement, really it was negotiated after the first contract and it was really all about best efforts. But you also said it does not exonerate you from the requirement to follow up.

So perhaps you could just comment on that for us so that we have a better understanding of what your role could have been to maybe improve things, if there was even a role for you to do that.

A. O'RIELLY: Yeah, I think, we could have all benefited from having been on the front end of this and figuring out, if we wanted to achieve industrial benefits from these agreements, from this construction, that should have been built in, baked in right at the outset with clarity as to what it is we were seeking and also clarity as to the responsibilities and accountabilities for monitoring and achieving that.

But it seems to me, in retrospect, I guess, it was probably a bridge to far. I mean, the first vessel must have been already under construction when we were doing this. So, I mean, the opportunity for procurement on that was already passed and now you're sort of jumping in in the middle of a process and trying to extract some benefit of it. So that was one issue.

I think the other part that again could have been greater clarity was that in this particular case these weren't obligations,

these were, like I said, best efforts. So that should have been better communicated, I think, and understood with everyone. Because, as I said, I mentioned a couple of firms were disappointed that we weren't able to ensure that they got work from these contracts. We obviously weren't in a position to do that.

I think that's part of it, is clarity on the front end. If you're going to jump in the middle of it, you're going to be seriously compromised, I think, in terms of getting something of it.

So it wasn't a bad thing to do, it's just that the timing wasn't good. The obligations weren't really there. I'm not sure to what extent it was really clear that – the stuff that Damen was talking about was incidental to the ferry contract. I mean, the Arctic research facility and the service facility that they talked about, that was only going to happen if they picked up another significant piece of business that they were working on and, if it happened, then they were happy to have the incremental benefit of these ferries.

So in that sense, I don't think – the outcomes are not surprising. As I said, they didn't commit to do a lot and what they did commit to do, they did, I think, in terms of co-operating and sharing information and giving people the opportunity. But that was all that was really (inaudible) to this.

There was one other – most of the industrial benefit agreement activities that the province was involved in somewhat tangentially is in the offshore oil and gas sector through the Canada-Newfoundland and Labrador Offshore Petroleum Board. In that case, those negotiations occur with that entity and previously with the Department of Energy for the province. These were obligated and they were upfront, they were known in advance and therefore enforceable and comprehensible and so on. This was different.

The only other example that we have of something comparable to an industrial benefits arrangement within the Department of Business, or IBRD, to my recollection was a Bombardier contract for the water bombers. That was an obligatory piece of business and they were required to spend money over time in one investment and other. The monitoring of that was much more rigorous because it was a contract and there was regular meetings and reports executed to do that.

So I think it all goes to what was perceived and what was real in terms of the industrial benefits elements of the ferry contract.

H. CONWAY OTTENHEIMER: Okay, thank you.

Now, the Auditor General in her report had indicated when talking about these commitments from Damen, they were not formalized in a legal agreement. Would that have made any difference, in your view, to really reinforce these initiatives?

A. O'RIELLY: That would really be night and day. That would be an entirely different context, and in any contracts, if people don't perform, there are penalties or remedies that can be provided. In this case, if there had been a contract where these were obligatory, one would expect that there would be those elements of remedial actions or compensatory actions that would've dealt with that. Those obviously weren't present here.

It permeated all those three undertakings that were part of this arrangement. Because, as I said, with respect to the initiative between Memorial and Irving and others, we were kind of monitoring and talking to the folks and how's that going and do you have any news to report and if there's anything we can do let us know, kind of context. But that was it. If they were obligated to do something, well, we would be holding their feet to the flames and if they didn't perform, then seeking whatever

remedies would've been available to us as a consequence.

H. CONWAY OTTENHEIMER: Whose responsibility would it have been to request or even require that these commitments be put into and formalized in a legal agreement?

A. O'RIELLY: If they could've been put in, which I don't think they could've at that stage, they could've been put in prior to the first RFP for the construction of both vessels and made part of the entire process. But at the juncture when it was introduced, I don't think anything could be done then. But if it had been done then, the contractual obligation probably would've been with Transportation and Works, unless there was a separate contractual obligation with government as a whole or with our department more specifically.

I think legally it could've been done with government, as a whole, then government would decide which department is responsible for acting on that and enforcing it. It could've been achieved that way. I think in this case, the reality is that we didn't have that obligation and we couldn't have achieved it when it was presented. That's why these are the outcomes that were experienced.

H. CONWAY OTTENHEIMER: I just have one final question on that. It seems from what you said earlier that the reason or – if I'm not correct in stating this – but the reason that Damen pursued this was for their own benefit, really, in terms of what the outcome would be for them.

I'm not sure I even understand why, what was the point, really, of doing this, this commitment letter which outlined the business development initiatives, if it couldn't be enforced?

Perhaps you could just elaborate, what was the point in this at all?

A. O'RIELLY: It's speculation because we weren't party to it, but my sense of it was that Damen was interested in having the second vessel contract realized, as was the department, and the prime objective was to achieve that contract, as I understood it, at the same price level. But, I mean, I think they wanted to sweeten the deal to some extent and say, look, if we get the second vessel, we'll pursue these initiatives. Hopefully that might have helped in terms of selling the – I don't know if that was a consideration. I have no idea.

I think that was the context in which it was – it seems to me to be the context which was put forward because it didn't become part of a contractual obligation for them. It was something that they would expend their best efforts to achieve these desirable outcomes, and for all intents and purposes they did that, it seems, but from my observations and recollections they did. That's all they committed to do and that's, unfortunately, all that was achieved.

H. CONWAY OTTENHEIMER: Okay.

Thank you very much. I appreciate it.

CHAIR: So I'll just conclude Mr. O'Rielly with a couple of brief comments and questions. I think you've done an excellent job of educating us today on the missing pieces that we were missing when it comes to how this happened. I think the Auditor General has some key words in her findings.

It's interesting, though, your comment about the cost because when I went through the AG's report, the first vessel cost \$51.1 million was the contract and the second one was \$49.6. So they did achieve that objective, but clearly it does not appear to have been anything in the subsequent amendment or the signing of the amendment to, as my colleague says, formalize this agreement in the sense of, like, legally. The Auditor General makes a comment that the company would – quote –

explore with the assistance of the department that you were deputy minister in at the time.

These commitments, I was wondering, did your department ever get a copy of that commitment letter?

A. O'RIELLY: I don't recall seeing it but it's possible I may not have anyways. It might have been something that one to the directors or the ADM could have seen. I have no recollection of –

CHAIR: But in your testimony you indicated that the follow-up on a lot of these things that were outlined, you would have – I'm not sure if I heard you right – contacted the company to see what's the – is there anything we can do to help? Are there other things?

And I noticed you mentioned the meeting at the hotel with everybody – that was mentioned by DM Meade – at the Delta. Your memory is really good. It was this meeting that was held and stuff. But I wondered what was the relationship between your department and the company? Were there any letters exchanged, that type of formal type of to and fro, if you would, about opportunities or what was happening or was it mainly more like pick up the phone and say what are you doing now or that type of thing?

Was there anything formalized between your department and the company in regard to this type of thing that they said they would explore?

A. O'RIELLY: I think on the issue of supply or development, I mean, there was a lot of to and fro on that and their commitment to go ahead and have this event and participate with the local firms and then the mission to the Netherlands. There would have been documentation and information on that, as to who the participants were and what the costs were and so on.

On the other initiatives, my own recollection was that from time to time I'd get an update. Anything happening on this initiative with the university? Yeah, we talked to folks and this is what we understand. They're still waiting for a second or third player, et cetera, et cetera, that kind of dialogue. So there may be some email correspondence and so on, but I don't recall there being anything like a formal report. I believe, again from recollection, that both of those issues were still outstanding at the time I left, which was in March of '16.

There was still, I think, in play the possibility of something coming of either of those initiatives, either the service facility or the research initiative.

CHAIR: Thank you.

Clearly, I guess it comes down to the lack of any kind of formalized agreement. It makes it difficult to hold someone accountability, when they talk about being able to explore, and the company clearly explored. How hard they explored remains to be seen, but there doesn't seem to any evidence here of any formal agreement, any formal plan of how these things would be achieved. Is that correct to say that?

A. O'RIELLY: That's correct, yes.

CHAIR: Well, I want to thank you for coming in and enlightening us and helping us get a little bit closer to some of the things that have gone on. This particular piece was one of the things we were trying to understand the process and what exactly went on.

Unless somebody else has any other questions, or if you want to make a closing comment, by all means, go right ahead. We'd be delighted to hear from you.

A. O'RIELLY: I hope that my discussions and participation was of some benefit. It is going from memory. It is a very useful topic and, as I've mentioned, it's complicated. It's not an ad hoc piece of business. It warrants

a deep dive in terms of how government procurement can support those kinds of initiatives and that's a learning, I think from this particular example, as is the issue of, particularly, communications.

I think we may have created – in terms of the supplier development elements with Damen and bringing people in – an impression that yeah, there's opportunities here and we're going to extract some benefit. That really wasn't the case and I don't know that to be the case. I just know that a couple of firms had that perception or misperception, which is regrettable because that wasn't the case. So communications, I think, is another key finding or element here that's important.

So that's it. Again, I hope it's of some benefit and good luck with the rest of your deliberations.

CHAIR: Yeah, it was really good.

Thank you so much.

(Inaudible) again to our public hearing. I just wanted to thank the witnesses who appeared today. I want to thank the Auditor General's staff again for the excellent work they've done. I want to thank all of the Committee Members for their excellent questions again today.

I will now close this public hearing and end it, if that's okay.

Thank you.