

COMPLIANCE AUDIT REPORT

Presented to:

*The Management of the
The Copyright Board of Canada*

Prepared by:

Pauline Blais & Associates

March 31 2005

Table of Contents

1	EXECUTIVE SUMMARY	3
2	INTRODUCTION	4
3	BACKGROUND	4
4	AUDIT OBJECTIVE AND SCOPE.....	4
5	APPROACH AND METHODOLOGY	5
6	APPRECIATION.....	5
7	DETAILED FINDINGS AND RECOMMENDATIONS.....	6
7.1	Commitment control	6
7.2	Delegation of Authority	6
7.3	Account Verification.....	9
7.4	Acquisition Card	10
7.5	Hospitality	10
7.6	Travel	11
7.7	Contracting.....	13

1 EXECUTIVE SUMMARY

The Copyright Board of Canada (Board) is an independent administrative agency that has been conferred department status for purposes of the Financial Administration Act. It was established in 1989 as the successor of the Copyright Appeal Board. The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective administrative society. Moreover, the Board has the right to supervise agreements between users and licensing bodies, issues licenses when the copyright owner cannot be located, and may determine the compensations to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

The audit examined whether the Board was in compliance with key policies and directives issued by Treasury Board concerning financial and contracting matters. The Auditors initiated their work by understanding the organizational structure of the Board, the roles and responsibilities of managers and financial officers. They examined whether the Board had established its own policy and familiarized themselves with the financial management framework in place. Once familiar with the framework, they examined a sample of transactions selected from fiscal years 2003-04 and 2004-05 up to and including October 31, 2004. They tested transactions to assess whether the controls described as part of the financial management framework were working as intended.

The auditors would like to thank the various individuals and organizations that have participated in this audit for their co-operation and assistance.

The Board generally complies with Treasury Board Secretariat (“TBS”) financial and contracting policies although auditors identified some areas for improvement. The audit reported on the opportunity for the Board to improve its delegation of authority instrument so that it reflects the attributions and responsibilities of officers. The same instrument should be clarified as to the authority to approve hospitality when the cost of an event exceeds the limitations imposed by the TBS policy on hospitality.

The auditors have made a recommendation pertaining to how hospitality expenses are approved. Finally, Auditors have recommended that practices surrounding contracting be looked at in an effort to increase competition and transparency.

2 INTRODUCTION

The Copyright Board (Board) is an independent administrative agency that has been conferred department status for purposes of the Financial Administration Act. It was established in 1989 as the successor of the Copyright Appeal Board. The Board is an economic regulatory body empowered to establish, either mandatorily or at the request of an interested party, the royalties to be paid for the use of copyrighted works, when the administration of such copyright is entrusted to a collective administrative society. Moreover, the Board has the right to supervise agreements between users and licensing bodies, issues licenses when the copyright owner cannot be located, and may determine the compensations to be paid by a copyright owner to a user when there is a risk that the coming into force of a new copyright might adversely affect the latter.

At present, the Board is composed of a Chairman, a Vice-chairman, and three full-time members. The Chairman must be a judge, either sitting or retired, of a superior, county or district court. The Chairman directs the work of the Board and, in particular, apportions its work among the members of the Board. The Vice-chairman is the chief executive officer of the Board and has supervision over and direction of the Board and its staff.

Although the Vice-chairman has supervision over and direction of the Board and its staff, the Secretary General has been delegated financial signing authorities to carry out the day-to-day activities of the Board. The Chairman has no financial signing authority.

3 BACKGROUND

The Copyright Board is an organization of 12 FTEs with total Voted Appropriations of approximately \$2.4 million in 2003-04. It operates as a single business line, with the Vice-chairman responsible for the budget.

Delegations of authorities have been given to the Vice-chairman, Secretary General, Financial Officer and Administrator and a number of positions within Industry Canada who acts as Financial Officers for the purpose of approving payment under section 33 of the Financial Administration Act (FAA), and for processing pay related transactions. The Vice-chairman, the Secretary General and the Financial Officer and Administrator have been delegated payment authority for all transactions of the Board.

4 AUDIT OBJECTIVE AND SCOPE

The objectives of this audit are to provide assurance that key financial and contracting activities are conducted in compliance with TBS financial and contracting policies and to make recommendations to improve control activities when compliance is not assured.

The scope of the audit includes all financial and contracting activities of the Board excluding salaries. The auditors reviewed financial related information and documentation for the period

of April 1, 2003 to October 31, 2004. The audit was conducted primarily within the Finance and Administration Division of the Board.

5 APPROACH AND METHODOLOGY

The auditors used the following approach and methodology in carrying out the audit:

- *Review of all relevant documentation on financial management within the Copyright Board.* The auditors reviewed relevant documentation in order to gain a sound understanding of the Board's policies, procedures and reporting mechanisms as they related to financial and contracting practices.
- *Interviewed the Secretary General and the Financial Officer and Administrator.* The Financial Officer and Administrator has responsibilities for the processing of financial and/or contractual transactions. The interviews allowed the auditors to gain an understanding of the current financial management framework and the practices to process these transactions.
- *Establish audit criteria to undertake the audit.* Specific audit criteria were developed to assess the appropriateness of the financial management framework (control mechanisms and processes) and whether the key elements of a sound financial management framework are in place. The criteria are presented with each finding described in section 7.
- *Conduct a review of financial and contractual transactions.* The auditors reviewed a sample of financial and contractual transactions to appreciate whether the key controls expressed in TBS or Board policies were working as intended.
- *Validate results from sample review.* The auditors developed a document entitled "Observation Sheets" which was given to the Secretary General and the Financial Officer and Administrator for review and comment. The auditors then met with them to review the document and seek the Board's responses.

6 APPRECIATION

The auditors would like to thank the various individuals and organizations that have participated in this audit for their co-operation and assistance.

7 DETAILED FINDINGS AND RECOMMENDATIONS

7.1 Commitment control

The Board has put the necessary procedures in place to ensure that commitments are controlled and that records pertaining to them are maintained.

The auditors assessed whether the Board had implemented system functionality and developed procedures so that it could only enter into contracts or other arrangements for which sufficient unencumbered balances were available in the relevant appropriation to discharge such debts incurred under such commitments.

The financial system in place offers commitment control functionalities and these functionalities are working as intended. The auditors noted that funds are usually committed prior to expenditures. For utilities and credit card purchases, global commitments based on estimates are made at the beginning of the year. These commitments are reviewed several times during the year to ensure there are enough funds in budget to cover the expenditures.

7.2 Delegation of Authority

The Board operates with a delegation of authority instrument duly approved by the Minister of Industry. However the Chart does not reflect actual attributions of responsibilities and is not in line with the requirement of the Treasury Board policy on Delegation of Authorities.

The auditors were assessing whether the Minister of Industry had delegated financial and operational authority to officers of the Board and whether the Board was administering this delegation in accordance with the obligations set forth in the delegation instrument and in line with the TBS Delegation of Authority policy.

Delegation of Spending Authority

The Secretary General has sub-delegated to the Informatics Officer the authority to initiate expenditures of low value items up to \$2K. The Minister is the only person empower by the Financial Administration Act to delegate authorities and authorize another person to exercise it on his or her behalf. Sub-delegation is not permissible under the FAA. For the delegation to the Informatics Officer to take effect, the Financial Signing Authorities Chart should include a delegation of up to \$2K to the Informatics Officer under the section goods and services.

Recommendation:

The Board should officially delegate spending authority to the Informatics Officer if this delegation is necessary for the efficiency of the Board's operations.

Management Response: The Board agrees.

Financial Officer and Administrator has incompatible financial authorities

The Financial Signing Authorities Chart delegates **spending authority** (expenditures initiation) and **payment authority** to the Financial Officer and Administrator. Although sometime this officer may acquire supplies or other small items, most of the time, she is not involved in the initiation of expenditure but rather assists in the organization of the procurement by verifying availability of funds, requesting quotes or performing other procurement related activities. She is also signing contract on behalf of the Board. This officer inputs all financial transactions into the financial system, CDFS.

Currently, the Financial Officer and Administrator has been delegated with “full” financial authorities for the following actions:

- Expenditure Initiation authority of all type of transactions except conference sponsorship and is limited to 2K for settlement of Ex Gratia payments;
- Commitment authority (Section 32 of the Financial Administration Act “FAA”);
- Contracting Authority (Procurement);
- Certification of the receipt of goods and provision of services (section 34 of FAA);
- Certification of requisitions for payment pursuant to section 33 of the FAA.

This officer also inputs financial transactions into the system. Therefore, as it stands, this position has been delegated incompatible financial authorities and functions, as the officer could process a transaction from beginning to the end.

The auditors believe that the delegation of financial authorities should reflect the responsibilities assigned to this position as well as be in line with the requirements of the TBS on Delegation of Authorities which states that each step of the spending process should be kept separate:

- Procurement;
- Certification of the receipt of goods and provision of services (contract performance under section 34 of FAA);
- Verification of accounts and preparation of requisitions for payment; and
- Certification of requisitions for payment pursuant to section 33 of the FAA.

Recommendation:

In seeking a revised Delegation of Signing Authorities from the Minister of Industry, the Vice-chairman should ensure that the position of the Financial Officer and Administrator is only delegated with the following authorities:

- **Commitment authority under section 32 of the FAA;**
- **Procurement or contracting authority; and**
- **Limited authority for certification of the receipt of goods only (contract performance under section 34 of FAA). There is no need for the authority to approve contract performance for services.**

The Financial Officer and Administrator should be not delegated the following financial authorities because they are incompatible with other authorities and functions of the position:

- **Expenditure initiation authority which is normally restricted to the Responsibility Centre Manager. The Tribunal operates as a single business line, with one responsibility centre and the Vice-chairman is responsible for the budget. If this restriction is operationally unfeasible, then a limited expenditure initiation authority should be given to this position for goods and services only and the authority should have a financial limitation; and**
- **No payment authority under section 33 as the Financial Officer and Administrator has input capacity into the financial system.**

Management Response: The Board agrees.

Non-financial officers exercising payment authority

The current Financial Signing Authorities Chart delegates **payment authority** to the Vice-Chairman and Secretary General when the Treasury Board Policy requires that the Board must delegate such authority to positions classified as “financial officer” who can independently verify how other officers exercise spending authority. Although the Financial Signing Authorities Chart delegates such authority to these two senior positions, this attribution is rarely used as payment authority is exercised by Industry Canada through a MOU for the provision of such services.

This situation is acceptable given the small number of resources within the Board. However, the exercise of this authority should be limited to exceptional situations for emergency payments for instance. If the Vice-chairman or the Secretary General need to exercise this authority they will have to ensure that they have not previously approved the receipt of goods and services under Section 34 of the FAA for that transaction, as these are incompatible financial authorities and not permitted under the FAA.

Full Authority for hospitality expenditure

The Delegation of Authority Chart provides full authority to the Vice-chairman, the Secretary General and the Financial Officer and Administrator to initiate hospitality expenditure. This full authority is subject to limitations imposed by TBS policy on hospitality. One such limitation exists with respect to the approval of hospitality which requires ministerial approval for any single event estimated to cost more than \$5000. Other limitations exist with respect to the maximum dollar value that other positions within the organization can approve.

Recommendations:

The Financial Signing Authorities Chart should indicate the limitations provided in the TBS Policy on hospitality directly into the chart so that there is no misunderstanding with respect to the limitations.

The Board should also seek the Minister's signature for a revised Financial Signing Authorities Chart.

Management Response: The Board agrees.

One case of non-compliance with the Financial Signing Authorities Chart

As part of examining a sample of transactions, we reviewed expenditures related to the organization of an international conference held in October of 2003. The conference was sponsored by the Copyright Board with a portion of the costs shared by Industry Canada, Canadian Heritage and Foreign Affairs and International Trade. The Financial Signing Authorities Chart did not provide the Vice-chairman with the authority to approve such event. A revision to the Financial Signing Authorities Chart has since been done to delegate such authority to the Vice-chairman and Secretary General.

7.3 Account Verification

The Board has put in place a verification process that ensures, based on risk considerations, that work has been performed in accordance with a contract or agreement terms and conditions, that financial coding is accurate, that relevant policies have been complied with. Such process takes place prior to the delegated officer exercising contract performance authority (section 34 of FAA).

The auditors were assessing whether the Board was paying on time, neither early nor late, amounts that represent a legitimate obligation and are correct. Auditors expected to see that the Board had put in place an account verification process designed and operated in a way that maintain probity while taking into consideration the varying degrees of risk associated with each payment.

The verification process required prior to recording a transaction into the financial system and prior to the delegated officer exercising contract performance authority is well documented. The accounting officer tasked with account verification responsibilities for the period examined, is well experienced in recording financial transactions and in conducting account verification activities. Documents are assembled in one unique supplier files to provide the evidence that the account was verified (audit trail). Sample testing revealed that account verification was done in an appropriate manner on transactions examined.

7.4 Acquisition Card

The Board has put in place a modest acquisition card program. The Financial Officer and Administrator is coordinating the acquisition card program.

Auditors assessed the Board's use of the acquisition card for the procurement and payment of goods and services where it is efficient, economical and operationally feasible to do so. Auditors expected to see that a coordinator manages the Acquisition Card Program within the Board. They also expected to observe that the coordinator ensures reliable controls exist over the use of the acquisition cards and that the Board acquisition card program is well managed.

There are two cardholders who use the MasterCard and there is one CIBC Visa Card. Monthly limits on the cards vary from \$4,000 to \$10,000. The statements from the Bank of Montreal and CIBC are reviewed and matched to Purchase Orders and invoices by the cardholders and approved under section 34 of the FAA by the Secretary General.

Six AMEX cards were given to staff traveling on a regular basis. These cards facilitate the management of business travel within the Board.

The TBS policy on acquisition cards limits their use. These restrictions are identified in section 5g of the policy. Examples of such requirements include not allowing the card to be used for travel-related expenses and restricting the use of the card to the person named on the card. Monitoring over the use of acquisition cards should be done by the Board.

Recommendation:

The Secretary General should ensure the monitoring of the requirements on the use of acquisition cards at the same time he approves payment under section 34 of the FAA.

Management Response: The Board agrees.

7.5 Hospitality

The Board extends only few hospitality events and therefore has not put in place an extensive program to manage such events. Auditors have however noticed that hospitality events have not always been approved in advance and in writing which is not in line with TBS Hospitality policy.

Auditors were assessing whether the Board had developed practices to extend hospitality in an economical, consistent and appropriate way to facilitate the Board business or when considered desirable as a matter of courtesy. Auditors expected to see that when hospitality was extended, that it was done in accordance with TBS Policy and that it complied with the average and

maximum per person cost limits. Auditors also assessed whether the Board was abiding by the Government proactive disclosure directives.

Treasury Board Policy permits that hospitality expenses be reimbursed to employees attending functions where there are guests who are not employee. The policy also includes the extension of hospitality to the spouse of a person officially attending a function if the presence of the spouse enhances the conduct of the function because of protocol or other justified reasons. In the later case, these hospitality events require written pre-approval by the Vice-chairman. Auditors have noticed that such written pre-approvals were not always on file.

Auditors also noticed instances where costs exceeded the maximum allowance per person. The policy in section 3 (a) (ii) allows for the maximum per person costs to be exceeded in unusual and non-recurring circumstances where prior approval by the Vice-chairman is obtained. We would encourage the Board to use this clause when circumstances call for the maximum to be exceeded rather than have employees or Board members absorb the amount exceeding maximum per person entitlements.

The Board should keep track of the costs of hospitality events so that at year end it knows whether hospitality events were maintained within the average per person cost as requested per the policy (Note to Appendix B of the Policy).

Recommendations:

The Vice-chairman or the Secretary General, who are delegated with the authority to approve hospitality events should pre-authorize in writing all events unless they are the sole participant in the event. Events which costs are higher than the maximum per person can still be reimbursed if the Vice-chairman approves them.

The Board should keep track of the cost of hospitality events in accordance with Treasury Board Policy on hospitality.

Management Response: The Board agrees.

7.6 Travel

The Board has put in place the necessary controls to ensure that business travel is authorized and records maintained. Travel claims are reviewed and approved in accordance with the Treasury Board Travel Directives and Special Travel Authorities.

The Board shares Treasury Board principles of trust, fairness, transparency and modern travel practices across the organization.

Auditors were assessing whether the Board shared TBS principles for the management of business travel and ensured that these principles were guiding all employees and managers in achieving fair, reasonable and modern travel practices across the organization.

Staff and member travel is authorized by the Vice-chairman or the Secretary General and travel advances are kept at a minimum. For staff and members who do more travel, the Vice-chairman and/or the Secretary General approves a global travel authorization at the beginning of the year, thus avoiding the requirement for obtaining travel authority for every business trip undertaken. This process is in line with TBS Travel Directive but may need to be examined from a legal perspective to ensure the employee is adequately covered should an accident occur during such business trip.

Travel claims are used to report travel costs and are properly reviewed prior to being authorized for payment by the Vice-chairman or Secretary General. We noticed that the Board strictly applies the Travel Directives and Special Travel Authorities in making employees choose accommodations *within* the city rate of a particular city. This situation has raised some complaints from members and or staff which would rather stay in other hotels which are listed as *above* the city limit rate of the hotel directory. Auditors have examined whether the Board has flexibility in the application of the policy for the selection of hotels. We noted that the September 24, 2002 Communiqué on Government Travel Committee New NJC Travel Directive indicates that the determination of travel arrangements shall best accommodate the employee's needs and interests and the employer's operational requirements. We have also noted that the TBS Directives provide a government hotel directory which shall serve as a guide for the cost, location and selection of accommodation. Therefore, auditors believe that management has some discretion in the selection and approval of accommodation and should therefore be able to justify a hotel not included within the city limit rate if there are no exaggerations.

Other – Chairman's travel expenditures

The auditors noted that the travel expenditures for the Chairman are paid by the Office of the Commissioner for Federal Judicial Affairs and then claimed by this Office to the Board. The expenditures are verified for their reasonableness by the Office of the Commissioner for Federal Judicial Affairs. However, the Board does not have any supporting document to this effect. Although the Office of the Commissioner for Federal Judicial Affairs has offered to share such information, the Board has so far refused as it is not sure whether it could protect such information from access to information if in possession of the Board. This situation exists because the Judge, when acting as President of the Board, maintains the status of a Judge and therefore keeps the privileges attached to such position.

Recommendation:

The Board should seek clarification from the Office of the Commissioner for Federal Judicial Affairs to confirm this arrangement.

Management Response: The Board agrees.

7.7 Contracting

The Board acquires specialized services from time to time to achieve its mandate. Contracting is most of the time done without a competitive process thus exposing the Board to criticism of unfairness in the selection of contractors and may not result in best value to the Crown and the Canadian people.

Auditors were assessing whether the Board contracting is conducted in a manner that stands the test of public scrutiny in matters of prudence and probity, facilitates access, encourages competition, reflects fairness in the spending of public funds and ensures the pre-eminence of operational requirements. Auditors also examined if adequate file documentation¹ was maintained by the Board.

The auditors examined seven contracts for the procurement of goods or services. These contracts were awarded to four different organizations or individuals on a sole source basis, yet only one contract was justified as a sole source contracting. All of these contracts except one were under \$25,000 and did not require competitive bids. However, two or more contracts were issued to the same firm or individual during the same year indicating a requirement for specialized expertise.

Other small service procurements are done with the same suppliers, whether it is for computer programming and maintenance or for printing. Again, the selection process for these contracting arrangements is not documented on file. Generally, the documentation relating to contracting file was poor.

This approach to procuring goods and services expose the Board to criticisms of unfairness and lack of value for money. We would encourage the Board to qualify firms or individuals using a small competitive process. These firms and individuals would then from time to time render services to the Board. We would also encourage the Board to advertise proposed awards (for bigger project) on the electronic bidding system of the Government through an Advance Contract Award Notice (ACAN). When using ACAN and if no statements of capabilities meeting the requirements are received with fifteen days, the proposed contract is considered to be competitive. This approach would assist the Board to mitigate risks relating to contracts.

Recommendations:

The Board should document and provide justification when awarding a contract on a sole source basis.

The Board is encouraged to put in place a competitive selection process when feasible and economical to do so.

Management Response: The Board agrees.

¹ File documentation refers to the official records that comprise a contracting file including: detailed information on the selection process, copies of the contract and invoices, progress and final reports and other deliverables.