



# Report to Ministry of Advanced Education, Employment, and Immigration

## Report on the Allegations Related to the Proposed Merger of Carlton Trail Regional College and St. Peter's College

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**Date:** June 23, 2011

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## 1.0 EXECUTIVE SUMMARY

MNP has been engaged by the Ministry of Justice and Attorney General on behalf of their client, the Saskatchewan Ministry of Advanced Education, Employment and Immigration, to conduct a due diligence engagement and forensic investigation with respect to the issues and allegations identified during a previous consultative review conducted by MNP's Consulting practice.

The previous review was a merger proposal review and consultation process with respect to the proposed merger between Carlton Trail Regional College ("CTRC") and St. Peter's College ("SPC"). The principal outcome of this due diligence engagement is to investigate the allegations and issues identified during the consultation process and report on our findings.

### Key Observations

- Public funds provided to SPC by the federal and provincial government as part of the Knowledge Infrastructure Program exclusively for capital projects were, at times, used for operational purposes. However, the costs of the Michael Hall Revitalization has exceeded the amount of provincial and federal capital funding received which indicates that, in totality, the appropriate dollar amount of government funding has been used on the renovation.
- Discussions to transfer a total of \$135,000 (\$60,000 for an increase in the operating grant and \$75,000 for a portion of the market research) of funds from CTRC to SPC were discussed in camera at a joint Board meeting with no minutes or documentation of the Board's discussion and rationale.
- The decision to purchase a vehicle by SPC for the intended use of the President of SPC was based on a questionable analysis that included gas, mileage and car maintenance expense claimed by the President and resulted in an inflated calculation of the President's total travel expenses. However, the SPC Board had approved the President's claims for travel reimbursement for his vehicle expenses prior to the purchase of the vehicle, and these claims included actual gas expenses, mileage allowance, and car maintenance expenses.
- It was represented to the CTRC Board by SPC Executive Management and the SPC Board that the market research would be jointly funded by both colleges. To date, it appears that the \$75,000 transferred from CTRC to SPC has funded the entire project.
- From a governance perspective, SPC and CTRC operated as one entity throughout 2010, despite the lack of formal approval from the Ministry of Advanced Education, Employment and Immigration to do so.
- There are numerous instances where proper tax filings and reporting were not performed, resulting in potential CRA liability to SPC, SPC Board members, and a member of its Executive Management.
- Although MNP was not engaged to perform an internal controls review, our due diligence investigation indicated that there was a lack of policies and decision-making controls at SPC.

## 2.0 BACKGROUND TO ENGAGEMENT

### 2.1 CONSULTATION PROCESS

In the fall of 2010, MNP was engaged by the Saskatchewan Ministry of Advanced Education, Employment and Immigration (“the Ministry”) to conduct a review of the proposed merger of CTRC and SPC. The scope of this consultative review included an examination of the merger proposal as developed and submitted by the two institutions, as well as a public consultation process to engage stakeholders.

During the consultants’ review of the proposal submission, supporting documentation and the stakeholder consultation process, they became aware of a number of issues, concerns and allegations with respect to the proposed merger and the ongoing operation of the two institutions. These items generally fell within two categories of information:

1. Items of concern that extended beyond the scope of the consultative engagement that required further investigation and follow-up; or
2. Unsubstantiated allegations noted during the consultation process with respect to the activities of Executive Management and the Board of Directors of CTRC and SPC.

### 2.2 DUE DILIGENCE PROCESS

The Ministry of Justice and Attorney General (“Saskatchewan Justice”) engaged MNP on behalf of its client, the Ministry, to undertake a follow-on assignment which encompasses additional due diligence and investigation with respect to the issues and allegations identified during the merger proposal review and consultation process.

The principal outcome of this second engagement is to investigate the allegations and issues identified during the consultation process and provide Saskatchewan Justice and the Ministry with a report on our findings.

## 3.0 SCOPE OF WORK

The engagement encompassed a review and follow-up of the concerns raised during the consultation process. Of particular interest were concerns raised with respect to the actions of the President and CEO of the two institutions, the governance and approval processes of the institutions, and the use of public funds at SPC.

The project approach consisted of the following phases:

1. Phase 1 – Preliminary Interviews
  - Conduct interviews with the individuals who raised concerns during the consultation process to determine the basis and support for those concerns.
2. Phase 2 – Discovery
  - Complete a review of the documentation associated to concerns raised.
3. Phase 3 – Final Interviews
  - Conduct interviews with those identified as being responsible for the concerns to secure their point of view and position on the issues.
4. Phase 4 – Reporting and Presentation

## 3.1 ALLEGATIONS

The allegations that fell beyond the scope of the original consulting engagement and that were to be addressed in the due diligence engagement are outlined below.

### 3.1.1 GOVERNANCE

Allegations have been noted suggesting that the independence and autonomy of the Boards of both institutions are in question. Specific issues and allegations noted during the consultative process are as follows:

- A significant lack of transparency with respect to the evolution of the current governance model. Specifically, it is difficult to identify official Board membership, assess who enjoys voting privileges, and confirm the role of “guests” in Board meetings;
- Management initiating Board motions and acting in a voting capacity on Board matters;
- It has been alleged that SPC Board Members and Executive Management have engaged in the discipline of CTRC employees who have expressed concerns regarding the operation of the college(s) or the merger;
- A high volume of key issues being discussed strictly in camera and therefore excluded from Board minutes and other disclosures, including limited documentation of Board/management decisions and supporting rationale;
- Concerns have been raised, supported by documentation, regarding the appropriateness of Board communication to employees of CTRC, including situations where senior staff were bringing forward important concerns to the Transition Board;
- Limited meetings of the CTRC / SPC Boards as independent entities. Specifically, it has been alleged that formal meetings of the CTRC Board have effectively ceased. Board minutes suggest that CTRC last held full and independent Board meetings in January of 2010; and

- The rapid establishment and subsequent dissolution of the CTRC / SPC amalgamation transition Board and the installation of a joint Board of Directors has been criticized as lacking transparency and procedurally flawed.

### 3.1.2 FINANCIAL MANAGEMENT

During the consultative review of the proposed merger, the consulting team conducted a high-level review of the financial status of both CTRC and SPC. This review included a review of financial statements, Board minutes, information provided by stakeholders, internal communications presented by employees of CTRC to the Executive and Board of Directors, as well as audit reports for both institutions. Our analysis of these materials identified a number of specific issues with respect to the financial management of the institutions.

Specific issues and allegations noted during the consultative process are as follows:

- Allegations related to inappropriate use of SPC-purchased assets. Specifically, allegations were raised with respect to a missing television purchased through SPC that was in the care of the President of SPC;
- Inappropriate use of restricted capital funds to manage operations. Specifically, it has been alleged that SPC management have funded operations by using funds reserved for non-operational uses;
- Non-compliance with Canada Revenue Agency (“CRA”) rules concerning failure to report taxable benefits issued to management. These concerns were noted in audit letters provided to the MNP Consulting team by SPC. It was noted in the consultative review that these compliance errors had been raised repeatedly to the SPC Board of Directors, but no corrective action has been taken by the Board to remedy the issue. The issue of CRA compliance relates directly to benefits granted to the President of SPC for professional development (pursuit of a PhD program) and the use of a vehicle that was not reported to the CRA through a T4;
- Allegations regarding inappropriate expense claims. Specifically, it has been alleged that the President of SPC claimed mileage and fuel expenses, effectively double-claiming these expenditures;
- Concerns were noted with respect to a vehicle purchased with SPC funds for the President, registered in his own name. It has been alleged that this vehicle was purchased for the President in the absence of Board approval. Further concerns were noted with respect to the appropriateness of the vehicle purchased in light of SPC’s financial position;
- Concerns related to an increase of the CTRC operating grant paid to SPC from \$40,000 to \$100,000 without documented justification. It has been alleged by management that this increase in transfer amount was intended to relieve SPC’s financial operating pressures, and that no analysis was done to assess the impact of this change on CTRC’s financial position; and
- Concerns related to a transfer of \$75,000 from CTRC to SPC to fund a portion of a market research project. It has been alleged that there was no basis or budget to justify the amount of the transfer, and that CTRC may have funded the entire market research project.

The issues and allegations of potential impropriety have emerged through the consultative review of the proposed merger. However, the issues were beyond the scope of the original review concerning this matter.

On March 16, 2011, MNP’s Investigative and Forensic Services group (“MNP Forensics”) was engaged by Saskatchewan Justice on behalf of its client to undertake additional due diligence and investigation procedures and to provide a report on our findings.

### 3.2 INDIVIDUALS INTERVIEWED

MNP Forensics conducted preliminary interviews with eighteen individuals, consisting of current CTRC staff, former CTRC Board members, current and former SPC staff, and current Board members of SPC. Final interviews were conducted with two members of the SPC Executive Management team and one current SPC Board member.

### 3.3 SCOPE LIMITATIONS

In performing our work, we requested and relied upon data provided to us by CTRC and SPC. We have assumed that all documentation and data provided to us are factual and representative of actual transactions.

Our observations, finding, and conclusions are based upon the results of our investigation and the evidence available for review as of June 23, 2011. We have planned and performed our engagement in accordance with *Standard Practices for Investigative and Forensic Engagements, 2006* required by the Canadian Institute of Chartered Accountants (“CICA”) and the Alliance for Excellence in Investigative and Forensic Accounting of CICA.

We have focused our work on the concerns identified by the Ministry and the scope of work as described above. We have not conducted an audit of financial statements as defined by the CICA.

## 4.0 METHODOLOGY

The observations and findings of this report are based upon the following procedures performed:

1. Conducted interviews with current and former staff and Board members of both institutions who have first hand knowledge of the allegations at issue.
2. Obtained relevant supporting documentation from the individuals interviewed.
3. Performed electronic discovery and computer forensics analysis on a desktop computer at CTRC, a desktop computer at SPC and a laptop at SPC that were used by the CEO of CTRC / President of SPC.
4. Analyzed the supporting documentation provided by the individuals interviewed and obtained from electronic discovery procedures. Specific analyses included:
  - a. Timeline analysis of events of interest, including transfers of money from CTRC to SPC.
  - b. Detailed review of all expenses submitted by the Executive Management of SPC for reimbursement to SPC and CTRC for the period between March 1, 2008 to March 16, 2011.
  - c. Timeline analysis and source and use of funds analysis related to the Knowledge Infrastructure Project (KIP) funding provided to SPC.
  - d. Analysis of expenses related to market research jointly conducted by SPC and CTRC.
  - e. Analysis of tax implications of expenses reimbursed, gifts, honorariums, salaries, and other monies paid to the President of SPC.
5. Conducted interviews with those identified as being responsible for the concerns to secure their point of view and position on the issues.

## 5.0 DETAILED FINDINGS

### 5.1 USE OF RESTRICTED FUNDS FOR OPERATIONS AT SPC

#### 5.1.1 BACKGROUND

Allegations were made in the original consultative process of inappropriate use of restricted funds to manage operations. Specifically, it has been alleged that SPC management have funded operations by using funds reserved for non-operational uses.

Based on our due diligence review and interviews, it is our understanding that SPC holds restricted funds related to capital and scholarships. As the mandate of MNP's due diligence review was on the use of public monies, our analysis is focused on the use of restricted capital funds provided by the provincial and federal government to SPC under the Knowledge Infrastructure Program (KIP).

The KIP is a two-year, \$2 billion economic stimulus measure to support infrastructure enhancement at post-secondary institutions across Canada. Effective February 24, 2009, SPC entered into an agreement with the Ministry and received approval for \$3,000,000 of provincial capital funding and a federal KIP contribution of \$6,036,000 for their Revitalization Initiative of the Michael Hall building at the college.

#### 5.1.2 TERMS OF AGREEMENT

The Knowledge Infrastructure Program Reporting and Accountability Agreement between SPC and the Ministry contains strict parameters on what are considered eligible costs. The Agreement also indicated that funds not used for eligible costs shall be returned to the province. Schedule B of the Agreement contains the following definitions for eligible and ineligible costs:

*Eligible costs are:*

- a) *Costs considered by Canada to be direct and necessary for the successful and timely implementation of a Project, listed in Schedule A, excluding those explicitly identified in ineligible costs.*

*Ineligible costs include the following:*

- a) *Any costs incurred prior to the Effective Date of the Agreement;*
- b) *Land acquisition, leasing land, buildings (acquisitions and leasing), equipment and other facilities, real estate fees and related costs;*
- c) *Financing charges, legal fees and loan interest payments (including those related to easements (e.g. surveys);*
- d) *Any goods and services costs which are received through donations or in kind;*
- e) *Employee wages and benefits, overhead costs as well as other direct or indirect operating, maintenance and administrative costs incurred by the Institution for the eligible Project(s), and more specifically costs relating to services delivered directly by permanent employees of the Institution, or corporation owned and controlled by the Institution; and,*
- f) *Provincial sales tax and Goods and Services tax, for which the Institution is eligible for a rebate, and any other costs eligible for rebates.*

### 5.1.3 ANALYSIS OF KIP FUNDS

Based on MNP's interviews with the Finance staff at SPC and review of the records, it is our understanding that the KIP funds were deposited into SPC's operating bank account at the Muenster Credit Union. This is the same account in which tuition and operating grants are deposited, and from which operating expenditures are made. SPC received the \$3,000,000 from the provincial government on March 28, 2009 and the \$6,036,000 from the federal government on February 12, 2010. The first construction invoice related to the Michael Hall Revitalization was paid on November 25, 2009.

MNP performed a timeline analysis that tracked the activity of SPC's operating bank account at the Muenster Credit Union. In order to determine whether or not SPC had used capital funds for operations, we developed a hypothesis that prior to the payment of the first construction invoice for the Michael Hall Revitalization, there should be a minimum of \$3,000,000 in the Muenster operating account at all times. It should be noted that during this period under review, SPC had negotiated a line of credit with the Muenster Credit Union of \$100,000. The line of credit was not drawn upon during the period under review.

SPC received the \$3,000,000 of provincial capital funding on March 28, 2009. Prior to the deposit of the \$3,000,000, the balance of that account was in an overdraft position of \$(41,930.25). In the 8-month period between the receipt of the provincial funding and the payment of the first construction invoice related to the Michael Hall Revitalization, operating expenses exceeded deposits into the account in the months of April, June, July, September, October and November. At the end of November 2009, SPC's operating account had a balance of \$432,303.79, with \$2,000,000 of the provincial capital funds held separately in a short-term deposit, for a total of \$2,432,303.79. Given that the first construction invoice had not yet cleared the bank at the end of November, the shortfall of \$567,696.21 from the provincial capital funds of \$3,000,000 indicates that SPC had used capital monies for operations.

The pattern of activity whereby SPC's operating expenses (excluding construction invoices) exceeded their deposits (excluding KIP monies) continued past the date of receipt of the federal funding. At the end of June 2010, our analysis indicates the most significant shortfall of \$877,558.21 between what should be in the account had capital funding been appropriately restricted and what actually was in the account.

MNP obtained all invoices related to the Michael Hall Revitalization. The most recent invoice available at the time of our analysis was dated January 13, 2011. The total of all available invoices was \$9,115,489.62. Construction has not yet been completed, and SPC has entered into a loan agreement with the Scotia Bank in March 2011 to secure additional financing.

The costs of the Michael Hall Revitalization has exceeded the amount of KIP funding received which indicates that, in totality, the appropriate dollar amount of KIP funding has been used on the renovation. However, MNP's analysis indicates that due to the co-mingling of KIP funds in the operating account, KIP funds were not appropriately restricted and have been used to fund operations at various points throughout the period between March 28, 2009 and January 13, 2011 (the date of the most recent available construction invoice).

## 5.2 IN CAMERA DISCUSSIONS OF TRANSFER OF CTRC FUNDS

### 5.2.1 BACKGROUND

One of the concerns that surfaced in MNP's consultative process was that a high volume of key issues were being discussed strictly in camera and therefore excluded from Board minutes and other disclosures. It was further alleged that there was limited documentation of Board/management decisions and supporting rationale.

The mandate of MNP's due diligence review was on the use of public monies. As such, we have focused on two specific transactions – the transfer of an additional \$60,000 from CTRC to SPC for an operating grant and the transfer of \$75,000 from CTRC to SPC for a market research project.

The motions to make these transfers were made at a joint CTRC/SPC Board meeting on September 14, 2010. The meeting went in-camera at 12:30PM and moved back into regular session at 1:00PM. Motions 09-10-10 and 09-10-11, respectively, were made by CTRC Board members to increase the operating grant to SPC from \$40,000 to \$100,000 and for CTRC to fund a portion of the market research project in the amount of \$75,000.

## 5.2.2 INCREASE IN OPERATING GRANT

In November 2004, CTRC and SPC entered into a partnership agreement. One of the terms in the agreement is:

*2.1 Carlton Trail Regional College agrees to provide an annual grant to St. Peter's College for the delivery of a Business diploma program using a variety of delivery mechanisms.*

This agreement was executed by the CTRC CEO and SPC President at the time.

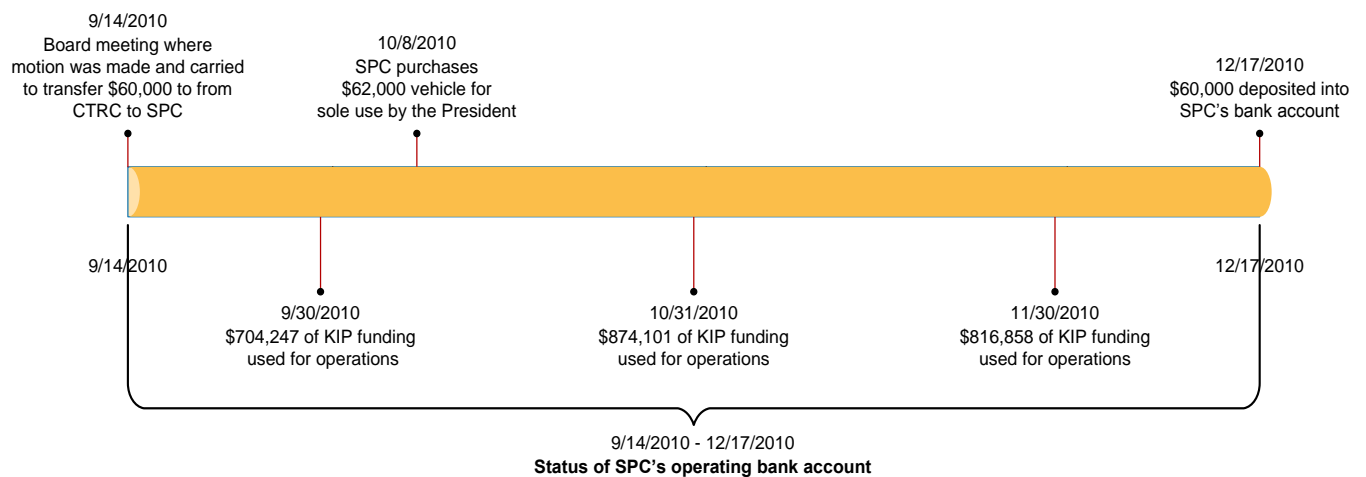
Based on the interviews conducted with both CTRC and SPC staff, it is our understanding that this agreement has continued on to the present date. This operating grant has been described to us by CTRC and SPC staff as being similar to a non-competition agreement. Due to the proximity of the two colleges, instead of both colleges competing to provide university level programming, CTRC will provide SPC with the operating grant to provide the programming for the region.

Interviews with CTRC staff have indicated that the grant was historically \$60,000 per year. However, it was decreased to \$40,000 per year based on decreasing student numbers at SPC. As at September 14, 2010, the operating grant was at \$40,000 per year.

In our interviews with two former CTRC Board members and four SPC Board members who were present at the September 14, 2010 Board meeting, no one could recall with clarity and certainty the discussion that took place in-camera surrounding the transfer of a lump-sum increase of \$60,000 to SPC.

It was brought to our attention by CTRC staff that the timing of the transfer of the \$60,000 lump sum is coincidental to the purchase of a \$62,700 vehicle by SPC for the exclusive use of the SPC President. A timeline of the sequence of events, is provided below:

**Figure 1.**



The vehicle purchased for the SPC President was registered in the President's personal name and home residence. The vehicle itself, and its registration and plates were paid for by SPC. However, there is an agreement dated November 9, 2010 between the SPC President and the Chair of SPC's Finance Committee which indicates that although the vehicle is registered in the President's name, the owner of the vehicle is SPC.

It should be noted that as of the date of this report, the vehicle is in SPC's possession.

The Board members who were interviewed do not recall any discussion taking place that the \$60,000 to be transferred from CTRC to SPC was for the purpose of purchasing a vehicle for the use by the SPC President.

However, upon performing electronic discovery procedures on the laptop obtained from the President of SPC, MNP recovered an email dated October 7, 2010 from the Chair of the Finance Committee of SPC addressed to three other members of the Board and the VP of SPC. The email indicated that *"A portion of the cost of the vehicle will be born by Carlton Trail"*. When MNP interviewed the Chair of the Finance Committee, he indicated that CTRC would only be responsible for their portion of the ongoing expenses of the vehicle, not the capital cost of the vehicle. When MNP showed him the email that he had written on October 7, 2010, he indicated that he should have written "expenses of the vehicle" instead of "cost of the vehicle".

Per review of the minutes for an SPC Board meeting on May 27, 2010, it was requested that the Finance Committee of SPC research the cost of purchasing a vehicle for the President of SPC as an alternative to paying mileage. It was noted in the minutes that present research to date showed that approximately \$55,000 had been paid to the President in travel expenses for his vehicle. MNP inquired with the Chair of the Finance Committee about the rationale behind the purchase of the vehicle. He indicated that he realizes now that the claiming of both mileage and gas expenses by the President of SPC resulted in a situation where the President was over-compensated for vehicle expenses.. However he stated that, at the time, it was represented to him by the President that this was an acceptable practice, and the Board approved the President to claim all gas, mileage and car maintenance expenses . The Chair of the Finance Committee concurred that the analysis that he did on the travel expenses was inaccurate as it captured all the mileage, gas and car maintenance expenses that were being claimed. He also indicated that this analysis resulted in the significant purchase of the vehicle.

Based on MNP's review of the President's vehicle expenses between the period of March 1, 2008 to March 31, 2011, total vehicle expenses claimed and reimbursed are as follows:

Mileage	\$41,993.07
Gas	\$11,695.51
Car maintenance	<u>\$2,769.62</u>
TOTAL	<u>\$56,458.20</u>

It should be noted that the claiming of mileage expenses ceased upon purchase of the vehicle.

MNP inquired about the status of SPC's financial position at the time of the purchase of the vehicle. The Chair of the Finance Committee indicated that, to the best of his knowledge, they were able to purchase the vehicle from the operating funds. However, based on MNP's analysis of SPC's operating bank account in Figure 1 above, as at the end of October, SPC had spent \$874,101 of capital funding for operations.

### 5.2.3 TRANSFER OF CTRC FUNDS FOR MARKET RESEARCH PROJECT

Per review of a draft Marketing Research Proposal dated March 19, 2010 prepared and provided to us by SPC staff, we noted that the purpose of the market research was to identify the programming and educational needs of the Saskatchewan post-secondary learner as the merger between SPC and CTRC proceeded.

The objectives of the market research were to identify:

- Learners' interest in post-secondary education programming
- Learners' interest in different program delivery methods
- Learners' expectation of post-secondary education
- The barriers to post-secondary education
- The determining factors in the learners' choice to attend a particular post-secondary institution
- The most efficient way to communicate with the learners
- The effective marketing strategies for a post-secondary educational institution
- Data that can be compared and contrasted with previous survey results
- The educational needs of the Saskatchewan learner
- Regional needs for continuing education including employers' needs

In our interviews with two former CTRC Board members and four SPC Board members, it was indicated that the representation made in-camera by SPC Executive Management was that the \$75,000 requested from CTRC would fund half of the market research.

In order to achieve these objectives, market research was conducted with various target markets, including secondary students, businesses and adult learners. In a project expense summary that was prepared by SPC at the request of the Ministry, it was noted that total project costs were \$98,205.99. This included expenses for external consultants, contractors, software, licenses, travel expenses, and an estimated wage allocation for SPC employees. It was also noted in the project expense summary that there were several components left to complete, including the writing of the final report, in-depth data mining, town reports and town visits. It was projected that the final components of the project would cost approximately \$25,000 to \$30,000.

Two issues were noted in the calculation of the project expense summary.

Firstly, included in the total project costs to date of \$98,205.99 was estimated wage allocation of SPC employees of \$37,882.85. These SPC employees provided in-kind time for the purpose of conducting the market research. However, it was indicated to us by a member of CTRC management that CTRC staff also contributed in-kind services. It was provided to us that 18 members of CTRC staff contributed in-kind services for an estimated total of 1,477.5 hours. These in-kind hours were not included in the project expense summary prepared by SPC and provided to AEEL.

Secondly, as the time and services provided by SPC and CTRC staff were in-kind, the staff did not receive any additional payments for their time. The in-kind time spent on the market research took time away from their regular job duties; however, they did not receive any additional compensation other than their regular payroll. The inclusion of SPC's estimated wage allocation in the project expense summary may provide a more complete representation of total project costs, but is not indicative of additional expenditures made directly in relation to the project. When the estimated wage allocation of SPC staff is removed from the project expense summary, actual additional expenditures related to the market research is \$60,323.14. This indicates that of the \$75,000 provided to SPC by CTRC, there should be \$14,676.86 not yet spent.

Further, although it was represented to CTRC that their \$75,000 would be funding a portion of the market research, in our discussion with the Chair of SPC's Finance Committee, he did not recall any discussion taking place in relation to SPC putting up money to fund their portion of the market research.

## 5.3 ALLEGATIONS OF MISSING TELEVISION

### 5.3.1 BACKGROUND

On May 7, 2010, a member of CTRC management authored a memo on the financial and accounting irregularities at SPC. The memo was addressed to the Board of Directors of CTRC and SPC. The memo highlighted certain financial and accounting irregularities at SPC, including a significant number of tax-related issues. These tax issues are addressed in section 5.5 below.

Another item of concern in the memo that falls within the scope of MNP's due diligence review was the issue of a 52 inch Sony television (TV) that was unaccounted for. In our review of capital expenditures at SPC, MNP noted that an asset sheet indicated that there were five TV's purchased at a cost of \$17,258.34. MNP located the purchase invoice. The purchase invoice was from The Sony Store in Saskatoon and indicated that six TV's had been purchased (three 52 inch TV's, two 46 inch TV's, and one 40 inch TV). MNP reviewed email correspondence which shows that the member of CTRC management inquired with the IT person at SPC about the TV's. The IT person performed an inventory of TV's around the College, and confirmed in writing that there were only 5 TV's on the premises and there was one 52 inch TV that was unaccounted for. The member of CTRC management also followed up via email with the Vice-President of SPC, but did not receive a response.

The member of CTRC management emailed the memo to the Boards of CTRC and SPC on Friday, May 7, 2010, in anticipation of a joint Board meeting on Monday, May 10. At the Board meeting on May 10, the Chair of SPC's Finance Committee escorted the Board members in attendance to the storage room at SPC and showed them the missing 52 inch TV.

### 5.3.2 ALLEGATIONS

There have been allegations that the TV had not been in the storage room, and had been returned to the storage room over the weekend (after the issuance of the memo and before the Board meeting). MNP interviewed the Chair of the Finance Committee on this matter, and he indicated that the TV's were picked up from The Sony Store in Saskatoon and taken to SPC by the President. The Chair of the Finance Committee was unable to state whether or not the TV was in the President's possession for an extended period of time before being placed in the storage room.

MNP interviewed the President of SPC and questioned him on the custody of the 52 inch TV. The President confirmed that he had picked up the TV's from the Sony Store. He also confirmed that the TV's were in his possession for a period longer than that of the actual transport. However, he denied returning the 52 inch TV to the storage room in between the issuance of the May 7<sup>th</sup> memo and the Board meeting.

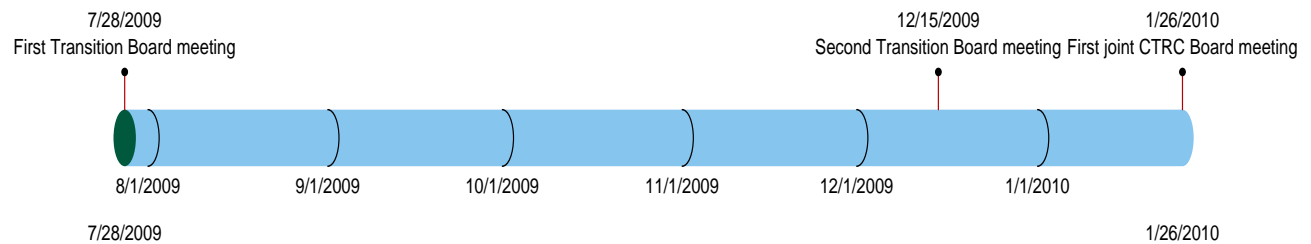
## 5.4 GOVERNANCE ISSUES

In addition to the discussion of key issues being discussed strictly in camera, as outlined in section 5.2 above, other governance issues were raised as items of concern during MNP's consultative process. Those that fell within the scope of the due diligence review are discussed below:

### 5.4.1 CTRC AND SPC BOARDS AS SEPARATE ENTITIES

The rapid establishment and subsequent dissolution of the CTRC / SPC amalgamation transition Board and the installation of a joint Board of Directors has been criticized as lacking transparency and procedurally flawed. During MNP's due diligence review, it was difficult to determine when the Transition

Board was formed, who was part of it, and when it was dissolved. From our review of the available minutes, we were able to form the following timeline:



MNP was unable to locate any minutes or documentation behind the dissolution of the Transition Board and the implementation of a joint Board. From our review of the minutes it appears that independent meetings of the CTRC Board effectively ceased on January 26, 2010. SPC had one independent Board meeting in 2010 (December 9). However, SPC's Finance Committee continued to meet separately regarding SPC's financial decisions.

Given that the merger of the two colleges had not yet been formally approved, the formation of a joint Board appears to be premature and lacking independence. Furthermore, in our review of the joint Board minutes, we have identified several instances where SPC Board members would make motions on CTRC business. CTRC and SPC were still legally separate entities with specific agendas, financial discussions, and human resource issues that would require independent Board discussions.

In MNP's interviews with both CTRC and SPC Board members, all members admitted that the colleges were operating as one entity throughout 2010. The members also all conceded that although they had undertaken to operate as one entity, there was no formal approval from the Ministry to do so.

#### 5.4.2 DISCIPLINING OF CTRC EMPLOYEES

It has been alleged, and supported by documentation, that SPC Board members and Executive Management have engaged in the discipline of CTRC Executive Management when they expressed concerns regarding the operation of the college(s) or the merger.

MNP interviewed members of the SPC Board who were involved in the disciplinary meetings of CTRC management. The SPC Board members indicated that they were asked to accompany SPC Executive Management to talk to CTRC staff because the CTRC Board members were not available.

Given that CTRC and SPC were still legally independent entities, SPC Board members and Executive Management should not have been involved in any disciplinary discussions with CTRC management.

#### 5.4.3 BOARD COMMUNICATION

Concerns have been raised, supported by documentation, regarding the appropriateness of Board communication to employees at CTRC, including situations where senior staff members were bringing forward important concerns to the Transition Board.

MNP reviewed an email sent on May 11, 2010 from CTRC Executive Management to all CTRC staff. The email answered concerns regarding the merger that were raised by CTRC staff at a Board meeting the previous day. The email concluded by encouraging staff to share questions, concerns, thoughts and ideas. It should be noted that an SPC executive was included in this email, despite the concerns being strictly CTRC-related.

A CTRC staff member responded to the email with her concerns and carbon copied the CTRC Board members on her email. Her email was responded to by two CTRC Board members who carbon copied all of the SPC Board members on their response.

Given that CTRC and SPC were legal independent entities and the concerns were raised by CTRC staff to CTRC Board members, the involvement of SPC Board members and Executive Management was unwarranted.

## 5.5 INCOME TAX CONSIDERATIONS WITH RESPECT TO EMPLOYMENT BENEFITS AND OTHER MATTERS

With respect to the income tax considerations, we are providing our views as Chartered Accountants experienced in income tax matters, on the income tax implications related to the findings in the due diligence investigation with respect to SPC.

Our views are based on the provisions of the Income Tax Act (Canada)<sup>1</sup> and the Regulations there under as of the date of this letter and our understanding of the current administrative practices and judicial interpretations of the CRA. Our research does not include a review of the Provincial Sales Tax statutes or the Excise Tax Act. Note that we will not address the laws of any province other than Saskatchewan, nor any territory or foreign jurisdiction, nor will we address any tax issues other than tax issues arising under the Income Tax Act. Our views do not take into account or anticipate any future changes in law, whether by legislative, administrative or judicial decision or action.

Our views represent our judgment as to the tax implications as of the date noted above and are based upon and subject to the information provided to us in the course of our due diligence investigation. The views expressed in this letter are not binding on CRA or the courts and we cannot provide any assurance that they will not be successfully challenged by CRA.

### 5.5.1 OVERVIEW

The taxation of amounts paid to taxpayers and the responsibilities of the recipient (or payee) and payor depend on the relationship between the payor and the payee. During the due diligence period under examination, there were periods when the relationship with SPC was one of employer/employee and potentially periods when the relationship was one of contractee/contractor. We will first discuss the income tax implications and responsibilities with respect to an employer/employee relationship and then address the income tax implications and responsibilities with respect to a contractee/contractor relationship.

### 5.5.2 EMPLOYER/EMPLOYEE RELATIONSHIP

#### ***Employment Income***

Subsection 5(1) of The Income Tax Act (the “Act”) contains the general rule for determining income from an office or employment. It reads as follows:

5(1) Income from office or employment — Subject to this Part, a taxpayer's income for a taxation year from an office or employment is the salary, wages and other remuneration, including gratuities, received by the taxpayer in the year.

Note that the provision addresses salary, wages and other remuneration and includes in a taxpayer's income the amounts *received* by the taxpayer in the year. This essentially requires a taxpayer to calculate their employment income on a cash basis i.e. amounts *received* in the year.

The reference to *any other remuneration* brings any other cash payment into employment income if the amount is received in the course of employment, regardless of how the payor or payee may characterize the amount as an honorarium, scholarship, gift, etc.

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<sup>1</sup> Income Tax Act (1985, c.1 (5<sup>th</sup> Supp.))

Examples which may be relevant to the current due diligence examination include:

1. Cash payments made to an employee

To the extent an employee receives cash gifts, honoraria or scholarships, these amounts must be included in employment income. Based on documentation reviewed during our investigation, an SPC employee received a number of cash payments described as gifts, scholarships, honoraria gifts (known amounts totalling \$105,000) and these amounts were not reported on a *T4 Statement of Remuneration* slip.

2. Cash payments made on an employee's behalf

To the extent an employer pays, for example, a personal income tax liability on behalf of an employee, the employee will be taxable on that amount in addition to the original income upon which the tax is exigible.

To the extent an amount may fall outside of the provisions of Subsection 5(1), Paragraph 6(1)(a) below may then apply to bring an amount into employment income.

### **Employment Benefits**

Paragraph 6(1)(a) of the Act describes the general provision regarding the taxation of employment benefits. It reads as follows:

6(1) Amounts to be included as income from office or employment — There shall be included in computing the income of a taxpayer for a taxation year as income from an office or employment such of the following amounts as are applicable:

(a) Value of benefits — the value of board, lodging and other benefits of any kind whatever received or enjoyed by the taxpayer in the year in respect of, in the course of, or by virtue of an office or employment,

We will first discuss the general rules and then describe some of the exceptions in the context of the due diligence examination.

#### *General Rule*

In general, to the extent an employer provides a benefit to an employee, the benefit is taxable in the employees' personal hands. As noted in the Federal Court of Appeal case, *McGoldrick*<sup>2</sup>:

“As a general rule, any material acquisition in respect of employment which confers an economic benefit on a taxpayer and does not constitute an exemption falls within paragraph 6(1)(a) (see *The Queen v. Savage*, 83 DTC 5409 at 5414 (S.C.C.))... Where something is provided to an employee primarily for the benefit of the employer, it will not be a taxable benefit if any personal enjoyment is merely incidental to the business purpose (see *Lowe v. The Queen*, 96 DTC 6226 at 6230).

In essence, any enrichment of a personal nature that results in an economic benefit to an employee must be included in taxable income of the employee, unless it can be argued that the employer is the primary beneficiary of the material acquisition.

<sup>2</sup> *McGoldrick*, [2004] 3 C.T.C. 264 (FCA)

Some examples which may be relevant to the current due diligence examination include:

1. Discounted tuition fees

In a 2010 technical interpretation<sup>3</sup>, CRA examined the income tax implications of an educational institution providing reduced tuition or no-cost tuition to employees. The CRA concluded that the fair market value of the benefit must be included in the employee's income. The difference between the standard tuition paid by members of the public and the discounted tuition paid by the employee is an appropriate measure of the fair market value of the benefit. Tuition was paid by SPC on behalf of an employee's family member, while the related T2202A indicated half of the same amount had been paid by the student and was, therefore, claimable by the family member. It is not known whether the employee claimed this amount.

2. Provision of a vehicle owned by St. Peter's College

On October 8, 2010, SPC purchased a vehicle for the sole use of the employee. The vehicle was purchased by SPC, but was at the exclusive use of the employee and was registered in the employee's name for insurance purposes. The CRA could view the entire purchase price of the vehicle as a taxable benefit to the employee. At a minimum, any personal use of the vehicle is considered a taxable benefit to the employee. This is calculated to include what is known as the standby charge plus the operating expense benefit minus any reimbursements an employee makes in the year for benefits the employer otherwise has included in the employee's income related to the standby charge and operating expense benefit. The calculation is meant to recognize the economic benefit the employee receives from having a vehicle available to them with respect to their personal use.

3. Paying for travel from home to work

Travel from home to work is considered a personal responsibility as travel from home to the place of employment is normally not travel for employment.

4. Provision of free lodging

If an employer provides free lodging to an employee, the employee receives a benefit and must include the benefit in their income. Lodging is considered a personal responsibility not to be provided by one's employer, unless the lodging is provided to an employee because the employer requires them to be away from their usual lodging due to employment activities. Lodging for the exclusive use of the employee was provided free of charge for numerous months.

*Exceptions to Employment Income Inclusions*

Some exceptions to the general rule which may be relevant to the current due diligence examination include:

1. Certain tax-free allowances

An employer may pay a "reasonable" allowance to an employee for the business-use portion of an employee-provided vehicle. As noted in *T4130 Employers' Guide: Taxable Benefits and Allowances*, in order to be reasonable, the allowance must have all of the following conditions:

"The allowance is based only on the number of business kilometres driven in a year; the rate per kilometre is reasonable (as described in the Regulations to the Act); and you did not reimburse the employee for expenses related to the same use of the vehicle."

During a period in 2009, the employer was paying a per kilometre vehicle allowance to the employee and was also paying for fuel and car washes during the same period.

<sup>3</sup> 2010-0373791E5 Taxable Benefit for Tuition

## 2. Meal expenses related to employment activities

CRA's current administrative policy with respect to overtime meals and allowances is described in Income Tax Technical News No. 40. The publication indicates:

"The CRA's current administrative policy allows for a non-taxable status of certain overtime meals or reasonable allowances for overtime meals. This is the case if the employee worked three or more hours of overtime right after his or her scheduled hours of work; and the overtime was infrequent and occasional in nature (less than three times a week).

Concerns have been raised to indicate the economic benefit received by the employee are often minor, the meaning of a "reasonable allowance" is not always clear, employer policies often allow for meal allowances after two hours of overtime and the strict application of the limitation of "less than three times in a week" sometimes leads to certain inequitable results.

In order to address these issues, effective for the 2009 year, the CRA will consider no taxable benefit to arise if:

- the value of the meal or meal allowance is reasonable; a value of up to \$17 will generally be considered reasonable,
- the employee works two or more hours of overtime right before or right after his or her scheduled hours of work, and
- the overtime is infrequent and occasional in nature. Less than three times a week will generally be considered infrequent or occasional. This condition may also be met where the meal or allowance is provided three or more times per week on an occasional basis to meet workload demands such as major repairs or periodic financial reporting.

If overtime occurs on a frequent basis or becomes the norm, the CRA considers the overtime meal allowances to be a taxable benefit since they start taking on the characteristics of additional remuneration."

If an employee is receiving this type of tax-free "per diem", then they must not also claim actual receipts for those same meals. Otherwise, the "per diem" amount would be considered a taxable benefit which would be required to be reported as part of the employee's taxable income.

## 3. Small non-cash gifts

If an employee receives a gift (whether in cash or by non-cash means) they are required to include it in income, with one caveat. CRA does have a policy to address smaller non-cash gifts, which allows for an employer to give a non-cash gift or non-cash award (which can be made up of multiple gifts) on a non-taxable basis, provided the total value is less than \$500 annually. An additional separate non-cash long service/anniversary award will be non-taxable provided the total value is less than \$500 annually.

## 4. Scholarships

There is a deduction allowed for scholarships under paragraph 56(1)(n) of the Act, but this deduction does not apply if the scholarship is received as a result of employment or received in the course of a business. As noted above, a scholarship is taxable to an employee under 5(1) or 6(1) of the Act.

In addition to Subsection 5(1) and Paragraph 6(1)(a), Subsection 6(3) of the Act further requires that any payment made to an employee is required to be included in income of the employee. Taken together, these three provisions provide that virtually any payment from an employer to an employee may be taxable.

### ***Implications to the Employee***

To the extent amounts are received as a result of employment, the employee is required to include these amounts in their income in the year and pay the appropriate income tax. To the extent amounts have not been withheld, or withholdings are insufficient, the employee could be assessed late instalment interest and/or penalties on late or deficient payments of tax.

### ***Implications to St. Peter's College***

As an employer, SPC would be required to report both amounts actually paid to the employee as salary and wages and any taxable benefits and allowances. All amounts must be reported and their corresponding withholdings of income tax, Canada Pension Plan and Employment Insurance contributions, as applicable, deducted and remitted to CRA.

As noted in *T4130 – Employer's Guide: Taxable Benefits and Allowances*, it is the employer's responsibility to determine the following with respect to any benefit or allowance provided to an employee:

- determine if the benefit is taxable;
- calculate the value of the benefit;
- calculate payroll deductions; and
- file an information return.

The employer is required to calculate the appropriate payroll deductions, hold these amounts in trust for the Receiver General and remit the amounts to CRA. Whether a particular benefit attracts Canada Pension Plan payments and Employment Insurance premium withholdings depends on the taxable benefit or allowance (for example, cash automobile allowances attract both CPP and EI, while standby charge and automobile operating expense benefits attract only CPP). There are a number of penalties assessable under the Act for the following failures:

- The employer can be assessed a penalty of 10% of the amount an employer fails to deduct. This and the other penalties would apply not only to any unreported benefits and allowances, but also any unreported amounts paid in the context of an employer/employee relationship. The 10% penalty usually applies to failure to deduct amounts in excess of \$500, however, if it is determined that the failure was made knowingly or under circumstances of gross negligence, the penalty can be applied to the entire amount;
- A penalty can be assessed for late-filing and failure to file the T4 Information Return (if, for example, it is ultimately determined by the Minister of Revenue that there is an employer/employee relationship and the parties did not consider it to be characterized that way). This penalty has a sliding scale depending on the number of information slips involved; and
- The employer can be assessed a penalty for failure to remit and late remittances. The penalty applies where an employer deducts the amounts but fails to remit them or where the CRA receives the deducted amount after the due date. The penalty is based on 10% of the amounts if more than 7 days late. In addition, if an employer is subject to this penalty more than once in a calendar year, a penalty of 20% can be applied on second or later failures if they were made knowingly or under circumstances of gross negligence.<sup>4</sup>

In addition to the applicable penalties, interest may apply from the day the payment was due.

Directors may be held personally liable for failure to deduct withholdings, late-filing and failure to file of information returns and information slips and for failure to remit withholdings.

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<sup>4</sup> T4120 Employer's Guide: Filing the T4 Slip and Summary

### 5.5.3 CONTRACTEE/CONTRACTOR RELATIONSHIP

The preceding discussion assumes that SPC and the individual taxpayer are in an employer/employee relationship. If it is determined that the relationship is not an employer/employee relationship but, rather, is one of contractee and independent contractor, then the discussion and analysis is less complex.

Note that even if there is disagreement as the nature of the relationship between SPC and the individual taxpayer, there are additional provisions in the Act (for example, Subsection 56(2) and Subsection 246(1)) which are intended to bring indirect payments within the scope of the charging provisions in the Act.

Since a discussion of the distinction between an employment relationship versus an independent contractor relationship is beyond the scope of this discussion, we will simply comment on the resulting income tax implications in the event it is determined there is an independent contractor relationship.

Subsection 9(1) of the Act says:

9. (1) Income — Subject to this Part, a taxpayer's income for a taxation year from a business or property is the taxpayer's profit from that business or property for the year.

Some of the characteristics of income pursuant to Subsection 9(1) include:

- It is calculated on an accrual basis as opposed to when received;
- If there are barter transactions involved (e.g. trading of services with no transfer of cash, provision of services or items at reduced cost or nil cost) income is recognized to the contractor at the fair market value of the bartered item.

#### ***Implications to the Contractor***

To the extent amounts are earned as a result of the contractor relationship, the contractor is required to include these amounts in their income in the year and pay the appropriate income tax.

#### ***Implications to St. Peter's College***

There are similar reporting requirements for the filing of the related CRA forms with respect to payments for services as there are with respect to payments to employees.

No withholdings are required on fees paid to self-employed Canadian residents, however, SPC may be required to file a T4A Statement of Pension, Retirement, Annuity and Other Income slip and summary pursuant to Subsection 200(2) of the Income Tax Regulations, depending on the nature of these types of payments. There are penalties for failure to file these information returns and for failure to distribute the slips in a timely manner.

## 6.0 CONCLUSION

MNP was engaged by the Ministry of Justice and Attorney General on behalf of their client, the Saskatchewan Ministry of Advanced Education, Employment and Immigration, to conduct a due diligence engagement and forensic investigation with respect to the issues and allegations identified during a previous consultative review conducted by MNP's Consulting practice.

The costs of the Michael Hall Revitalization has exceeded the amount of KIP funding received which indicates that, in totality, the appropriate dollar amount of KIP funding has been used on the renovation. However, MNP's analysis indicates that due to the co-mingling of KIP funds in the operating account, KIP funds were not appropriately restricted and have been used to fund operations at various points throughout the period under review.

The transfer of a total of \$135,000 from CTRC to SPC was made in-camera at a joint Board meeting. There is no documentation on the discussion and rationale of the transfer. The transfer of \$60,000 was described as an increase in the operating grant provided by CTRC to SPC. The timing and amount of this transfer is coincidental to SPC's purchase of a \$62,700 vehicle for its President. The request for \$75,000 was represented to the CTRC Board as being a portion of a joint market research project. However, to date, the actual additional expenditures of the market research project is less than \$75,000. SPC has not contributed any additional funds to this project.

Prior to May 7, 2010 (the date that a member of CTRC management sent the financial and accounting irregularities memo to the Boards), a 52 inch TV purchased by SPC as part of a larger TV order was unaccounted for. The member of CTRC management inquired with the VP of SPC and did not receive a response. He also inquired with the IT person at SPC who performed an inventory around the college and determine that the TV in question was not on the SPC premises. At the Board meeting on May 10, 2010, the Chair of the Finance Committee escorted the Board members to a storage room and showed them the 52 inch TV. Based on our interviews with the Chair of the Finance Committee and the President of SPC, it was determined that the President had picked up the TV's from the vendor and delivered them to the school. Both the Chair of the Finance Committee and the President of SPC were unable to provide a firm date or timeline as to when the 52 inch TV was returned to the school.

The SPC and CTRC Boards operated as one Board throughout 2010, despite lack of formal approval from the Ministry to do so. SPC Board members participated in discussions relating to CTRC finances and the discipline of CTRC management.

Misinformed Board decisions surrounding expense reimbursement policies and compensation policies have led to potential CRA liabilities for SPC, SPC Board members, and a member of SPC's Executive Management.