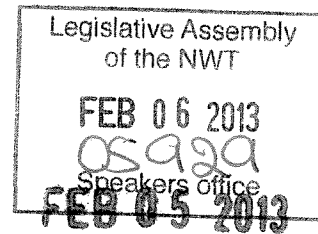




Northwest Territories Minister of Finance



*Robert*

ROBERT HAWKINS  
MLA, YELLOWKNIFE CENTRE

**Potential Breach of FAM 3307- Aircraft Chartering**

Thank you for bringing this matter to my attention. This issue was recently raised with me by the Minister of Transportation who requested that it be reviewed by the Office of the Comptroller General. The Comptroller General has completed his review and issued a report to the Department of Transportation.

When reviewing this situation, one has to take the whole policy into account. You have cited sections that apply to non-government parties whose presence are not required for business purposes, or are in the public interest and are therefore sharing the air charter as described in Section 4.3 of the policy. I wish to point out that the policy does contemplate the inclusion of non-government parties in certain circumstances where it is for business purposes or in the public interest.

The review found that the Department initially interpreted FAM 3307 incorrectly. Given the nature and significance of the Deh Cho Bridge opening, the Department applied a broad definition of "public interest" for including non-government parties on the air charter that was to occur on November 30, 2012. As you are aware on November 19, 2012, the Minister of Transportation issued an invitation to all members of the Legislative Assembly, their staff and their families to participate in the charter on a limited availability basis.

However, upon further discussion with various senior officials after the event occurred, the Department reassessed its interpretation. While some non-government parties were included on the charter for business purposes or in the public interest, 10 were deemed not to fit either category and the Department of Transportation has taken steps to recover the appropriate funds from those individuals. Steps were not taken sooner as the air charter company failed to provide the GNWT with invoices and supporting documents until requested in January.

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As you can appreciate, the sections of the policy that you have referenced related to making prior arrangements for payment were not complied with, however, this was due to the initial misinterpretation of the policy. Subsequent action by the Department has resulted in compliance with the policy objective of FAM 3307, which is to ensure that the GNWT only incurs air charter expenses for transportation of government parties and non-government parties where there is a business purpose or in the public interest.

The Comptroller General has recommended that the Department of Transportation undertake steps to ensure staff are aware of the requirements of FAM 3307. There will also be further clarification coming from the Comptroller General's office on what constitutes "business purposes" and "public interest" under the policy. I have provided a copy of the Comptroller General's report.

I appreciate you may feel this is a serious breach, however, from my perspective an error in interpretation of policy was made by officials in the Department of Transportation, which in turn led to the Minister inviting the family of members of the house and staff to join the charter. Once the Department was made aware of their error, corrective action was taken.



J. Michael Miltenberger

Attachment

- c. Honourable David Ramsay, Minister of Transportation  
Mr. Michael Nadli, Chair, Government Operations Committee

**Department of Transportation**  
**Air Charter - Deh Cho Bridge Opening Ceremonies**  
**Compliance Review**

**January 2013**

**Issued by:**  
**Office of the Comptroller General**



JAN 18 2013

MS. PENNY BALLANTYNE  
SECRETARY TO CABINET

MR. MIKE AUMOND  
SECRETARY OF THE FINANCIAL MANAGEMENT BOARD

MR. RUSSELL NEUDORF  
DEPUTY MINISTER  
DEPARTMENT OF TRANSPORTATION

**Compliance Review: Department of Transportation  
Air Charter – Deh Cho Bridge Opening Ceremonies**

**ISSUE:**

The Department of Transportation (DOT) organized an air charter to take officials and non-government parties to participate in the opening ceremonies of the Deh Cho Bridge. A complaint has been made that FAM 3307 - Aircraft Chartering may not have been properly followed, and in particular, that family members participated in the charter at no cost. As this issue deals with compliance with FAM, it was referred to the Comptroller General for review.

**SCOPE AND OBJECTIVES:**

The objective of this review was to determine if the actions related to the air charter arranged for attendance of the Deh Cho Bridge opening ceremonies complied with GNWT policies. In reviewing this transaction, the Ministerial Benefits Policies – Spousal Travel (5.0) and FAM 3307 – Air Chartering were considered to be the relevant policies. Documents provided by DOT have been considered, as well as interviews with DOT officials. The review also relied on some documents provided by the MLA, Yellowknife Centre to the Conflict of Interest Commissioner, as the original documents, specifically Air Tindi Ltd. Invoices, and supporting manifests, had not been received at DOT at the time the review was conducted. Those documents were subsequently received by the Department.



**BACKGROUND:**

On November 5, 2012, DOT issued of Request for Aircraft Charter, AC 600439, for two aircrafts to transport 9-15 passengers on November 30, 2012 from Yellowknife to Fort Providence, holding and returning to Yellowknife on the same day. The original intent was to transport Cabinet and MLAs on two separate aircrafts.

Three tenders were received by the closing at 3:00 pm, November 8, 2012. The bids were evaluated and BIP adjustments were correctly applied. Air Tindi Ltd. was the successful tender. Air Tindi provided a bid for two Beech King Air 200's for \$4,462.08.

On November 19, 2012, and Contract Change Order, CC 433532 was issued to replace one King Air 200 with a Dash 7 at an incremental cost of \$3,052.84. There was no documentation on the charter file indicating the need to change to a larger aircraft. The Department has indicated that the DCB ceremony sub-group made this decision as a result of additional "priority" travellers being identified such as the MP for the Western Arctic and a Senator.

On November 19, 2012, the Minister of Transportation extended an invitation to Members of the Legislative Assembly to attend the opening ceremonies of the Deh Cho Bridge. The offer was also extended for members to bring staff and family members on a "first come, first booked basis".

An e-mail provided to the Office of the Comptroller General by DOT on January 11, 2013, provided the rationale applied to the November 19, 2012 decision to include family members:

"The decision to invite family members to join the opening event was in accordance with the 3307 FAM Directive and Ministerial Benefits Policy, Spousal Travel. The applicable sections are provided below for reference.

The decision to invite family members was verbally discussed and agreed to by the Minister of Transportation. The Minister of Transportation extended an open invitation via e-mail to all Ministers and MLAs to attend the opening ceremonies, and indicated that family members would be accommodated if space allowed.

The FAM Directive speaks to accommodating others on GNWT charters if it is in the public interest. DOT notes that it is in the public interest to have happy and satisfied GNWT employees who like their work. One way that the GNWT encourages this is to acknowledge hard work and to celebrate achievements. Formal GNWT programs include long service awards and performance bonuses.

The Deh Cho Bridge project was a significant accomplishment for DOT. The project received national attention, the project was more than 10 years in development, and received much political debate. In the end completion of the bridge was a great accomplishment for all GNWT staff that were involved. DOT chose to acknowledge the hard work and achievement by allowing all DOT employees to attend the event, and DOT also provided an invitation to allow family members to attend to help celebrate the achievement. The invitation was made on the basis that space on the various charters (air, bus) and private vehicles would be available. In the end the family members that joined the air charter filled seats that otherwise would have been empty. The value of each seat fully costed was approximately \$120. It is also noted that the opening event itself, including crowd control and safety on the bridge, was coordinated through many volunteers that included DOT staff, contractor staff and family members. The invitation to family members was also provided to encourage Ministerial and Departmental attendance.

It is in the interest of the public to have GNWT employees that take pride in their work and think the GNWT is a good employer. This translates into better services to the public, and employees that are willing to go above and beyond. Many DOT services impact the public directly, and the public can have more confidence in those services knowing that DOT staff are dedicated to their jobs and ensuring the safety of the public.”

On November 30, 2012, an Air Tindi Ltd. Dash 7 was used to transport 46 passengers to and from the opening ceremonies in Fort Providence. Passengers included 24 government employees, and 22 non-government parties.

In reviewing the facts of the Charter, and the further review of FAM-3307, DOT has concluded that family member travel to the opening ceremonies was not in the public interest as defined with FAM 3307 and has initiated a process to recover the appropriate portion of the charter costs from GNWT family members.

It was also determined that copies of Air Tindi Ltd. invoices and manifests had not been received by the Department of Transportation at the time of this review. The Department was in the process of obtaining copies from Air Tindi Ltd. to facilitate payment and recoveries related to family member travel.

**SUMMARY OF FINDINGS:**

In reviewing the information provided by the Department, the charter file did not contain documentation to indicate the reason for the air charter or the reason to issue the change order. There were decisions made by an event DCB Ceremony sub-group and that planning information which was subsequently provided by the Department indicated the need to transport MLAs and members of Cabinet on two separate planes. The Aircraft Charter Liaison Officer for the Department was a member of the sub-group so he was aware of the reasoning at the time charter arrangements were made.

Of the 46 passengers that were transported by the aircraft, 22 were non-government parties as defined under FAM 3307. It should be noted that the number of individuals that used the aircraft exceeds the seating capacity, as in some cases passengers travelled one way on the Dash 7 and another on the King Air 200. There may in fact be more individuals that used the aircraft as the manifests for the aircraft do not appear to have been fully completed by Air Tindi Ltd.

FAM 3307 provides for the inclusion of non-government parties on GNWT charters if it is for "Business Purposes" and in the "Public Interest". Business Purpose is defined when *"there is a direct or indirect positive impact on a departmental or governmental policy by permitting the non-government passenger to travel on the charter flight"*. The example provided is a speaker at a government sponsored event. Public interest is defined when *"a direct or indirect benefit accrues to the Government by permitting a non-government passenger to travel on the charter flight"*. The example provided is for reasons of protocol and spouse or significant other if a Government employee or Minister must accompany that person to an official business event.

Through discussions with the Department, it would appear that 4 of the 22 non-government parties have been included because it was deemed to be in the Public Interest. Those four include two reporters, the MP for the Western Arctic and a Senator. The rationale that these are in the public interest appears reasonable as positive reporting on the opening ceremony is an indirect benefit to the GNWT. Maintaining a positive relationship with political leaders also provide indirect benefits to the GNWT.

Another 8 non-government parties have been included as their attendance was deemed to be travelling for business purposes. This included the Master of Ceremonies for the event, which is an obvious direct positive impact to the Government. The remaining 7 are consultants or other parties associated with the construction of the bridge. The indirect positive impact from these parties comes from relationship building and positive benefits in any future business dealings with these parties.

There was no documentation on the charter file that provided substantiation and approval of the non-government parties that were deemed to be travelling for business purposes and in the public interest. This documentation is required to be signed off by the responsible expenditure offices and relevant Regional Superintendent of Departmental Director of Finance.

The remaining 10 non-government parties are family of members of Cabinet and GNWT officials. On January 11, 2013, the Department provided the initial rationale for inclusion of family members. There was no business purpose for family members to attend. There was no protocol in place requiring their attendance at the event, nor any other official requirement for their attendance. Therefore these individuals do not meet the criteria for non-government parties to share a charter at government expense, and therefore they are required to pay their share of air charter costs.

It should also be noted that the original rationale to invite family members was to recognize the achievements of DOT staff in relation to the bridge project. As the rationale provided by the Department above correctly points out employee recognition does occur within the GNWT through programs approved through various policies such as the Long-Service Awards, and performance pay. The recognition extended in this case was outside of policy and went beyond the staff involved in the project.

The contention that family members served as crowd control and safety on the bridge is not particularly compelling given the number of children who travelled who would have presumably required some level of supervision by staff or family members.



As the Department took the view that inclusion of family members on the charter was in the public interest at the time charter arrangements were being made certain aspects on FAM 3307 were not performed. Specifically, DOT did not make arrangements with these 10 individuals before the charter to obtain their written agreement to pay their share of the charter costs and to pay the air carrier directly, nor did they make arrangements with the air carrier to receive and deduct these payments from the invoice to the GNWT.

The issue was raised as to whether travel for “spouses” of two members of Cabinet would be considered spousal travel under the Ministerial Benefits Policies – Spousal Travel (5.0). This was discussed in detail with the Department of the Executive. As there was no indication that protocol for the event made it either appropriate or required for Minister’s spouses to attend, the interpretation from the Executive is that the policy would not apply in this situation. In any case, the Policy requires approval from the Premier ahead of time which was neither sought nor obtained.

The Department of Transportation has taken steps to recover a pro-rata share of the air charter costs from 10 non-Government parties, plus applicable GST who travelled on the air charter.

While not specifically within the scope of this review, it was observed that a breach of contract by Air Tindi Ltd. may have occurred, as it appears they may have released confidential information without written authorization. Air Tindi Ltd. has confirmed that it did provide copies of charter documents that were used in this review to the MLA, Yellowknife Centre on December 5, 2012. DOT was not in receipt of these documents from Air Tindi Ltd. until after this review was initiated. The release of this information would appear to be in breach of the Air Charter Contract clause 25-

*CONFIDENTIALITY – The Contractor shall ensure all and any information related to the affairs of the GNWT to which the contractor becomes privy as a result of this contract, is confidential and shall be treated as confidential during and after the term of this contract and shall not divulge, release or publish without the prior written approval of the GNWT.*

This issue is being investigated separately by the Departments of Justice and Transportation.

## CONCLUSIONS:

The Department of Transportation has complied with the major policy objective of FAM 3307 – Aircraft Chartering which is to ensure the GNWT only incurs the costs associated with travel for GNWT employees or non-government parties when it is for business purposes or in the public interest.

However the Department has not followed some other aspects of the Policy.

- a) Several sub-sections of section 4.3.1 were not followed, however, given that the Department initially misinterpreted the policy which led the Department to conclude that all travel was for business purposes or in the public interest, this omission is reasonable. Specific omissions were as follows:

4.3.1 (c) the air charter company agrees to non-government passengers

4.3.1 (e) non-government parties agree in writing to pay the carrier

4.3.1 (g) non-government parties pay the air carrier directly

- b) Sub-section 4.3.4 was not complied with. The section requires that where travel by non-government parties is deemed to be for business purposes or in the public interest a justification signed by the person authorizing the travel and a Regional Superintendent or Director of Finance and Administration.

The Department only formally documented their initial rationale for including family members after discussions with this office. In addition, there was no documented rationale for the other 12 non-government parties that were included on the charter that were not family members. There is a requirement for these decisions to be documented with clear evidence of approval.

Beyond the simple aspects of compliance, there are other issues that underlie some of the policy requirements. One is a legal liability issue associated with transporting non-government parties who are travelling for which there is no business purpose or in the public interest. If those travellers simply pay their share of costs to the GNWT, then they are contracting with the GNWT and the GNWT may be held legally liable should some form of loss occur. By making arrangements with the carrier and the individual in advance and having payments made directly to the carrier, the argument that the GNWT is the contractor is diminished.

Another element of the policy recognizes that the GNWT has a tax agreement with Canada that provide a Tax Exempt status relative to GST/HST. However, to the extent that air charter services are purchased to transport non-government parties for business purposes or in the public interest, those services are not GST exempt and the GNWT is required to remit GST.

There is a need for the Department of Transportation to reinforce the requirements of FAM – 3307 Aircraft Chartering with its expenditure officers that may be requesting air charters and the designated Air Charter Liaison Officers. Managers should be aware of the requirements of the policy and the need to ensure required documentation is maintained on their air charter files.

It is also apparent that FAM 3307 could provide improved guidance to users with regard to what constitutes “business purpose” or “in the public interest”. The Office of the Comptroller General will undertake to provide greater clarification of these issues.

A handwritten signature in black ink, consisting of several large, overlapping loops and a long horizontal stroke extending to the right.

Warren St. Germaine  
Comptroller General