

# **PRIVILEGED AND CONFIDENTIAL**

**SUMMARY OF FINDINGS**

**FROM MNP LLP**

**To**

**PINK LARKIN LLP**

**IN THE MATTER OF**

**INDIAN BROOK (SHUBENACADIE) FIRST NATION**

**APPENDIX #8 – OPERATIONS & MAINTENANCE  
SNOWPLOWING**



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**EXHIBITS**

<b>Tab</b>	<b>Title</b>
1.	Memo re: Council requests for tenders to be issued for snow removal, salting, sanding roads/parking lots/driveways in reference to December 9 <sup>th</sup> Council Meeting
2.	Service Agreement with H. Sack dated December 15, 2009
3.	Letter from McLellan, Richards & Bégin dated February 17, 2014
4.	Sack's Plowing cheque requisitions and cheque stubs for year ended March 31, 2010
5.	Sack's Contracting & Management Limited Invoice 16042012snow for the amount \$133,000, dated April 16, 2012

## 1 BACKGROUND

- 1.1 From April 1, 2009 to March 31, 2012 (“Period of Review”), Shubenacadie First Nation (“SFN” or “the Nation” or “the Band”) paid for snowplowing as part of its Operations and Maintenance department (“O&M”). We were advised that there had been a change in the contractor doing the work. We were requested to review how the snowplowing work is awarded and to review the amount paid to the contractor.
- 1.2 Concerns were raised in regard to the awarding of the work to Mike Sack (“M. Sack”), the cost of the snowplowing year by year and the changes to the request for proposal process.
- 1.3 Amounts have been rounded for reporting purposes.

## 2 TIMELINE OF EVENTS

- 2.1 Prior to 2009, we understand that snowplowing on the reserve was done by two employees of O&M with a Bobcat and a three ton truck both equipped with a plow. Both were owned by SFN and used on an as needed basis. When the employees were not doing the snowplowing, they were employed doing other operations such as garbage removal. The Manager of O&M left the community for approximately one year, and when he returned in late 2010 he discovered that the snowplow equipment had been sold or given away. In addition, snowplowing had come under the control of Housing. The Manager of O&M was under the impression that there was a 10 year contract for the snowplowing and did not question it. As he was not responsible for the budget, he did not monitor the expenses.
- 2.2 There was a feeling that external resources were reluctant to bid on doing the snowplowing due to concerns about being paid.
- 2.3 Documents related to the tendering of a snowplowing contract were found in the records of Burchell MacDougall Lawyers (“Burchell MacDougall”). In 2008 a memo was released which referenced a Council Meeting on December 9<sup>th</sup>, where the Council requested “*invitations for tenders be issued for snow removal, salting, sanding roads/parking lots/driveways.*” The bid process stipulates that the contract is from “*December 16<sup>th</sup>, 2008 until March 31<sup>st</sup>, 2009 for all main roads and subdivisions and lanes, community parking lots/driveways, emergency responder’s driveways and seniors, disabled, driveways*”. The memo does not indicate how much snow must fall before snow removal is to take place. A copy of the memo is attached as **Exhibit 1**.

- 2.4 The Band received five bids; John Peter Paul, M. Sack, CJ Sack, CJS Excavating and Thomas Maloney. However, a note on the bid from CJS Excavating indicated that it was not received on time, therefore not considered. The bids can be summarized as follows:

**Table 1: Snowplow Bids**

<b>Name</b>	<b>Bid</b>
M. Sack	\$1,070 for 107 and \$2,080 for 208 <sup>1</sup>
CJ Sack	\$802.50 for 107 and \$1,560 for 208 <sup>1</sup>
CJS Excavating	\$124,750.00
Thomas Maloney	\$127,454.15
John Peter Paul	Total not provided

- 2.5 We understand that the tender process failed and no bid was accepted. Burchell MacDougall was asked to provide an opinion on the process. The January 14, 2009 opinion found that the process was “fatally flawed” and that the bids were largely not comparable. The recommendation was to reject all proposals and contact the four bidders who submitted their documents on time to offer them the ability to re-submit bids. We did not find documents that would suggest that this was done. Invoices and payment for snowplowing services prior to March 31, 2009 have not been examined as they are outside of our Period of Review.
- 2.6 In addition to the Burchell MacDougall comments, we also note that the bids attributed to M. Sack and CJ Sack are identical in formatting and the handwriting appears to be the same, however the cost is different. We understand that CJ Sack is the owner of CJS Excavating.
- 2.7 The next reference to snowplowing was found in the Council Minutes dated November 18, 2009, as follows “*Gary Richards to complete a contract for snow removal*”. Based upon the date of the meeting we assume that the contract would, at a minimum, be for the winter of 2009/2010.
- 2.8 MNP was provided a Service Agreement between SFN and Henry Sack (“H. Sack”) dated December 15, 2009 by Pink Larkin LLP. Pink Larkin LLP also provided a letter from Alain Begin, the legal counsel for H. Sack in regard to the termination of the snow contract. A copy of these documents is attached at **Exhibits 2** and **3** respectively.

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<sup>1</sup> We believe that the reference to 107 and 208 refers to the number of homes or driveways to be plowed.

- 2.9 The contract stipulates that *“this is a contract for the performance of a service and Mr. Sack is engaged under the contract as an independent contractor for the sole purpose of providing a service”*. The contract further stipulates
- i) *“the Band will pay Mr. Sack upon acceptance of invoices for services provided. The value of the monthly invoices submitted shall not exceed forty thousand dollars (\$40,000).”*
  - ii) *“Total amount of remuneration to be paid to Mr. Sack by the Band shall not exceed (\$158,000) one hundred and fifty-eight dollars per annum.”*
  - iii) *“The Contract is limited in term commencing on December 1, 2009 and terminating on November 30, 2016”*
  - iv) *“The Contractor and the Band may, by mutual agreement, terminate this Agreement upon ninety (90) days written notice delivered to the other party.”*
  - v) An appendix titled *“Schedule of Remuneration”* indicates *“The months of December, January and February will be billed at a flat rate of \$40,000 per month. March of each year will be billed at a flat rate of \$38,000. Snow removal outside of the billed months are included in these costs.”*, and
  - vi) The contract refers to the Contractor’s address *“shall be as it is stated in the Registry of Joint Stock Companies records”* but there is no referral to a corporation name within the contract itself.
- 2.10 The letter from Mr. Begin of McLellan, Richards and Begin Barristers and Solicitors indicates that H. Sack did 85% of the work himself and that he leased the equipment from Sack’s Excavating. Although there is reference to a termination of the contract the financial records reflect payments to Sack’s Plowing in fiscal 2010 which were primarily signed by M. Sack. In addition, the financial records indicate that Sack’s Excavating, a business associated to M. Sack, has billed SFN for snowplowing services for the years ended 2011 through 2012.

### 3 EXPENDITURES

3.1 The cost of snowplowing is reported as part of O&M operations. Excerpts from the O&M schedule of operations from the audited financial statements are shown in Table 2 below. Snowplowing is shown alongside some of the other expenditures to give the amount context to the other amounts spent.

**Table 2: Excerpts of Operating & Maintenance Expenses**

Description	2010	2011	2012	Total
Water & Sanitation	\$470,617	539,823	405,167	1,415,607
Community Buildings	448,974	400,929	273,360	1,123,263
Garbage Collection & Recycling	341,137	310,040	311,749	962,926
Oil Spill Clean-up	-	-	288,794	288,794
Snowplowing	120,000	158,000	158,000	436,000
Total	\$1,380,728	1,408,792	1,437,070	4,226,590

3.2 Based upon a review of the general ledger and available supporting documentation, we compiled **Schedule 1**. We note the following with respect to snowplowing payments:

#### March 31, 2010

- The billing for the year ended March 31, 2010 consisted of five progress bills; four for \$30,000 and the last one for \$38,000. Available invoices from Sack's Plowing, cheque requisitions and cheque stubs are attached as **Exhibit 4**. The registration of a business under the name Sack's Plowing was not found and the invoices do not list an address;
- The above progress billings indicate that the total amount spent on snowplowing for the 2010 fiscal year was \$158,000 whereas the financial statements report a total expense of \$120,000. The financial statements are prepared on an accrual basis, therefore the final payment was recorded in the 2011 fiscal year. It is likely that the final draw was not set up as an accrual. One reason for this could be that the contract was not available to refer to and the invoice does not indicate when the work was performed;
- Of the cheque requisitions obtained, Jeff Hayes approved all payments. There is no evidence of any other approval from the O&M Manager or the Housing Manager;
- None of the cheque requisitions refer to a purchase order or work order. Although the description of services rendered refers to a "snow contract" H. Sack signed the cheque requisition for draw #2 as the person who received the payment. M. Sack signed the others; and,

- The invoice and cheque requisition for the first draw was not located, however the general ledger record shows that cheque #24568 in the amount of \$30,000 was issued on January 7, 2010 to Sack's Plowing.

### **March 31, 2011**

- No invoices or cheque requisitions were found for the year ended March 31, 2011;
- As noted in the 2010 financial statements, the amount reported is based upon the payables recorded in the general ledger. In the case of fiscal 2011, the last draw from 2010 in the amount of \$38,000 was added to the first four draws recorded for 2011;
- Looking at the transactions on a cash basis, the general ledger indicates that two cheques were issued totaling \$158,000 as follows:
  - December 17, 2010, cheque #38221 \$30,0000 to Sack's Plowing; and,
  - March 31, 2011, cheque #40674 \$128,000 to Sack's Contracting and Management Ltd.

### **March 31, 2012**

- One invoice was located with respect to snowplowing for fiscal 2012. Invoice 16042012snow, dated April 16, 2012 in the amount of \$133,000 is attached as **Exhibit 5**;
- The invoice refers to "snow plowing and salting services contract, Winter 2011/2012". The amount of this invoice is net of a payment of \$25,000 which was made on December 13, 2011. Cheque #49277 was recorded in the general ledger as paid to Sack's Plowing "New contract 2011-2012";
- The new contract referred to on the invoice and in the general ledger has not been found;
- Invoice 16042012snow was effectively settled by M. Sack offsetting the amount against fishing revenue owed to SFN. The application of this amount is discussed in the Fishing Appendix, Appendix 9; and,
- Although the invoice for 2011/2012 totals \$158,000 the final payment from 2010/2011 in the amount of \$38,000 was effectively expensed in 2011/2012. The difference of the \$38,000 is a timing difference for reporting purposes. In effect, \$158,000 was paid in each of the three years reviewed, for a total of \$474,000.

### **Summary of Payments**

- 3.3 The payments recorded in the general ledger of SFN reflect the total amount provided for in the contract with Henry Sack. However, the invoices in 2011 and 2012 were from a company owned by Mike Sack and not Henry Sack. A registration for the name Sack's Plowing was not found, although at least three cheques issued to Sack's Plowing were received by Mike Sack.

## 4 HISTORICAL SNOWFALL

4.1 We understand that snowplowing contracts would be based upon the expected snowfall. For example, the roads and driveways would require plowing or sanding based upon the amount of snowfall. Different levels of snowfall would require different levels of service, however we note that the memo requesting tenders did not specify when snowplowing should take place. Accordingly, we performed high level research with respect to the snowfall experienced in Shubenacadie during the Period of Review. Table 3 below was prepared from the National Climate Data and Information Archive of the Environment Canada website. According to the Service Agreement dated December 15, 2009, “the contractor shall be required to supply appropriate service under this Contract whenever there is a snowfall in excess of 10 cm; or, if less than 10 cm is accompanied by significant drifting”. We are unable to determine what would signify “significant drifting” for the purposes of this Report. The following information comparing monthly snowfall and number days were snowfall exceeds 10 cm is presented for information purposes only.

**Table 3: Snowfall for Shubenacadie Region 2009-2012**

Month-Year	# of days over 10 cm	Total Snowfall (cm) for month
<b>2008/2009</b>		
Jan-09	3	90.0
Feb-09	2	49.6
Mar-09	2	58.9
Apr-09	0	3.7
Sep-09	0	0
Total	7	
<b>2009/2010</b>		
Oct-09	0	0
Nov-09	0	7.9
Dec-09	1	53.6
Jan-10	24	41.4
Feb-10	1	43.3
Mar-10	0	2.6
Apr-10	0	8.9
Total	4	
<b>2010/2011</b>		
Sep-10	0	0
Oct-10	0	0
Nov-10	0	5.4

Month-Year	# of days over 10 cm	Total Snowfall (cm) for month
Dec-10	1	30.9
Jan-11	1	61.4
Feb-11	2	87.2
Mar-11	0	4.9
Apr-11	0	10.3
Total	4	
<b>2011/2012</b>		
Sep-11	0	0
Oct-11	0	5.0
Nov-11	1	35.2
Dec-11	1	19.8
Jan-12	1	39.6
Feb-12	2	29.8
Mar-12	0	28.1
Apr-12	1	9.8
Total	17	

4.2 When comparing the number of days where snowfall was over 10 cm (“snow days”) to the amounts paid by SFN for snowplowing we note the following:

- 2009/2010 - \$158,000 for 7 snow days or \$22,571 per snow day;
- 2010/2011 - \$158,000 for 4 snow days or \$39,500 per snow day; and,
- 2011/2012 - \$158,000 for 5 snow days or \$31,600 per snow day.

## 5 CONCLUSION

- 5.1 Based on the above, the total cost of snowplowing for the three year period was \$474,000.
- 5.2 We believe that Mike Sack has an interest in Sack's Plowing and owns Sack's Excavating. This belief is based on the following:
- i) The initial invoices under the Sack's Plowing letterhead were signed by Henry Sack and then only by M. Sack after February 2010.
  - ii) M. Sack invoiced the Band using Sack's Excavating letterhead in 2011 and 2012. These invoices were not in relation to snowplowing;;
  - iii) M. Sack applied monies owed for snowplowing against monies he owed the Band for fishing revenues.
- 5.3 It does not make sense that the snowplowing contract would be reviewed and authorized by the Housing department. Operations and maintenance historically was responsible for this area and would have the expertise to determine the condition of the roads, the responsiveness of the snowplowing contractor and the effectiveness in the community. We were not advised of the rationale for the change of responsibility to Housing. We note that D. Gloade, the Housing Manager at the time was also an employee of M. Sack. This is a serious risk to the organization and potential conflict of interest for D. Gloade.
- 5.4 The contract was signed by H. Sack but M. Sack did the majority of the invoicing and received most of the payments for the snowplowing. M. Sack is not referenced in the contract and appears to have circumvented the bid process he engaged in the year previously. M. Sack was a member of Council and did not declare his conflict of interest in regard to this contract.

## 6 RESTRICTIONS AND LIMITATIONS

- 6.1 This Appendix to MNP Report is not intended for general circulation or publication, nor is it intended to be used for any purpose other than to advise Pink Larkin, or as outlined in the Terms of Reference noted at Section 1 of the Report. We will not assume any responsibility or liability for losses suffered by any party as a result of circulation, distribution, publication, duplication, reproduction, or any use of this report contrary to the provisions of this Paragraph.
- 6.2 We reserve the right, but will be under no obligation, to review all calculations and comments included in or referred to in this report and, if we consider it necessary, to revise our comments in light of any information existing at the date of this report that subsequently becomes known to us.
- 6.3 Our Report must be considered in its entirety by the reader. Selecting and relying on specific portion of the analyses or factors considered by us in isolation may be misleading. The procedures performed do not constitute an audit and an audit has not been performed on the financial information.