

A REVIEW OF CONCERTS HELD ON THE NORTH COMMON – JANUARY 2006 TO MARCH 2011

JUNE 2011

1.0 Preamble:

In early March 2011, the then Director of Finance/Chief Financial Officer reported to the Auditor General she had been advised by the then Acting Chief Administrative Officer (Acting CAO) he had taken actions which may have exceeded his authority and likely exposed the Municipality to financial risk resulting in an unbudgeted liability of \$359,550.

Subsequent to a discussion with the Acting Chief Administrative Officer and the Municipal Solicitor, the matter was reported to the Audit and Finance Committee of Council and shortly thereafter to Regional Council. As a result of his actions, the Acting Chief Administrative Officer tendered his resignation and retired from employment with the Halifax Regional Municipality (HRM).

The initial examination by the Auditor General and Director of Finance into the actions of the Acting Chief Administrative Officer highlighted a number of apparent systems weaknesses which facilitated the ability to carry out various activities undetected. As a result, the Office of the Auditor General (OAG) began an examination into the matter.

Of particular interest is the mechanism by which the Acting CAO was able to encumber HRM (through the Halifax Metro Centre), by requesting transfers of funds outside of the normal HRM financial system and its controls, and how this practice could go undetected for so long. All transactions occurred via the use of a Halifax Metro Centre bank account which falls under HRM's consolidated banking agreement with its banker. Given what became known and observed at the time, it was apparent a number of matters as they relate to overall HRM governance, roles and responsibilities, culture and accountability had surfaced and their impact needed to be fully understood.

Finally, issues around governance and accountability for the operation and management of the Halifax Metro Centre under management agreement with Trade Centre Limited (a Provincial Crown Corporation) were highlighted by these matters.

2.0 Scope:

The examination considered, to the extent possible and practical, the entire history of the involvement of Halifax Regional Municipality into the development and delivery of concerts held on the North Common since 2006, up to and including the particulars of the most recent concerts held in 2010, which resulted in the unbudgeted liability noted previously.

Available financial information was examined for each concert to understand and validate the due diligence undertaken for funds provided as in-kind services or other. The OAG extended the examination into the financial information/records, especially cash transactions, flowing through the Halifax Metro Centre bank account to determine the nature and validity of the transactions.

An initial review of the governance model and management relationship between the HRM, Halifax Metro Centre and Trade Centre Limited was completed to determine the current appropriateness and effectiveness of this model as it dates back to 1982 and in light of recent events. As a result, further review was warranted specific to HRM, including but not limited to:

- roles and responsibilities of the CAO, Mayor and Regional Council;
- roles and responsibilities of HRM Legal Services, Finance and Community Development business units;
- roles and responsibilities of various members of staff;
- an understanding of the role the present HRM culture played in this matter; and
- an understanding of the role risk management processes had in not identifying transactions taking place in the Halifax Metro Centre bank account.

External advice was sought to assist in understanding the legalities of certain actions and the validity of obligations under contracts entered into by the Acting CAO which clearly exceeded his authority.

3.0 Objectives:

The objectives of the examination were to identify and evaluate the controls around the approval and delivery of concerts on the North Common, and where applicable, recommend improvement around:

1. dispersal of funds outside of signing authority;
2. dispersal of funds in contravention of the HRM Charter;
3. contractual relationship between the parties participating in these activities, including Trade Centre Limited and the Halifax Metro Centre;
4. correctness of using an off-book process to flow funds to a third party;
5. what roles should various business units, certain positions particularly the CAO, DCAO and Mayor have in bringing concerts to the North Common, the advancement of ticket sales to a promoter and the agreement to make a forgivable grant; and
6. the processes which should be in place and information which should be regularly requested by and provided to Regional Council, should HRM's involvement with concerts on the North Common continue.

4.0 Methodology:

The OAG used a variety of tools and methodologies to achieve the objectives including:

1. one-on-one interviews with those persons known to be, or subsequently determined to be, involved in the decision making around or execution of the delivery of concerts on the North Common, as well as those with self-identified knowledge of events or circumstances leading up to decisions made to “partner” with Power Promotional Events, Trade Centre Limited and other parties who became known during the examination;
2. an examination of financial records, source documentation and communications around payments made on behalf of or to Power Promotional Events. Consideration was also given to assessing the potential for irregular activity with regard to the use of the Halifax Metro Centre bank account and financial records;
3. financial analysis of “in-kind” costs actually incurred by HRM to support the concerts, as compared to estimates and final figures reported to Regional Council;
4. research into “soft controls” underlying the management and administration of organizations;
5. research into many aspects of Corporate Governance including reading numerous papers written on current best practices and thinking;
6. some research into high level organizational dynamics with a view to explaining the unusual behaviours of some;
7. research into various matters as they relate to the relationship between corporate governance and risk management; and
8. research into various matters as they relate to the concert event and venue industry.

Notes to Reader:

1. This was a review of HRM's involvement in staging "concerts on the commons". As the review progressed it became clear the activities of Halifax Metro Centre, a division of HRM, and Trade Centre Limited, a provincial agency, were so interwoven that the involvement of TCL had to be included in the scope of the examination even though TCL is not covered by the mandate of this Office. TCL officials cooperated fully and we were given full access to the information and records we required. Furthermore, the Auditor General of Nova Scotia, who has the mandate to audit provincial agencies, was fully supportive of our inquiries.
2. Throughout the report the terms "repayable grant," "forgivable grant," and "un-repayable grant" are used by various parties to refer to the payment provided to Power Promotional Events, resulting in the \$359,550 outstanding amount. The Office of the Auditor General considers these terms to refer to direct financial assistance, prohibited by the HRM Charter under Sections 35(2)(d)(i), 71(2), and 79.

5.0 Executive Summary:

Opening remarks:

The objective of this report was to understand specifically actions, inactions, systems and processes involved in the advancement of funds for concerts on the North Common, as well as the granting of a non-repayable amount. As often happens, during the course of our work which touched a significant number of persons and business units, opportunities arose to provide recommendations in areas not specifically identified in the initial scope or objectives of the report. It is also very important to understand that our identification of various matters and recommendations included in this report does not suggest they were the direct cause of any of the matters under review. However, it is in the purview of the Auditor General's mandate to identify and speak to areas of improvement in efficiency and effectiveness, wherever they are noted.

The recommendations in this report focus on organizational and process improvements that HRM can make. In undertaking the work to complete this report the Auditor General was impressed with the cooperation and work ethic shown by everyone involved. The recommendations are to the organization, not to individuals. The Auditor General has every confidence that HRM will receive this report as an opportunity for continuous growth and improvement.

As the OAG undertook this analysis and throughout the many interviews and discussions which took place, one question which was continually raised was why these events not only occurred but continued to occur.

When projects of this type are undertaken, most would think the conclusion would be the situation occurred as the result of a series of complex, interdependent events, which were well thought out so as to circumvent control systems in place. What the OAG quickly came to understand is, by all measures, quite likely the opposite had occurred. What took place was not difficult to accomplish, was not a series of complex transactions and for the most part was not hidden.

What became complex however, was attempting to explain why the events took place and why rational and responsible individuals acted in what might be described as a cavalier manner. It also became obvious the DCAO (Acting CAO) could not have caused the advances and other matters to take place on his own. It is our view, others needed to be willingly involved (but not necessarily in a malicious or illegal way) for events to have unfolded as they did.

It is important to understand, often the work of the OAG involves making suggestions as to systems which do not exist or are failing. In these cases, recommendations often centre on the development or improvement of appropriate controls systems. However, it is interesting to note this was not entirely

the situation in this case. HRM has many well defined and functional systems of controls in place which, had they been followed, would have mitigated or prevented this situation from occurring.

The OAG also concluded a number of individuals with senior roles in their organizations operated outside of their roles or the systems for which they would normally be expected to participate as one of the controls. Therefore the focus of our recommendations became more of an attempt to move organizations and their management to an improved tone from the top and a culture of complete adherence to regulations, policies and procedures.

Risk and Warning Signals around Risk:

We know there were some cautious, prudent and well thought through risk assessments done initially with respect to concerts leading up to Council adopting a policy. However, it is obvious many people subsequently acted outside normal roles and behaviours. The question of why is the one most difficult to answer. The report speaks at length to issues around governance, general thoughts around risk management and, with “groupthink” as a backdrop, addresses how risk assessments became seemingly overlooked or lacking in the apparent overwhelming desire to offer concerts on the North Common.

The above point is further amplified by another question regarding how experienced individuals or professionals could not have known something was wrong or questionable with their approach or actions. Were there no signals? The simple answer is there were in fact signals. One example is continued risk assessments and monitoring as to performance of each concert opportunity appeared to be deliberately overlooked by individuals who were heavily involved with negotiations and subsequent requests for supplemental funding.

Lack of Detection of Irregular Activity:

As the OAG identified facts around this matter, the Office spent considerable time trying to understand how the series of transactions and events surrounding concerts went undetected for so long. We have concluded most of the answers are relatively simple, but had profound impact. For example:

- as noted in governance literature and papers, often risk management is simply ignored, as “groupthink or behaviour” tends to overshadow sound advice or thinking;
- a single individual thinking outside the “groupthink” has difficulty to be heard. In one instance, concern was raised by an individual around the terms and conditions within the contract with the promoter, however, changes were deferred to future contracts. In another case, concern was raised regarding the relationships between HRM and TCL but no indication was found the concerns were addressed. Likely a single individual who was not in line with the perceived “groupthink” would not be heard as they were the bearer of bad news and this was not what “anyone” wanted to hear;

- there was a misguided sense of what the “groupthink” really was. In other words, the true “groupthink” was likely much more cautious around concerts than was perceived;
- there was a clear lack of “honest” and engaged two-way communications with key stake holders and various business units who had some understanding of matters around concerts. In fact, there was a failure to ask questions on the part of those paid to ask them;
- HRM does not have the appropriate risk management cultures in place. Discussions certainly took place around risks and risk management early on; however it would appear risk management was not a priority and/or practised at all levels;
- as exhibited in this situation, organizations can be prone to accepting the logic, if “it” has worked in the past then, “it has served us well,” and therefore, “it can be expected to work in the future”;
- the theory of risk management would suggest when risks are not properly managed, inappropriate consequences result. In this situation, it would appear two of the risks not managed were the assignment by HRM of persons with appropriate experience in the major events business and those assigned potentially overestimating their capabilities.

Significant Findings and Recommendations:

Corporate Culture:

During the review, we often heard comments similar to: “I wasn’t asked”, “I wasn’t told or didn’t know”, “I made someone aware”, “I drafted a memo”, “not my responsibility”, “I carried out instructions received,” and “these actions will not affect my organization so if someone else wants to do it, it is their business.” This thinking is fundamentally flawed and reflects the culture of organizations which appear to lack an attitude of questioning, follow-up or accountability at the highest levels. A number of recommendations speak to improvement in this area of soft controls.

Recommendation 8.4.1.1.1

The HRM Audit and Finance Committee should adopt as part of its terms of reference an appropriate level of responsibility with respect to soft controls in addition to those controls normally thought of as more measurable or definable.

Recommendation 8.4.2.5

The OAG recommends it be made clear to the current CAO and future CAOs through performance management, that a delegated task is still one where the CAO has full oversight and outcome responsibilities.

Recommendation 8.4.2.7

In keeping with the evolving trend in both the public and private sectors around strong and accepted governance models and codes of conduct, the OAG recommends senior management develop a formal written policy regarding ethics training which would include the mandatory requirement for all staff and elected officials to participate in ethics training on a regular, recurring basis. We understand there is an intended business practice that would see all staff receive ethics and values training as they join the organization; however, we feel the requirements should be formalized, given higher priority, and should be more than a one-time event.

In order to reinforce its importance and to set the “tone from the top”, the OAG also suggests senior management and Regional Council of HRM, lead by example and be the first to participate in the training.

Role Clarity:

The lack of role clarity is pervasive throughout the findings in the report. The issues extend from individuals engaging in activities outside their legislated roles, defined day-to-day responsibilities or in not fulfilling their legislated or authorized roles.

Recommendation 8.4.2.8

The OAG would suggest there may be benefit to a discussion around the need for a clear and strong delineation between oversight on the part of Regional Council and its representatives and day-to-day active management.

Operation and Management of the Halifax Metro Centre:

The Halifax Metro Centre is a HRM asset, managed on their behalf by Trade Centre Limited (TCL), a provincial crown agency. The review identified, among other things, significant issues extending from the limited contents contained within the Memorandum of Understanding (for the operation and management of Halifax Metro Centre), lack of performance measures, lines of authority, oversight responsibilities of both parties and nature of the reporting of activities.

Recommendation 8.2.10.1

The management agreement between the Province of Nova Scotia, Halifax Regional Municipality, and the Trade Centre Limited for the Halifax Metro Centre should be updated to include numerous matters such as the specific levels of authority of all parties, performance measures, reporting requirements, and details of the basis for the compensation of TCL as the management company.

Recommendation 8.2.10.3

In order to ensure adequate and appropriate levels of oversight take place for the Halifax Metro Centre, HRM Administration, likely with the lead of Finance, should develop stated and approved guidelines to govern where and under what methods they feel it appropriate to engage the TCL Board.

Recommendation 8.2.10.18

As management of risk is one of the focal points of this report, it is recommended at least yearly, HRM Administration engage the Trade Centre Limited Board in a structured discussion around risk.

Co-mingled Funds Held in a Halifax Metro Centre Bank Account:

Included under the Trade Centre Limited is Ticket Atlantic, a line department of TCL. The use by Trade Centre Limited of a bank account containing transactions of both the Halifax Metro Centre and Ticket Atlantic (TA) clearly led to the facilitation of the advances made as well as the “repayable grant”.

Recommendation 8.2.4.1

It is recommended any money deposited into, withdrawn or paid from the Halifax Metro Centre bank account should be specifically related to the operations of the Halifax Metro Centre only. Should use of Halifax Metro Centre funds be proposed for purposes other than for the operations of the Halifax Metro Centre, pre-approval should be sought and received from HRM Regional Council.

Recommendation 8.2.10.9

HRM Administration should immediately instruct TCL to update the banking arrangements so the cash transactions for each entity (TCL/TA, HMC) take place in separate bank accounts. This would be in keeping with normal business practices.

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation.

HRM Legal Services:

The significant and primary role of Legal Services in the development and administration of contracts for the Municipality cannot be overstated. Elected officials, operating within a highly specialized and regulated environment such as a municipality must rely heavily upon the advice provided by professionals.

From recent events, it is clear there is not a consistent understanding as to the meaning and/or use of “approved as to form” when a contract has been reviewed by Legal Services.

Recommendation 8.1.4.1.2

The OAG would recommend Regional Council obtain independent advice as to the review standard expected of Legal Services in the review of documents.

Recommendation 8.1.4.1.4

HRM Administration should complete, in conjunction with Legal Services, an immediate review of staffing levels and performance measurements within Legal Services to determine if appropriate staffing is in place to support the total needs of HRM business units.

Included under the Legal Services business unit is the risk management function.

Recommendation 8.4.2.11

Given the enormous complexities which exist in today’s modern public sector, it may be appropriate at this time to consider the overall roles and responsibilities of risk management. To effectively manage all aspects of risk is clearly a significant undertaking. With the implementation of a new risk management tool, this role in the organization will undoubtedly grow and achieve a certain level of independence.

Given worldwide historical events in recent years, the development of the role of Chief Risk Officer was clearly seen as needed and beneficial to the management of organizational risks of all types including financial, reputational and operational.

The OAG recommends the HRM should acknowledge the specialized knowledge required around all aspects of risk and consider the establishment of the responsibilities within a separate role.

Concluding Remarks:

Through the review of this matter, it has become clear there were actions taken by senior individuals which were either outside the Halifax Charter or typical business processes, and/or inappropriate given the experience, training and knowledge they individually held. It is also clear, if these and other individuals were not aware actions were inappropriate, it is our view they should have been aware, given the circumstances, and asked the questions expected of someone in their position and taken appropriate action.

It was difficult for the OAG not to notice there were clear warning signs leading up to the “forgivable grant”. Excluding the matter around advances, etc., it would seem reasonable to conclude there was some general knowledge or there ought to have been knowledge, concerts leading up to the events which took place in the summer of 2010 had not been huge “successes” from a paid attendance perspective and hence financial perspective, which of course heightened the risks for subsequent concerts.

What is most disappointing, given the increased knowledge and experience gained by HRM as successive concerts took place, is no obvious changes to management of risk took place, no obvious changes to the business modelling or forecasting and no enhanced/transparent reporting to Regional Council occurred, despite the request of at least one member of Council.

Clearly in the minds of many, there was a preponderance of thought around how the future will be different and things will improve. While these are, of course, noble thoughts and could be made based upon experience-based changes, we did not see clear evidence of where reports and analysis were prepared and presented to either HRM Administration or Regional Council to assist in the decision making and to guide future actions. It would seem the past was simply discounted on the basis of perhaps a new approach to delivering concerts at smaller venues or special ticket giveaways would be the answer. Apparently, this resulted in possible problems being filtered through “rose-coloured glasses” and hence, “risk dots” which would normally be connected, were simply not.

However, the OAG is pleased to note the immediate and positive impact this report is having on both HRM and Trade Centre Limited. For example, in meetings which are customarily held with involved individuals and organizations prior to the release of a report, we were advised many of the recommendations which involve TCL have either already be implemented or are in the process of being implemented. We were provided with specific information with respect to separate bank accounts and also proposed changes to various governance matters within TCL.

6.0 Management Comments:

After a review of the draft for factual accuracy, and a review of the recommendations, the following comments have been received by the Office of the Auditor General:

Former Director of Finance and CFO – Cathie O’Toole

As the former Chief Financial Officer for HRM, and the individual who initially brought the issue to the attention of the Office of the Municipal Auditor General, I am very pleased with the comprehensive review that was conducted, and am in full agreement with the findings. Great organizations are those that try to learn from mistakes and continuously improve. The origin of many of the governance and process issues raised pre-date amalgamation and I believe HRM as an organization now is mature enough to embrace and implement the findings of this report. Many of the governance and process issues raised do not just pertain to this isolated incident regarding HRM's participation in concert promotions, so acceptance and implementation of the findings will have a broader benefit to HRM.

Director of Legal Services – Mary Ellen Donovan

As the Director of Legal Services for HRM, I support the recommendations that relate to my department. HRM is a professional organization and these recommendations will support us in our efforts towards enhancing the sophistication of HRM processes and controls.

Chief Administrative Officer – Richard Butts

After an initial review of the report, it is my opinion that the recommendations are reasonable. As an organization committed to continuous improvement, the HRM Administration supports the work of the HRM Auditor General and will thoroughly consider and respond to each recommendation.

Mayor – Peter Kelly

The role of the Auditor General is to assist Regional Council in holding themselves and the administration accountable for the stewardship of public funds and for the delivery of services so that to ensure transparency and value for money. I support and will continue to support this important function. This report provides an opportunity for our municipality to take stock and make the appropriate operational changes to maximize the benefits to the taxpayer. I fully accept the recommendations and will work with Council and administration to implement them.

7.0 Table of Contents:

1.	Detailed Findings, Recommendations and Background 8.0	Page 15
2.	Regional Council’s Instructions, Expectations 8.0.1.....	Page 15
3.	Dates and Times of Various Concerts 8.0.2	Page 19
4.	Governance, Relationship between HRM & Trade Centre Limited (background) 8.0.3..	Page 19
5.	What Happened? 8.1	Page 21
6.	General Governance, Controls and Systems 8.1.1.....	Page 21
7.	Supporting HRM Business Activities and Delivery of Programs and Services 8.1.2.....	Page 23
8.	Specific Concert Contract Development 8.1.3	Page 26
	Recommendations	Page 30
9.	Conclusions with Respect to HRM Contracts 8.1.4	Page 30
	Recommendations	Page 32
10.	Responsibilities of Trade Centre Limited and HRM 8.1.5	Page 34
11.	What Would a Reasonable Person Expect? 8.1.6	Page 34
12.	Standard of Care 8.1.7	Page 35
13.	Various Financial Matters 8.2	Page 37
14.	Cost of Concerts to HRM – Value in Kind 8.2.1.....	Page 37
	Recommendations	Page 39
15.	Halifax Metro Centre 8.2.2.....	Page 39
16.	Use and Rental of the Halifax Metro Centre 8.2.3.....	Page 41
17.	Halifax Metro Centre Operations 8.2.4.....	Page 42
	Recommendations	Page 43
18.	Ticket Atlantic – Sale of Tickets 8.2.5.....	Page 44
19.	Ticket Sales and Ticket Atlantic Proceeds – Additional Detail 8.2.6	Page 44
20.	Concerts on the North Common 8.2.7.....	Page 45

21.	Halifax Metro Centre – Other Matters 8.2.8.....	Page 46
22.	Audited Financial Statements 8.2.9	Page 51
	Recommendations	Page 51
23.	Halifax Metro Centre Management Agreement 8.2.10.....	Page 52
	Recommendations	Page 52
24.	Historical Synopsis Found in Various Documents and Email Accounts 8.3	Page 56
25.	2006 Concert Season 8.3.1.....	Page 56
26.	2007 Concert Season 8.3.2.....	Page 57
27.	2008 Concert Season 8.3.3.....	Page 59
28.	2009 Concert Season 8.3.4.....	Page 61
29.	2010 Concert Season 8.3.5.....	Page 64
30.	Trade Centre Limited Involvement, Knowledge and Participation 8.3.6.....	Page 69
31.	Venue Provider to Financial Backer 8.3.7	Page 69
	Recommendations	Page 70
32.	Conclusions with Respect to Historical Synopsis 8.3.8	Page 70
33.	Internal Controls - Soft Controls 8.4	Page 72
34.	Governance 8.4.1	Page 72
	Recommendations	Page 74
35.	Specific Comments with Respect to Risk Management 8.4.2.....	Page 80
	Recommendations	Page 83
36.	Phase 2 Reporting 9.0	Page 86
37.	Summary of Recommendations.....	Page 87
38.	Abbreviations	Page 96

Detailed Findings and Recommendations

8.0 Background:

8.0.1 Regional Council's Instructions, Expectations

The decision by Regional Council to allow concerts on the Halifax North Common clearly was undertaken with considerable discussion and input from staff. As examples, Council meetings of March 6, 2007 and July 31, 2007 provide a sense of the deliberations which took place.

March 6, 2007 meeting of Regional Council:

The following are some relevant facts or decisions taken from the minutes of the March 6, 2007 meeting:

- A report dated February 20, 2007 was before Council which dealt with the Memorandum of Understanding between HRM and Events Halifax regarding Major Outdoor Concerts.
- A decision was made to continue to support the North Common as an outdoor concert site for "major concerts".
- Regional Council approved the Memorandum of Understanding with Events Halifax as an interim agreement to address the immediate requests from concert promoters.
- Regional Council adopted, as policy, the approach contained on pages 6 and 7 in the February 20, 2007 report as the basis to evaluate requests for future concerts on the North Common.
- Regional Council gave staff the authority to begin negotiating a draft contract with Events Halifax pursuant to the MOU protocol, for two tentative concerts: August 18 and September 1, 2007.
- Regional Council approved an allocation of funds (to a maximum of \$100,000) to offset the municipal service costs.

Events Halifax was created in 1998, when Trade Centre Limited gained approval and funding from the Nova Scotia Department of Economic Development & Tourism. At the time of its creation, Events Halifax was dedicated to the identification and pursuit of major cultural and sporting events, both national and international, which could be attracted to HRM.

Within the Council report of March 6, 2007, there is a comment to the effect "this policy further places concerts as a legitimate use on [sic] the Commons." The report goes on to say "... in order to make a decision around a major concert for the Common, Council needs to understand the direct and indirect economic benefits in such an event, opportunities to promote the city and facilitate enjoyment, health and wellness by its citizens."

The report further notes, “that as outlined in the December 5, 2006 Information Report –Rolling Stones Summary report, two pieces of information still outstanding would need to be addressed before any future concerts are permitted on the Common”. One outstanding criterion was a determination of Council’s support to use the North Common as an outdoor concert site for “major events.” The second is the more interesting of the two criteria noted, “because both HRM and Events Halifax are inexperienced in organizing major concerts on the Common a Memorandum of Understanding was recommended to assist in defining clear roles and decision making protocol.” The question of roles and role clarity is also noted later in this report as a major factor in events leading up to the decisions to make advances on (future) ticket sales and finally to make a “forgivable grant”.

The report to Council of March 6, 2007 went on to suggest to Council a recommended approach to be used in considering future major events on the Common. It suggested the acceptance of the Halifax Common Use Policy as the basis of all decisions. Further recommendations included the following:

- each major concert be considered on a case by case basis;
- in making decisions, Council have available and review reports of all previous concerts on the Common from HRM Special Events Task Force;
- Council consider opening the North Common for major concerts projected to attract 40,000 persons or more. Concerts of 10,000 and under should be directed to the Halifax Metro Centre and concerts of 10,000 to 30,000 be directed to Citadel Hill.

The March 6th report also speaks to HRM’s preparedness to stage major events. Under the heading “Proposed MOU,” a comment is made, “The Rolling Stones concert was undoubtedly a great success, yet the process leading up to the actual event cannot be characterized in the same manner.” The report further says, “although the Common Use Policy outlines the requirement for Council’s permission to use the Common for commercial uses, beyond this there is no clear direction for hosting major concerts in HRM. Moreover, although HRM had hosted many major events, this was the first major concert on the Common, so a frame of reference for decision making, negotiations, etc. did not exist.”

The report outlines what was believed to be a reasonable approach to responding to opportunities for future concerts. It recommends, among other things:

- creation of a Major Events Hosting Strategy to help clarify HRM’s future role in major concerts;
- in the absence of a Major Events Hosting Strategy an interim protocol as suggested, centred around the MOU between HRM and Events Halifax be used;
- the possible use of the Special Events Marketing Levy Fund Reserve to support events given the clear linkages to economic and tourism development.

A number of points in the narrative are very interesting. One of these deals with financial and other risks. It suggests the MOU with Events Halifax will have as one of its benefits “a supportive concert

hosting environment while at the same time avoid placing Council in the difficult position of making financial decisions without a full understanding of risks and implications, as was the case with the Rolling Stones concert.” The report suggested the MOU requires Council to provide an indication of support early on, but also requires a contract be in place before the concert is announced so as to ensure the full extent of risk is understood and has been adequately addressed. Clearly the OAG is in complete agreement with this sound thinking and clearly the need for approved and vetted contracts being in place prior to the announcement of a concert is central to many of the recommendations which flow from this report.

July 31, 2007 meeting of Regional Council:

It would seem HRM Regional Council next became involved with the undertaking of concerts on or about July 31, 2007. At that time Regional Council agreed to:

- allow two major concerts to take place between mid-September and mid-October,
- authorize staff to approve proposed concerts and dates,
- authorize staff to contract on Council’s behalf.

Council stipulated they also expected staff to return with the financial details.

November 7, 2007 meeting of Regional Council:

It would seem the true genesis for the series of concerts actually held on the North Common commenced on November 7, 2007. Regional Council met on this day in a “special in camera meeting”. Mr. Wayne Anstey (Deputy Chief Administrative Officer) and Mr. Andrew Whittemore (Manager, Community Development) addressed Regional Council and provided a presentation concerning recent opportunities for holding concerts on the North Common. Highlights of the presentation from the minutes of this meeting included:

- It was felt a concert on the North Common would need to be broadened into more of a cultural event rather than just a “pop” event.
- It was pointed out the major concert business was becoming very competitive in Atlantic Canada. It was noted one other city was “aggressive” in pursuing major artists.
- The possibility of three shows in the summer of 2008 was brought forward: one a country show, the second a rock show, and finally one with a major international star. Due to the need for confidentiality, no names of potential performers were mentioned.
- It was pointed out clearly, with respect to funding, Council would not be exposing the taxpayers to any financial risk as HRM assistance would be coming from “the hotel tax reserve” (the Marketing Levy).
- It was noted the Province of Nova Scotia had committed \$150,000.

By the conclusion of this meeting, Regional Council had recommended an amendment to the Civic Events Policy to approve three concert dates on the North Common during 2008.

Regional Council further approved:

- The authority to contract with any promoter for the use of the North Common on the dates discussed and for any future dates and concert seasons be delegated to the Mayor and Chief Administrative Officer.
- The above was on condition, the funding for any municipal costs would be provided from the Special Events Marketing Levy Fund Reserve.

Extract of Regional Council Minutes - November 13, 2007

14.3 Contractual Matter

- This item was addressed the November 7, 2007, In Camera session and was now before Council for ratification.

MOVED by Councillor Murphy, seconded by Councillor Sloane, that Regional Council amend the Civic Events Policy to approve the three concert dates on the Commons during the 2008 outdoor concert season presented to Council by staff on November 6, 2007, and that the authority to contract with any promoter for the use of the Commons on those dates as well as approval of any further dates and contracts in 2008 and future concert seasons be delegated jointly to the Mayor and Chief Administrative Officer, provided that any funding of municipal costs associated with the concerts be funded through the Civic Events Reserve.

MOTION PUT AND PASSED.

The November 13, 2007 instructions changed the Civic Events Policy established by Regional Council articulated in the July 31 and March 6, 2007 meetings. This change in policy materially affected the level of oversight of the concert process by Regional Council from more active participation to a more passive approach with less reporting and follow-up and much less transparency. This reflects a determination of Regional Council to streamline the process of approving the use of the North Common for major events.

8.0.2 Dates and Times of Various Concerts

Date	Artist	Promoter
September 23, 2006	Rolling Stones	Donald K Donald, Events Halifax, Trade Centre Limited
August 30, 2008	Keith Urban	Power Promotional Concepts
July 11, 2009	Paul McCartney	Power Promotional Events
July 18, 2009	KISS	Power Promotional Events
July 24, 2010	Black Eyed Peas	Power Promotional Events
August 7, 2010	Alan Jackson	Power Promotional Events

8.0.3 Governance & Relationship between HRM and Trade Centre Limited (background information)

To assist in understanding the governance aspect of the why question, the various assets and relationships involved should be outlined.

- The Halifax Metro Centre is an HRM owned asset which is situated on municipal land holdings. A small portion of the World Trade and Convention Centre co-exists on Halifax Metro Centre property.
- The Halifax Metro Centre was constructed essentially by the Province of Nova Scotia with the majority of funding coming from the Province.
- Trade Centre Limited (TCL) is a Provincial Crown Corporation which operates - among other things - the World Trade and Convention Centre, Events Halifax and Ticket Atlantic.
- TCL, under agreement, operates the Halifax Metro Centre on behalf of HRM and has done so for many years.
- The agreement which governs the operation and management of the Halifax Metro Centre contains limited guidance on the operations of the Halifax Metro Centre.
- The agreement governing operations does not contain, nor were we ever provided with, any documented performance measures which HRM uses to evaluate the performance of TCL in managing the Halifax Metro Centre.
- The Board of TCL operates as the Board for the Halifax Metro Centre.
- The Board of TCL has as members the Mayor and three councillors from HRM.
- All of the record keeping for the Halifax Metro Centre takes place at TCL under the direction of a Chief Financial Officer, who also has a Controller reporting to her.

- The financial reporting with respect to Halifax Metro Centre operations appears to be at the discretion of TCL and is on a non-scheduled basis other than the yearly audited financial statements.
- The HRM Finance business unit has little or no involvement with the ongoing accounting of the Halifax Metro Centre and receives a copy of the year end audited financial statements for inclusion in the HRM audited financial statements.

Since inception of the Board of TCL in 1982, municipal councils have appointed elected officials to the Board; three councillors and the position of Mayor. Councillors are appointed for two- year terms while the position of Mayor appears to be a continuous appointment. During the period under review (2006 – 2010) the following members of Council have sat on the Board of Trade Centre Limited.

Year	Member of Council	Year	Member of Council
2005	Mayor Peter Kelly Councillor Sheila Fougere Councillor Russell Walker Councillor Len Goucher	2008	Mayor Peter Kelly Councillor Brad Johns Councillor Gloria McCluskey Councillor Jim Smith
2006	Mayor Peter Kelly Councillor Stephen Adams Councillor Reg Rankin Councillor Linda Mosher	2009	Mayor Peter Kelly Councillor Brad Johns Councillor Gloria McCluskey Councillor Jim Smith
2007	Mayor Peter Kelly Councillor Stephen Adams Councillor Reg Rankin Councillor Linda Mosher	2010	Mayor Peter Kelly Councillor Bill Karsten Councillor Jerry Blumenthal Councillor Dawn Sloane

One of the issues at the centre of this review is the “transfer of funds” from Ticket Atlantic, a TCL asset, to the Halifax Metro Centre, an HRM asset. As will be discussed in another section of the report, the use of an “essentially co-mingled” bank account is a clear signal of how close the two organizations were thought to be by TCL, both from an operational and governance perspective.

8.1 What Happened?

8.1.1 General Governance, Controls and Systems

8.1.1.1 HRM Governance - Powers of Council

The powers of the Municipality are exercised by Council, not by individual Council members or the Mayor. Council has the right to instruct its staff to carry out activities and spend funds on behalf of the constituents who have elected them with the stated purposes:

1. to provide good government,
2. to provide services, facilities and other things that, in the opinion of the Council, are necessary or desirable for all or part of the Municipality, and
3. to develop and maintain safe and viable communities.

Instruction/direction to staff occurs through the development of policies reflected in duly approved by-laws, administrative orders and motions of Council. Individual Council members are restricted, by Charter, from instructing or directing staff except through Council or through the Chief Administrative Officer.

The position of Mayor, in addition to being an elected member of Council, has the primary role of presiding over all official meetings of Council. As well, under Section 12(3) the Mayor may:

- (a) Monitor the administration and government of the Municipality; and
- (b) Communicate such information and recommend such measures to the Council as will improve the finances, administration and government of the Municipality.

Therefore, staff should not respond to individual directives from an individual member of Council falling outside of prescribed policies. Nor should a member of Council request or expect a member of staff to act outside of the established policies of Council. On the other hand, the Mayor of a municipality may be obligated, once he/she has determined it appropriate to “monitor the administration and government”, to report back to Council with information or recommendations “as will improve the finances, administration and government of the Municipality.”

8.1.1.2 HRM Governance - Authority and Role of Chief Administrative Officer

The Chief Administrative Officer (CAO) holds the highest ranking administrative authority and reports directly to Regional Council. The CAO is responsible for executing the strategic direction of Council, within the mandate given the Municipality by the Province of Nova Scotia. It is to the Chief Administrative Officer that Council’s directions and strategies are given. Section 34 of the Halifax Regional Municipality Charter states:

(2) The Council shall communicate with the employees of the Municipality solely through the Chief Administrative Officer, except that the Council may communicate directly with employees of the Municipality to obtain or provide information.

(3) The Council shall provide direction on the administration, plans, policies and programs of the Municipality to the Chief Administrative Officer.

(4) No Council member, committee or member of a committee established by the Council shall instruct or give direction to, either publicly or privately, an employee of the Municipality.

Furthermore, under Section 35(2)(d)(i) of the Halifax Charter, the Chief Administrative Officer(CAO) , “subject to policies adopted by the Council” may enter into contracts on behalf of the Municipality for anything required for the Municipality, where the amount of the expenditure is “budgeted or within the amount determined by Council.” The CAO has the authority to delegate this responsibility and HRM has established a signing authority protocol giving certain positions the authority to enter into contracts falling under a certain value. The authority to enter into contracts for concerts occurring on the North Common was delegated by Dan English, the then CAO, to Wayne Anstey, the then Deputy Chief Administrative Officer who would have assumed the signing authority of the CAO for this activity as set out by Council.

8.1.1.3 HRM Governance - Authority and Role of Directors of Departments

Under the Halifax Regional Municipality Charter, Section 36 (1) directors of business units are accountable to the Chief Administrative Officer for the performance of their duties and must submit reports and recommendations to and through the CAO. However, there are certain circumstances and positions held in the Municipality where this reporting mechanism can vary. For example, under Section 36 (3) where a director disagrees with a recommendation of the Chief Administrative Officer, they may provide their objections to the Chief Administrative Officer who “shall” present them to Council.

The Municipal Solicitor has even more independence in their positional authority to report to Council without going to or through the Chief Administrative Officer. Section 36 (2) states:

A report or recommendation from the solicitor of the Municipality shall be presented to the Council by the solicitor and the Chief Administrative Officer shall be informed of the contents in advance of the presentation to the Council, unless the report or recommendation is with respect to the Chief Administrative Officer.

This clause would suggest there is a greater obligation placed on the position of Municipal Solicitor by providing for the mechanism to by-pass the Chief Administrative Officer when circumstances, in the solicitor’s opinion, warrant. It also clearly points out that the ultimate responsibility of the Municipal Solicitor is to Regional Council.

8.1.2 Supporting HRM Business Activities and Delivery of Programs and Services

8.1.2.1 Contract Development

Council has also established policies such as the HRM Procurement and Claims Settlement Policies which set financial limitations on the CAO's signing authority and also provide guidance around acceptable business practices to support the ability of the Clerk and CAO to effectively discharge their duties. One such business practice is the development and execution of contracts. In keeping with Council's direction, subject matter experts from the various business units and Legal staff sometimes work together to draft the terms and conditions proposed in the contract. These terms and conditions are negotiated between the parties (in the case of major contracts with full involvement of Legal staff), the final contract is prepared or reviewed by Legal staff, then "approved as to form" and/or approved as to content and signed by HRM representatives – normally the Mayor and Clerk - and the contracting party. According to information provided to the OAG and a review of the circumstances around this matter, while there appear to be reasonable control mechanisms in place, the process is not always followed. In this case, they appear not to have been followed due to managerial (DCAO) override. This finding will be explained further in this report.

8.1.2.2. "Approved as to form" – Legal Services Business Practice

The term "approved as to form" has come under scrutiny during this review. It would appear there are degrees of approval used within Legal Services. According to the Director of Legal Services, one process includes a review of a document and is "approved as to form" which is described below:

In the context of municipal government "approval as to form" means that to the extent that Legal is made aware of what the intention of the parties is, the document reflects that. This awareness may be through a review of the council report, or otherwise depending on the circumstances.

The Director goes on to say, alternatively, Legal Services can review a contract and approve it as to content.

..where Legal Services is engaged in the writing of the contract, Legal Services is in a position to "approve as to content" because the author of a contract always has an in depth knowledge of the intention of the parties.

According to the Mayor's Office, a contract will only be signed by the Mayor if it has been reviewed by Legal Services and stamped "approved as to form". The assumption of the Mayor's Office is "approved as to form" means Legal Services has reviewed and approved as to content and "they were okay for the Mayor's signature". This understanding of what "approved as to form" means seems to be different from that of Legal Services, as described by the Director.

Despite the understanding documents have to be stamped as “approved as to form” prior to the Mayor signing, only four of the six contracts under review by the OAG and signed by the Mayor had, in fact, been stamped “approved as to form”, prior to affixing his signature.

8.1.2.3 Signatories to Legal Documents

By Charter, Halifax Regional Municipality is required to designate an employee of the Municipality to perform the duties of the Clerk. Among the Clerk’s duties is the responsibility to keep safe certain original records of the Municipality and to certify, where an original municipal record is not available, that a reproduction is part of the records of the Municipality and “a true reproduction” of the original record. In addition, where it is necessary to prove the authority of an employee of the Municipality, the Clerk may give a certificate confirming proof of the employee’s authority. A false certificate issued by the Clerk could result, upon conviction, in a fine or imprisonment upon default of payment of any fine. All of this points to the seriousness of the role of the Clerk in producing and validating certain documents, contracts being but one type. The Clerk holds the official seal which, once a document is signed by the Mayor and Clerk, is affixed to the document. The original signed and sealed contract is safeguarded in the Clerk’s office.

Section 10 of the Halifax Regional Municipality Charter states,

(3) The Mayor and Clerk or the persons designated by the Council by policy may sign a deed or other document to which the Municipality is a party on behalf of the Municipality.

When Council gave the authority to contract to the Mayor and CAO on November 13, 2007 did they also intend for the Mayor and CAO to be signatories to the contracts and bypass the usual process? The answer to this question is not clear.

As will become clear from this report, the aforementioned safeguards and governance controls provided for under the Halifax Regional Municipality Charter and various policies of Council appear to have been ignored or overridden in various degrees, by some parties participating in the development and implementation of major concerts on the North Common and contracting on behalf of the Municipality.

8.1.2.4 Contract – Cash Advance Clauses

It is important to note the revised contract for the Keith Urban Concert (Section 8.1.3.2) which included a cash advance clause, was reviewed by Legal Services, as were the contracts for the Black Eyed Peas and Alan Jackson concerts.

In its original form, the cash advance clause in the contract for the Keith Urban concert was as follows:

HRM agrees to use its best efforts in cooperation with the Promoter to arrange for Ticket Atlantic, the ticket sales agent intended to be engaged by the Promoter, to advance to the Promoter against ticket sales the amount of \$300,000.

In its revised form, in the contract for the Keith Urban, Black Eyed Peas and Alan Jackson concerts, the clause started:

HRM agrees to arrange for Ticket Atlantic, the ticket sales agent intended to be engaged by the Promoter, to advance to the Promoter against ticket sales the amount of \$300,000, the said sum to be repaid from the initial ticket sales in respect of the concert.

We are advised by Legal Services they did not have a concern with the cash advance clause in their review. They felt the clause itself, while somewhat unusual and probably unenforceable, did not pose any risk for the Municipality. Their reading of the clause was that it allowed the Municipality to make arrangements with Ticket Atlantic which was a service claimed and operated by Trade Centre Limited, the Provincial Crown Agency, to advance provincial funds against ticket sales to the extent of \$300,000 and not HRM funds. In fact, it would appear the funds used for the most part for the cash advances were not funds from the operation of the Halifax Metro Centre but rather funds from the operation of Ticket Atlantic. To the extent that arrangements were made for Halifax Metro Centre funds or funds exceeding \$300,000 to be advanced, this unauthorized action would not be within the contemplation of this clause. We were again advised by Legal Services there appears to be no contractual basis for the DCAO to make any of the numerous agreements for the cash advances involving the use of the Halifax Metro Centre funds.

8.1.2.5 Ticket Sale Updates

Up to the KISS Concert in 2009, there was a requirement included in all contracts under “General Conditions” for the promoter to provide “weekly updates on the total number of tickets issued, on every Monday morning between the signing of this contract and the Event. This information shall remain confidential and be provided to Halifax Regional Police only.” The purpose of this update was to ensure policing coverage was sufficient leading up to, during the event and subsequent dispersal of concert attendees and to monitor potential revenue resulting from ticket sales.

However, for the 2010 concert contracts a change in wording occurred regarding who was to receive the weekly updates. Found in both the Alan Jackson and Black Eyed Peas Concerts contracts under Section VII (62) “General Conditions”, is the following wording around updates:

The Promoter shall provide HRM monthly updates on the total number of tickets sold on every Monday morning between the signing of this contract and the Event until 30 days before the date noted in Section 2(a) at which time weekly updates will commence. Alternatively, the Promoter shall provide HRM proxy to obtain this information directly from the ticket agent. HRM shall keep this information confidential among senior staff.

It is not clear the reason for the wording changes but these changes do suggest HRM senior staff was or could have been aware of the progress of ticket sales during the 2010 concert season and, perhaps, had sufficient time to address emerging risks and issues.

8.1.3 Specific Concert Contract Development

8.1.3.1 2006 Rolling Stones Contract

In the case of contracts pertaining to the use of the North Common for large musical events, Legal Services worked with staff to develop terms and conditions in compliance with Council's direction in 2006. There was to be no financial risk to HRM and the asset had to be returned to its original state. A contract was entered into with Events Halifax who was contracted to bring the Rolling Stones to the North Common. Legal Services were fully involved in the contract development. The final contract was "approved as to form," by Legal Services, signed by the Mayor and Clerk and an original document filed in the Clerk's Office. This approach appears to be in keeping with Council's direction and the positional roles set out in legislation. Germaine to this review, there was no inclusion of a clause granting the promoter a cash advance on tickets sales for this concert.

8.1.3.2 2008 Keith Urban Contract

Although there were no concerts held on the North Common in 2007, a great deal of discussion occurred which included Legal Services staff. In October 2007, Legal Services was asked to draft a contract for the Keith Urban concert to be held on August 30, 2008. Based on records located and reviewed by the OAG, Legal Services prepared a draft document, dated November 2, 2007, which was subsequently changed by then DCAO, Wayne Anstey, into a version dated November 14, 2007 which suggested HRM would use its best efforts to provide the promoter an advance against ticket sales.

This version was reviewed and amended by Legal Services and returned to the Mayor's Office. However, unbeknownst to Legal staff, a third version, dated November 15, 2007, was circulated among staff which included additional changes, culminating in the final November 23, 2007 signed contract. It is unclear where version control of the contract resided as changes were made to the contract after Legal Services reviewed it. This is of great concern to the OAG. The final version was signed by the promoter, CAO and Mayor and still included the cash advance clause. The cash advance clause had been amended to state that:

HRM agrees to arrange for Ticket Atlantic, the ticket sales agent intended to be engaged by the Promoter, to advance to the Promoter against ticket sales the amount of \$300,000, the said sum to be repaid from the initial ticket sales in respect of the concert.

This appears to have changed the context of the clause from relatively benign assistance, to HRM making a concerted effort on behalf of the promoter. The final contract was not "approved as to form" by Legal Services, nor was the contract filed with the Clerk's Office which is not in keeping with the prescribed roles and responsibilities assigned to the parties and as described previously.

It should also be noted the foregoing activities occurred shortly after a "special in camera meeting" of Council held on November 7, 2007, ratified November 13, 2007 in open Council, authorizing the CAO

and Mayor to “contract with any promoter for the use of the Commons.” Although not specified, but based on the past practice of staff returning to Council to gain final approval to the terms of other contracts where there is a material change, including the Rolling Stones Contract, prior to sign off by the Clerk and Mayor, one could presume this was an expectation. However, this and all of the following contracts were signed by the CAO and Mayor and not the Clerk and Mayor as normally prescribed, and without further review and approval of Regional Council.

8.1.3.3 2009 Paul McCartney and KISS Contracts

Legal Services involvement with the Paul McCartney and KISS concerts can best be described as limited or essentially non-existent. Legal Services had no involvement in the drafting, reviewing or signing of the KISS concert contract and only received a copy on February 16, 2009, after it was forwarded to Legal Services by another staff member. This contract had been signed by all parties on November 28, 2008. It had not been stamped “approved as to form.” Included in this document was a clause to advance funds against ticket sales through Ticket Atlantic. This is an important point which will be discussed later in this report.

The final contract between HRM and the promoter for the July 11, 2009 Paul McCartney Concert was signed on June 17, 2009 by the promoter but not signed by HRM until June 25, 2009 by then CAO, Dan English and by the Mayor on July 9, 2009. This contract was forwarded to Legal Services on July 8, 2009 by the Mayor’s Office because it had not been stamped “approved as to form.” The documents arrived from the CAO’s office not the Clerk’s Office which is outside the normally prescribed process. The normal business practice is for the Clerk to receive two original copies of a contract from Legal Services that have been “approved as to form” to be signed by the Mayor and Clerk. The documents are logged when they are first received in the Clerk’s Office, logged when they are forwarded to the Mayor’s Office for signature and, finally, when returned to the Clerk’s Office for safekeeping. The Clerk affixes his/her signature only after the documents have been signed by the Mayor and prior to safekeeping. The Clerk’s Office has confirmed only the Rolling Stones Concert contract followed the established business practice. None of the other concert contracts signed after the November 13, 2007 direction from Council flowed through or to the Clerk’s Office for signature and safekeeping, again contrary to prescribed processes and roles.

Prior to receiving the request from the Mayor’s Office to “approve as to form” and prior to the Mayor affixing his signature, Legal Services had obtained a copy of a draft contract on June 22, 2009 from Mr. Anstey who advised the contract had been already provided to the promoter. In fact, the contract had already been signed by the promoter and returned to Mr. Anstey on June 18, 2009 according to email records. The contract Legal Services received and reviewed on July 8, 2009 from the Mayor’s Office had already been signed by Mr. MacKay and then CAO Dan English. Subsequent to the review of this contract it was pointed out to Mr. Anstey there was a discrepancy between numbers, which was corrected and the contract then “approved as to form.” It was this version that was signed by the Mayor on July 9, 2009, forwarded to the Clerk’s Office and placed on file, following a portion of the prescribed

process. A review of the draft and final contract for the Paul McCartney Concert did not include a clause relating to cash advances.

8.1.3.4 2010 Black Eyed Peas and Country Rocks Contracts

Following the concerts held during the summer of 2009, Legal Services raised concerns with HRM staff and Mr. Anstey around insurance and indemnity provisions included in the prior contracts in light of on-the-ground practices which had developed since the 2006 Rolling Stones concert. Legal Services followed up with Mr. Anstey in April 2010 who made the decision to change future contracts (post 2010) “since this years [sic] contracts were already signed using the old form”. Legal Services accepted Mr. Anstey’s position.

Shortly after a press release on December 2, 2009 announcing the Country Rocks Concert was to occur on the North Common in August 2010, Legal Services contacted staff to obtain information and offer assistance in the development of contracts for the upcoming season. Legal Services received a copy of a “draft” contract by email, dated March 23, 2010. Following its review, Legal Services inquired as to the status of the contract negotiations and were advised by a staff person “HRM was committed to the concerts.” Legal Services followed up on the above noted conversation in April 2010 with Mr. Anstey. However, the Country Rocks and Black Eyed Peas Concert contracts appear to have been drafted by Mr. Anstey, according to HRM staff and signed by the promoter on January 15, 2010 and March 29, 2010, respectively.

On June 25, 2010 Legal Services was contacted by the Mayor’s Office to “approve as to form” the two 2010 concert contracts. When the contracts arrived in Legal Services they had already been executed by Mr. English on June 25, 2010, prior to his retirement. Included in both final contracts was a clause providing a cash advance against ticket sales. These contracts were “approved as to form” by Legal Services, returned to the Mayor’s Office for signature and returned to the CAO’s Office, not the Clerk’s Office as is the prescribed process. Legal Services followed up their review with a memo to the then Acting CAO, Mr. Anstey.

There was no comment regarding the “cash advance clauses” as Legal Services believed any risk associated with the advances would rest with the third party providing the advances. They have advised they believed if the third party chose not to participate, HRM would not be liable.

8.1.3.5 Advance Agreements and Guarantees

In addition to the event contracts which included clauses addressing cash advances, cost recoveries and other municipal charges entered into by the DCAO and Mayor on behalf of HRM, the DCAO also entered into other agreements with the promoter and Trade Centre Limited using the Halifax Metro Centre bank account, leading up to concert events. Unbeknownst to Regional Council or Legal Services, Mr. Anstey entered into numerous agreements between 2008 and 2010 to provide additional cash advances against

current or future ticket sales. Legal Services and Regional Council were not made aware of the advance agreements or advised of the associated financial risk, apparently assumed by the HRM.

Each of these agreements appears to have been executed and signed by Mr. Anstey with the full knowledge of Trade Centre Limited. In addition, for the Keith Urban concert, there were two separate advance payments made to PPE totalling \$650,000 which were made without Mr. Anstey's approval, based on approval by Mr. Scott Ferguson, then Executive Vice President of Trade Centre Limited.

Had Trade Centre Limited not been an active participant in the process of providing cash advances through the Halifax Metro Centre bank account, this activity would not have been able to take place in this manner, much less continue for three years.

Some advances were covered by agreements which included some form of guarantee for repayment from Mr. Harold MacKay, Power Promotional Events and his partner, Mr. Edgar Goguen and/or Mr. Goguen's company, Arrow Construction Products Ltd., which could be invoked should the value of ticket sales not meet the total of the advances given on the tickets or where the cancellation of a concert required refunds back to the purchaser. We found no documentation to show a reasonable level of due diligence was taken on behalf of HRM to confirm the viability of Mr. MacKay or Mr. Goguen's financial ability to cover advances which ranged, from time to time, from a value of \$300,000 to over \$3,850,000. (We have included the \$3,850,000 payment here as an advance because the guarantee issued by the Province of Nova Scotia was to Paul McCartney directly and had likely no ability to protect HRM. In addition, the funds were not transferred to an escrow account as was instructed by Mr. Anstey.) In fact, a review of various documents and email suggests otherwise, as the desire for additional funding was a topic of frequent discussion between HRM, Trade Centre Limited and representatives of the Province both prior to and after each concert occurring in 2008, 2009 and 2010. There were sufficient "red flags" raised early in the relationship to suggest HRM/TCL should not have continued to advance cash against or on ticket sales. By doing so, HRM effectively transitioned from a supplier of a venue to the financial backer of the concerts, risking taxpayers' money.

8.1.3.6 Signatories to Advance Agreements

The November 13, 2007 resolution of Council allowed the CAO and Mayor "to contract" with promoters for the use of the North Common. This would suggest any valid contract entered into by HRM with a promoter relating to the use of the North Common should have been signed by both Mr. Anstey and the Mayor. The additional letters of agreement and guarantee executed by Mr. Anstey were only signed by Mr. Anstey and may, therefore, not have been binding documents.

8.1.3.7 Final Letter of Agreement and Guarantee

As long as each cash advance was able to be supported by ticket sales and the concert was not cancelled, it was thought by the parties there was little risk of exposure from the actions taken. However, in the last days leading up to the 2010 concerts, it seems ticket sales were well below the

estimated 40,000 per concert originally proposed. Discussions began in earnest with the Province of Nova Scotia to provide financial support. A decision was made, apparently by Mr. Anstey, to enter into another letter of agreement with Power Promotional Events to advance cash through the Halifax Metro Centre, even before receiving word the Province was not prepared to provide financial support. The concerts appeared in jeopardy of being cancelled at this point in time. Mr. Anstey agreed to a “repayable grant” component should ticket sales not meet a certain threshold. This occurred unbeknownst to Legal Services or Regional Council. The wording in the agreement was similar to wording proposed by Mr. Anstey in an earlier email to the Province of Nova Scotia in 2007 with respect to a potential concert for 2008. As events unfolded, the sale of tickets was well below the non-repayable threshold and Power Promotional Events was not required to repay the grant totalling \$400,000 advanced by TCL by way of the Halifax Metro Centre bank account, and authorized by HRM. TCL later invoiced HRM, on Halifax Metro Centre letterhead, directly addressed to Mr. Anstey, who was unable to make payment from the HRM without involving the Director of Finance and Regional Council.

Recommendation:

8.1.3.7.1 With respect to any future concerts or events where HRM is involved in any way with respect to contracts, the OAG recommends the practice of issuing cash advances not be allowed or supported by HRM. We believe they are in violation of the HRM Charter or the spirit of the Charter and go beyond the instructions given by Council regarding funding: “provided that any funding of municipal costs associated with the concerts be funded through the Civic Events Reserve”.

8.1.4 Conclusions with Respect to HRM Contracts

8.1.4.1 Contract Development and Approval

Are the established processes and current staffing of Legal Services sufficient to suggest a prescribed and acceptable legal review process exists within HRM? A cursory review of business units and programs availing themselves of legal advice and services includes:

- Transportation and Public Works - Real Estate - property sales, leases, alternate service delivery contracts
- Community Development - Facility Management Agreements, alternate service delivery contracts, Development Agreements, zoning changes, planning appeals
- Finance - Tax sale, grants-in-lieu challenges, deed transfer taxes, collection of unpaid general revenues, tender documents, Request for Proposal contracts
- Infrastructure and Asset Management - contracts specific to facility management, design and construction,

- Human Resources – legal advice on labour negotiations, collective agreements, grievances, employment contracts, work place rights complaints, human rights complaints
- Fire Services - Fire Investigations, M100 bylaw infraction prosecutions
- Police Services - Various regulatory infraction prosecutions, Police Review Board appeals
- CAO - Administrative Orders 40 and 41, advice and process review
- Insurance services - Personal injury and property damage
- Business Planning & Information Management - records management & FOIPOP issues, contracts

A clearly defining feature of these events is the fact that Mr. Anstey is a qualified solicitor (Queen's Counsel) whose prior employment in municipal government included the position of Municipal Solicitor. His prior duties would have included the development and execution of contracts for the Municipality and the management and oversight of Legal Services. As Acting CAO, Mr. Anstey was not contracted by the Municipality to perform legal duties, nor was he expected to act as the Municipal Solicitor. However, given Mr. Anstey's vast legal experience, he was well able to craft a legal document which others might understandably be able to rely upon. Mr. Anstey, as a lawyer, would have an obligation to bring his experience to bear in any work undertaken for his employer, regardless of the position he held. One could also rightly argue Mr. Anstey knew the legal limitations of his position, signing authority and his obligation to act in the best interests of his employer, the Halifax Regional Municipality. In fact, Mr. Anstey has publically admitted this.

The significant and primary role of Legal Services in the development and administration of contracts for the municipality cannot be overstated. Elected officials, operating within a highly specialized and regulated environment such as a municipality must rely heavily upon the advice provided by professionals. We were advised by legal counsel for the OAG, in terms of the role of the Municipal Solicitor the responsibilities would include activities and processes to:

1. ensure information and material presented to Regional Council, to the extent of their knowledge, is legally correct;
2. raise, analyze and identify concerns of the operations within the municipality where there may be instances or occasions of non-compliance with the Charter, other statutes and municipal policy; and
3. provide an oversight and reporting function to ensure Council's directions are honoured, for example contracts reflect council's wishes.

From recent events, it is clear there is not a consistent understanding as to the meaning and/or use of "approved as to form" when a contract has been reviewed by Legal Services. There appears to be significant differences between a contract reviewed as to form and as to content. An approved to content review appears to provide a more comprehensive and robust approval process. Currently there is no consistent involvement, nor does Legal Services believe they have sufficient resources, to review

and approve all contractual obligations entered into by HRM through various business units. In fact, there is some anecdotal evidence to suggest some business units regularly contract without Legal Services seeing or approving the contract. There are no policies in place governing the prescribed timeframe or type of contract requiring Legal Services to be involved.

Recommendations:

- 8.1.4.1.1 HRM Administration should review and identify all potential work processes where legal advice should be sought; develop and implement a mechanism to ensure all issues requiring legal assistance are adequately captured and followed up on.
- 8.1.4.1.2 The OAG would recommend Regional Council obtain independent advice as to the review standard expected of Legal Services in the review of documents.
- 8.1.4.1.3 a) The OAG would recommend HRM develop and adopt policies and business practices which require control of all legal contracts be vested in Legal Services. The timing and level of involvement should be at the discretion of Legal Services and not the business units.
- b) HRM may wish to establish legal review criteria using, for example, a financial threshold which recognizes the signing authority of certain positions within the organization. For example, Legal Services could approve a standard procurement contract but only need to review the terms of a particular purchase if the conditions appear to fall outside of the standard (most likely to occur with an RFP versus a Tender) or where the value of the purchase is above a dollar threshold. Legal Services should review and approve all cases of sole source contracts or contracts entered into through use of the Province of Nova Scotia procurement process.
- 8.1.4.1.4 HRM Administration should complete, in conjunction with Legal Services, an immediate review of staffing levels and performance measurements within Legal Services to determine if appropriate staffing is in place to support the total needs of HRM business units.
- 8.1.4.1.5 The OAG recommends the policy and business practices developed by Legal Services include a discussion with the Clerk's Office and include clear direction around who can affix signatures to which contracts and where the storage of these legal documents should occur.
- 8.1.4.1.6 HRM Legal Services should develop and implement a policy and business practice which highlights the importance of and addresses the risks around ownership and version control of developing and final contracts. There appears to be an unofficial policy respecting contracts whereby Legal Services are involved in the initial drafting of a

contract with some business units, which often then use the original as a template and make changes themselves. This should be carefully reviewed to ensure the interests of HRM are adequately protected.

- 8.1.4.1.7 With recommendation 8.1.4.1.6 in mind, the OAG would recommend a report be prepared immediately for review by Executive Management Committee outlining to what degree the practice appears to take place and what level of risk may potentially exist.

8.1.4.2 Best Practices in Other Municipalities

Atlantic Canada has a small major events market. Moncton New Brunswick's Magnetic Hill location has been offering large outdoor concerts for a number of years. According to sources within the City of Moncton, substantiated by a review of public documents available from their web site, contracts pertaining to concerts held at the Magnetic Hill site are approved by Council, authorizing the Clerk and Mayor to sign on behalf of the Municipality. In some cases, an MOU is pre-approved by Council prior to the development of the final contract. In one instance found on the website, the Legal Department was instructed to "prepare the necessary contract and submit to City Council for approval." Based on these documents and discussions with representatives of the City of Moncton, all contracts pertaining to the use of Magnetic Hill are brought before Council for approval.

8.1.4.3 Best Practices in the Industry

Information was sought from individuals familiar with the major events industry in Atlantic Canada as to best practices around the concert promotions process. Understanding the various roles of each player in the industry is critical to identifying what truly happened in the HRM situation. As we understand the various roles, an artist is generally represented by an agent or agency. The agent or agency is committed to advancing and protecting the interests of their client, the artist. A promoter is the "owner" of the "event" and contracts with the artist through the agent for a performance in a specified location. The promoter takes all the risks related to the success or failure of the event, pays the artist, venue and other fees and benefits (or not) from the profit of ticket sales.

The venue owner contracts with the promoter to provide a venue or space where the artist will perform. Included in this contract are services the venue is prepared to provide for a fee, usually imbedded within the rental fee for the venue, not auxiliary to the contract. While most well established promoters deal directly with the agent or agency, smaller promoters may use the services of a "broker" agency with direct access to a pool of talent, which is then marketed out to promoters. Generally however, the promoter will work directly with the agent or agency to avoid additional costs and communication issues. According to industry sources, the business is very "cut-throat" and secrecy in contract negotiations is critical to avoid overbidding on performance costs. Large promoters leverage multiple

events and offset any losses arising from one concert with the profits of other events. Building confidential and strong relationships with agents and agencies is critical to the success of a promoter.

An in-trust relationship often exists when one party is entrusted with the property of another until certain conditions occur to release the property, as in the case of the ticket seller and promoter. The promoter is responsible to arrange for ticket sales and marketing of the event. In some instances the venue owner may also provide ticket sales services but this is usually a separate contract. There is no known requirement to formally acknowledge the trust as occurs for example for income tax purposes and funds held by law firms, but a contractual and relationship of trust exists among the various parties including the ticket seller, ticket purchaser, promoter, artist (SOCAN fees) and government (HST).

Good business practices would suggest the ticket money be set aside and held securely so it is available for refunding to the ticket buyer upon cancellation of the event or settled with the promoter once the event is completed. The promoter receives the proceeds of the purchased tickets after the ticket agent extracts SOCAN fees and agreed costs associated with the event. At that time, the funds are no longer held "in-trust."

According to some ticket sellers in Atlantic Canada, the payment of cash advances to promoters is not a normal business practice because of the risks associated with the practice. Potential risk results from the possible inability of the ticket agent to refund ticket money due to cancellation of the event and funds no longer in their possession. According to one source, Power Promotional Events was the only promoter who had ever requested an advance on ticket sales. In this case, approval was sought from the appropriate principals backed by net ticket sales at the time, never in advance of the box office opening. According to the source, the transaction appears to have been adequately safeguarded through the use of a secured letter of credit from the promoter's bank with the added retention of certain box office proceeds; that is, with a hold back of all legislated taxes, fees and expenses.

8.1.5 Responsibilities of Trade Centre Limited and HRM

Clearly, HRM applied, for the most part, a hands-off approach to the ongoing management of the Halifax Metro Centre, its accounting, and use of bank accounts. However, it would be difficult not to accept some degree of trust relationship existed between HRM and TCL. TCL has been entrusted with the care and operation of an HRM asset, the Halifax Metro Centre. A confidence was placed in TCL by HRM Administration and the residents of HRM and this confidence was clearly accepted. The hands-off approach only serves to heighten the responsibilities of TCL towards the Halifax Metro Centre.

8.1.6 What Would a Reasonable Person Expect?

Often in determining the standard of care and defining appropriate actions in a given circumstance, the question of what a "reasonable person" might expect is considered. The so-called reasonable person standard can be used as a reasonable measure of what HRM might have expected from its relationship with TCL as it related to the provision of advances and the final "repayable grant".

It would seem reasonable to conclude a “reasonable person” might have expected many of the points which would be found in a “hallmark definition”, including¹:

- utmost care and duty to be bound to a very high standard;
- high moral integrity;
- duty of full disclosure of all material facts (either known or reasonably discoverable), which would influence decisions, actions, or a willingness to enter into a transaction;
- loyalty, with a full disclosure of any potential conflicts of interest which might be adverse to the interests of HRM residents;
- when TCL found itself in a position of possible conflicting interests, clearly the position should be reported to the contracting body for HRM, being Regional Council.

8.1.7 Standard of Care:

The research which was undertaken for this project concluded there was a clear “closeness” between, at a minimum the HRM CAO’s Office, the Mayor’s Office and management of TCL with respect to the concerts in question. With all the information described above with respect to responsibilities, the question which many will ask is was there a breach in the standard of care under which TCL was or should have been operating. There can be differences of opinion as to what degree there may have been a breach of duty, however it would seem to the OAG it would not be unreasonable to conclude given the very limited structure to the clause around management and operations in the MOU for the Halifax Metro Centre that improvements in TCL’s standard of care towards HRM are worthy of implementation.

While the question of whether any legal breach of trust or any fiduciary responsibility which might exist has taken place under the law is well beyond the scope of this report, the question of responsibility for the funds used to make the transfer is relevant, particularly on a go forward basis. Given the assertions of Trade Centre Limited and the actions taken in this matter, we have adopted the position the funds used were, for the most part, not funds from the operations of the Halifax Metro Centre but funds from the operation of Ticket Atlantic, a service claimed and operated by the provincial crown agency, Trade Center Limited.

It can be understood management of TCL was placed in a difficult position with respect to advances and the concerts. It has been suggested TCL felt it had approval given the involvement of the CAO (then DCAO) and the Mayor through the ongoing communications and discussions in bringing various performers to HRM and certainly leading up to the events themselves. It is this “active but arguably passive” behaviour which likely caused what the reasonable person might consider the conflicts which resulted.

¹ Excerpt from Errold F. Moody, Jr. “No Nonsense Finance II”, www.efmoody.com

When individuals were asked at various levels of government, why it could be thought appropriate for the TCL to advance Ticket Atlantic funds to the Halifax Metro Centre or for that matter when questioned as to where the funds originated, the response often was “I’m not sure” or “I thought they were HRM dollars.”

It would not seem unfair or unreasonable to conclude HRM Administration, particularly Community Development and Finance business units, have not spent – nor had been expected to provide - sufficient time in understanding how the Halifax Metro Centre is being operated and what should be expected as a yearly return and appropriate performance measures to use to assess the overall management.

Perhaps to understand governance more fully, an appropriate approach might be to set out examples of what it might seem reasonable for HRM Regional Council to expect as reasonable governance by the TCL Board.

- Regular updates on the governance structure in place at TCL to allow HRM to assess how its asset is being protected.
- Regular updates of any activities which are not within an established list of acceptable business. As an example, the loaning of funds to a promoter is unlikely to be included in a normally acceptable business model.
- A clear separation of all activities and accounting for Halifax Metro Centre and TCL and its divisions.
- The establishment of a clear reporting structure and adherence thereto. Any unusual or non-regular requests should be reported by TCL to HRM Audit and Finance Committee for example.
- An acceptance by TCL Board and its management, the Halifax Metro Centre is being operated by them in a “trust” on behalf of the residents of HRM and it is the residents to whom they are ultimately accountable through Regional Council.

These issues will be explored in later sections of this report.

8.2 Various Financial Matters

8.2.1 Cost of Concerts to HRM – In Kind Value

Starting in 2006/07, HRM Regional Council approved an “in kind” contribution be provided for concerts held on the North Common. The contribution was put in place to improve HRM’s competitive advantage with other venues and “level” the playing field for promoters. The amount, funded from the Special Events Marketing Levy, started at \$100,000 per concert in 2006 for the Rolling Stones Concert, increased to \$150,000 per concert for up to three concerts per year in 2009, and was reduced to \$100,000 per concert for two concerts per year in 2010. Over this time, there were six concerts held on the North Common. Council was very clear the funds were to come from the Special Events Marketing Levy Fund Reserve (Q315) which is comprised of cash collected from patrons using hotel rooms and not from property taxes. Mr. Anstey was aware of the distinction between using funds from the Special Events Marketing Levy Fund Reserve and the General Tax Fund.

The accounting for the value in kind services was not consolidated in one place, making it difficult in most cases, to determine the actual total spent. Additionally, in 2009 and 2010, the costs for the two concerts were recorded together. Therefore, we cannot determine how much was spent on the individual concerts in these two years. It is clear that HRM provided more than the maximum set by Council in both 2008 and 2009 (there were no concerts on the North Common in 2007). In 2007, Council approved \$100,000. There was one concert in 2008 which occurred under this approval and we were able to identify from the official financial records, at least \$169,655 spent for in kind value items. In 2009, Council approved \$150,000 per concert up to \$300,000. There were two concerts held and we were able to identify from the official financial records, \$384,129 for in kind value items.

Table 8.2.1 – Summary of Approved Budget to Actual In kind Support

Concert	Date	Detail	\$Amount Approved	\$Amount Spent	\$Variance
Rolling Stones	July 4, 2006	Council approved a contribution of \$100,000 toward policing, clean up, with no liability	100,000		
	Sept 26, 2006	Concert date		99,989	11
Keith Urban	Mar 6, 2007	Council approved, in principle an allocation of funds up to \$100,000 to offset municipal service costs	100,000		
	Aug 30, 2008	Concert Date		169,555	(69,655)

Concert	Date	Detail	\$Amount Approved	\$Amount Spent	\$Variance
Paul McCartney, KISS	Apr 29, 2009	Council approves funds for in kind services per concert up to 3 concerts per year (\$150,000 each)	300,000		
	July 11, 2009	PMC Concert Date			
	July 18, 2009	KISS Concert Date		384,129 ²	(84,129)
Black Eyed Peas, Alan Jackson	May 4, 2010	Council approves \$150,000 in kind services per concert for up to 3 concerts. For 2010/11 Council only approved 2 concerts with in kind support reduced to \$100,000 per concert due to anticipated cost savings to be achieved with the installation of permanent power. \$20,000 per event rental charge introduced.	200,000		
	July 24, 2010	BEP Concert Date			
	August 8, 2010	Alan Jackson Concert Date		139,092 ³	60,908
Totals			700,000	792,765	(92,765)

To our knowledge, the only summarized reporting of the in kind services incurred by HRM, excluding the Rolling Stones Concert, is this table.

In reviewing the contracts associated with the concerts, the services HRM agreed to provide are identified but no dollar amount was provided in all cases. This may have created a sense of obligation for HRM to provide a level of service beyond what was approved by Council. In addition, based on the multiple places where costs were collected, it is apparent there was not a coordinated effort to oversee the costs to ensure HRM did not overspend. It appears the reason HRM did not overspend again in 2010 is because HRM did not do restorative work on the North Common after the event as work was scheduled to begin for the Canada Games speed skating oval.

² This value is a combined total of the 2 concerts as HRM did not separate the costs in the SAP system.

³ Ibid

Recommendations:

In the event of future concerts:

- 8.2.1.1 The contract with the promoter should be written in a way that limits HRM's contribution to the maximum approved by Council.
- 8.2.1.2 The cost of services provided should be coordinated and planned with one central contact point so that all costs can be collected, monitored and reported.
- 8.2.1.3 Staff should undertake a regular review of the expenses as they are incurred to ensure HRM is staying within budget and to provide time to work with the promoter on any cost overruns.
- 8.2.1.4 HRM staff should provide an Information Report to Council once the event has been held, identifying the total spent compared to that authorized, as well as identifying areas of success and areas for improvement.

8.2.2 Halifax Metro Centre

As noted previously, the Halifax Metro Centre (HMC) facility belongs to the Halifax Regional Municipality (HRM) but co-occupies some space with Trade Centre Ltd. (TCL) which is a Provincial Crown Corporation comprised of the following business lines: World Trade and Convention Centre, Office Tower, Exhibition Park, World Trade Centre Atlantic Canada, TCL Major Events, and Ticket Atlantic.

Halifax Metro Centre is managed and operated by TCL under a management agreement dated May 14, 1982. This agreement specifies that the City shall finance the operation of the Halifax Metro Centre, and all profits from the Halifax Metro Centre shall accrue to the accounts of the City. It requires that all financial records and accounts of the Halifax Metro Centre be "kept separate" from those of the Convention Centre. In the professional opinion of the OAG, it is reasonable to assume that separate financial statements, independent books of record, and separate and distinct bank accounts are items that would have been contemplated by this statement. In addition, HRM makes an annual payment to the Trade Center relating to the first \$250,000 (1981 dollars) of operating deficit on the Convention Centre. There are some operating expenses which are shared between the Halifax Metro Centre and Trade Centre Limited for purposes of efficiency.

With few exceptions, the Halifax Metro Centre acts as a rental facility only, they do not act as a promoter for the events hosted in the facility. Based on the information provided by senior TCL staff, the OAG understands the general cash handling process adopted by TCL related to an event held at the Halifax Metro Centre is as follows:

- a contract is signed with the promoter;

- tickets are sold by Ticket Atlantic;
- proceeds from ticket sales are deposited to the HMC (HRM) bank account and recorded in the HMC's financial statements as Advance Ticket Sales;
- funds are held until the date of the event at which time a detailed settlement report is prepared and the balance owing to the promoter is paid;
- in some cases, a very small portion of the funds are advanced to the promoter on the day of the event for costs that have to be paid out as the day progresses. Any amounts advanced on this day are deducted from the final settlement payment.

The risk to the Halifax Metro Centre should be restricted to rental charges and expense recoveries. The Halifax Metro Centre business is based on providing a venue for events (generally entertainment events) to be held. As such, its revenue is primarily derived from the rental of the facility, sky boxes and advertising. Tickets for events held at the Halifax Metro Centre are sold exclusively through the ticketing agent, Ticket Atlantic (TA). Tickets can be purchased through a variety of mechanisms, including on-line, by phone and in person at the Halifax Metro Centre or at a number of Atlantic Superstore outlets. Included in the price charged by Ticket Atlantic are HST and the applicable copyright license fees which are remitted to The Society of Composers, Authors and Music Publishers of Canada (SOCAN). In addition, the sample Ticket Atlantic contract reviewed specifies that ticket sales must be held in trust for the promoter. The OAG was unable to find a formal contract between the Halifax Metro Centre and Ticket Atlantic confirming their arrangement or identifying the basis for the ticket commission provided to Halifax Metro Centre and there appears to be no costs charged to Ticket Atlantic for space rental or other items occurring on or with HRM property.

TCL senior staff asserts that Ticket Atlantic is a division of TCL. The transfer of Ticket Atlantic from the Halifax Metro Centre occurred during fiscal period 2006/2007. The OAG was advised by TCL staff there was a need for an upgraded ticketing system which required a capital expenditure. Expanding to a broader client base was necessary to support the investment. The transfer occurred and changes were made to the payment structure between TCL and the Halifax Metro Centre, which is discussed in greater detail later in this report under Section 8.2.4.1. This assertion is further supported as Ticket Atlantic is listed as a division of TCL on their web site and is included in TCL's annual report and audited financial statements. TCL senior staff also state that approximately 80 percent of the Ticket Atlantic sales relate to events held at the Halifax Metro Centre, with the remaining 20 percent being held at Trade Centre Limited locations or independent locations. We were advised this ratio formed the basis of the new payment structure resulting from the transfer of Ticket Atlantic from the Halifax Metro Centre to TCL.

In an attempt to validate this assertion, we identified 248 transactions each in excess of \$50,000 flowing through the Halifax Metro Centre bank account. We then identified all transactions paid to TCL, HRM, PPE and PPC, all transactions with no specific vendor, payments of high dollar value and multiple payments made to the same vendor in a relatively short period of time, but excluded eight payments easily identifiable to an external venue as well as payments made to, for example, the Halifax

Mooseheads or the Halifax Rainmen sports groups. This resulted in a detailed review of 31 event files and a total of 98 transactions. Of these files, two of the events were not held at the Halifax Metro Centre.

Our analysis suggests 74 percent of the sampled events ticketed through Ticket Atlantic were held at the Halifax Metro Centre. This appears to be a conservative number as the analysis excluded ticketed events for the Halifax Mooseheads, Halifax Rainmen and the NS Tattoo. These preliminary findings could suggest the basis for development of the current payment structure may need to be reviewed by the parties to ensure HRM maximizes its revenue.

8.2.3 Use and Rental of the Halifax Metro Centre

As has been clearly set out and understood by most, the Halifax Metro Centre is in fact an HRM asset which is operated under management agreement by TCL.

After reviewing what the OAG understood to be a representative license agreement for the use of Halifax Metro Centre, the business model being used by TCL appears to be:

- the licensee agreement is titled “Halifax Metro Centre - License Agreement”
- the Licensor is listed as Trade Centre Limited;
- the premises are listed as the main area within the building known as Halifax Metro Centre;
- it is made clear the Halifax Metro Centre is managed and operated by TCL;
- the contract states the licensor grants to the licensee a license to occupy and use the premises essentially as above;
- the agreement sets out who is to be paid the various fees involved with the event and for the most part, the payments are to TCL;
- the agreement contains a clause which states, “TCL shall be the exclusive seller of all tickets”. It also states, “agrees to be bound by Ticket Atlantic Standard Ticketing Services Agreement”. In the agreement, used as the basis for these comments, it was suggested the ticketing agreement would be attached as Schedule “B”. Schedule “B” was shown as N/A.
- the agreement contains a clause whereby the licensee agrees to TCL also reserving the right to sell tickets to the patrons of TCL’s choosing;
- the agreement includes a clause which makes clear the relationship between TCL and licensee is that solely as operator of premises and a party licensed for temporary use of the premises, the Halifax Metro Centre.

Based on the agreement signed on behalf of the Halifax Metro Centre and the event promoter, it is not clear there is a legal separation between the ownership of the Halifax Metro Centre, Ticket Atlantic and Trade Centre Limited. There is a strong and lingering connection between the use of the Halifax Metro

Centre and Ticket Atlantic which excludes the ability of the event promoter to use another service for ticket sales. This potential for conflict is discussed further on in this report.

Also in reviewing the contract used by the Halifax Metro Centre for most events, it is again unclear with which organization it is being contracted. As noted earlier, there are references to both the Halifax Metro Centre and Trade Centre used, apparently interchangeably, throughout the contract.

8.2.4 Halifax Metro Centre Operations

8.2.4.1 Ticket Atlantic Payment Structure & Banking Arrangements

In fiscal year 2006/07 the payment structure for the management agreement between TCL and Halifax Metro Centre was changed. It changed from Halifax Metro Centre absorbing all box office costs, receiving all the revenues and paying a management fee to TCL for managing the asset, to TCL taking over the operation of Ticket Atlantic (formerly the Metro Box Office) which up to this point had been a line department within the Halifax Metro Centre. When Ticket Atlantic was moved to TCL, all profits or losses associated with its operations were moved to TCL. Halifax Metro Centre, instead, received a commission of \$0.40 per ticket for all tickets sold to a Halifax Metro Centre event (excluding skyboxes, and season tickets to the Halifax Mooseheads and the Halifax Rainmen). For some reason which has never been made clear to the OAG, the banking arrangements in place at the time were not changed and cash transactions related to ticket sales continued to flow into an HRM Halifax Metro Centre bank account.

There is no documentation available showing the change - with respect to Ticket Atlantic - was officially approved by HRM, Regional Council or the TCL Board. In addition, HRM staff were not advised of this change until after it had occurred and only became aware of it when reviewing the annual financial statements. As a result, the then CAO of HRM (Mr. English) wrote to the then President and CEO of TCL (Mr. MacGillivray) requesting a written letter of explanation and a letter of comfort that the change would not affect HMC negatively. In this letter, Mr. English also raised the question whether this decision should have been approved by Regional Council, and suggested an Information Report to Council might be in order once the requested letter was received (April 3/07). Having received no response, Mr. English followed up with another letter of request dated July 30/08. Mr. MacGillivray responded in a letter dated July 31, 2008, providing the information and assurances Mr. English had requested. In addition, there is no indication the Information Report suggested by Mr. English was ever provided to Council.

There appears to be a lack of distinction between Halifax Metro Centre operations and TCL - Ticket Atlantic operations by TCL staff. During interviews and discussions, senior staff at TCL talked about both organizations as “we”, without differentiating; were often confused about which processes related to which organization and the Chief Financial Officer advised she did not understand the full implications surrounding the co-mingling of the two entities’ funds in the HRM bank account. We understand some

shared expenses for both Halifax Metro Centre and TCL are paid through the Halifax Metro Centre bank account, with those related to TCL being charged to the due to/from account. All advance ticket sales are recorded in Halifax Metro Centre, as is the event settlement payment process. The event settlement file combines the ticket sales (from Ticket Atlantic, including Ticket Atlantic's service charge) and rental revenue for the venue and deducts Halifax Metro Centre expenses. The two organizations also split the cost of shared staff, electricity, natural gas and some purchases.

An example of this lack of distinction between the operations of TCL's Ticket Atlantic and the Halifax Metro Centre can be observed in the guarantee for the Paul McCartney Concert. In this case, the Province of Nova Scotia guaranteed the \$3,500,000 artist's fee while negotiations were on-going. On May 8, 2009 a payment of \$3,850,000 was made by Trade Centre Limited through the Halifax Metro Centre bank account and transferred to Power Promotional Events, who we assume, forwarded the funds to Paul McCartney. Back up detail indicated Trade Centre Limited would only release this payment once approval from HRM had been received. On May 8, 2009 Mr. Anstey sent the following email to Scott Ferguson and Grant MacDonald of TCL:

Scott, I hereby give you approval to advance \$3,850,000 from the HMC account to an escrow account for Paul McCartney, respecting the guaranteed advance conditional on his appearance at the Halifax Common on July 11, 2009 for a concert, with the understanding that the province is backing \$3,500,000 of the advance through their guarantee previously given, and we all agree that the advance will be reimbursed from ticket sales. Please Confirm receipt.

We do not understand why TCL required the "approval" from the DCAO of HRM or why this payment was made from an HRM Halifax Metro Centre account as the Province was the guarantor of the artist fees and its own agency (TCL) was responsible for ticket sales. But this certainly reflects the confusion of TCL staff around Halifax Metro Centre and TCL operations, noted above. It is also interesting to note Mr. Anstey authorized a payment to an escrow account for Paul McCartney, which we conclude was to assure Mr. McCartney received the funds guaranteed by the Province of Nova Scotia. Why did TCL take additional risk by advancing the funds directly to Mr. MacKay and not directly to the escrow account?

Recommendations:

- 8.2.4.1 It is recommended any money, deposited into, withdrawn or paid from the Halifax Metro Centre bank account should be specifically related to the operations of the Halifax Metro Centre only. Should use of Halifax Metro Centre funds be proposed for purposes other than for the operations of the Halifax Metro Centre, pre-approval should be sought and received from HRM Regional Council.
- 8.2.4.2 On the basis TCL is authorized to loan funds on behalf of Halifax Metro Centre, it is recommended HRM review and approve on a yearly basis the types of loans or advances which can be extended, the terms, and what due diligence is required around repayment or recovery, should the need arise.

8.2.5 Ticket Atlantic – Sale of Tickets

The following are excerpts from one of the ticketing service agreements which were in place for one of the concerts on the North Common during the summer of 2010:

- The agreement is titled “TICKET ATLANTIC- Ticketing Service Agreement”
- Under the paragraph titled TICKET ATLANTIC is noted, Trade Centre Limited, a body corporate carrying on business under the firm name or style of Ticket Atlantic.
- Settlements are to be completed the first business day after the event.

Under the paragraph, USE OF PROCEEDS is found the following, “All gross proceeds derived from sale of tickets through the system, save and except for the Box Office fee, shall be held in trust by Ticket Atlantic as the Event Holder’s property until disbursed to the parties in accordance with their entitlement pursuant to this agreement.”

There are also clauses in the Ticket Service Agreement which speak to Ticket Atlantic also collecting from the purchasers’ tickets sold through the system – “all amounts properly eligible in respect of Federal or Provincial admittance taxes or other government admittance taxes, including Goods and Services or similar taxes.”

The agreement does not contain any clauses which speak to advances nor does it speak directly to when the funds held “in trust” can be disbursed.

Under the FAQ section found on the Ticket Atlantic web site⁴ is a question around ticket refunds. The question asked is: “The event I have tickets for has been cancelled, do I get a refund? The answer is “YES, if the promoter cancels their show, you will be issued a full refund. Tickets must be brought back to the Ticket Atlantic box office in person, or returned by mail (see Contact Information,) unless otherwise specified.”

The ticket service agreement noted above is silent with respect to refunds and the source of the funds.

8.2.6 Ticket Sales and Ticket Atlantic Proceeds – Additional Detail

As noted earlier, clear ownership and accounting for ticket sales appears to be an area of particular confusion. According to senior management at TCL, Ticket Atlantic is a division of Trade Centre, not Halifax Metro Centre; however, funds from ticket sales are deposited into the Halifax Metro Centre bank account and are recorded on Halifax Metro Centre’s audited financial statements as advance tickets sales. Senior staff at TCL stated the funds belong to the Halifax Metro Centre as they receive the interest revenue associated with the bank deposits. However, TCL staff also indicated they calculated an interest

⁴ <http://www.ticketatlantic.com/en/home/faqs/default.aspx>

allocation to TCL based on the due to/from balance to TCL. Under the assumption the Halifax Metro Centre no longer owns or participates in the ticket selling process, it is the OAG's view these funds belong to Trade Centre and should be deposited into a separate TCL bank account, or at a minimum, be categorized as 'Due to Trade Centre' on Halifax Metro Centre's books and as advance tickets sales on TCL's books. In reviewing the audited financial statements for the Trade Centre Limited, no advance ticket sales were separately identified.

As a result of these items, it appears there is a significant co-mingling of financial records. A high level review of the banking records indicates between 2008 and 2010 in excess of \$14 million in proceeds from Ticket Atlantic flowed through the Halifax Metro Centre (HRM) bank account. During fiscal years 2007/08 through to 2009/10, TCL included (on average) \$1.77 million in revenues in its financial statements related to Ticket Atlantic.

8.2.7 Concerts on the North Common

If in fact, the funds from ticket sales belong to Ticket Atlantic (as is believed), it raises serious concerns about the purported authority under which advance funds were provided to Power Promotional Events Ltd. (PPE) for the concerts on the North Common. The North Common is an HRM asset, solely under the control of the HRM. In all instances, it is our understanding the advance funds provided to PPE were purported to be based on advance ticket sales.

Operationally, the concerts in question were not held at the Halifax Metro Centre, had no connection with the Halifax Metro Centre and were in fact acknowledged by senior TCL staff as having no connection with the Halifax Metro Centre. To draw a comparison, would TCL have issued payments from the Halifax Metro Centre bank account on the direction of the CAO if they were for some other purpose such as advance payment to a contractor for work not yet done for HRM? Additionally, if the funds from the advance tickets sales are the liability of Ticket Atlantic, then the CAO or DCAO of HRM would have no authority to authorize the payments from these funds as TCL is a provincial entity, not a municipal entity.

In relation to the advances in question, we believe there were five separate instances where monies were advanced prior to tickets going on sale for the specific concert. We were advised by TCL staff money was available in the co-mingled bank account, "for the most part", as a result of advance ticket sales for the specific event. However, TCL staff did acknowledge there may have been one or two instances where there was insufficient cash from advance ticket sales from a specific concert. In these cases, service charges, ticket sales from other events and funds from HMC operations held in the Halifax Metro Centre bank account were used. Due to the co-mingling of the funds it is difficult to confirm where the funds actually came from. However, to gain a sense of the significance of this activity, the OAG conducted a high level approximation of the available cash flows.

From this analysis, we attempted to determine the portion of cash represented on the balance sheet related to HMC activities alone. An estimate would suggest an average of ending balances for 2008,

2009, and 2010 of approximately \$900,000. The year-end period was selected as in all cases, ticket sales for the events carried over from one fiscal period to the next. It is presumed these funds were properly reported in the financial information.

As noted previously, on one occasion⁵ the amount advanced was \$3,850,000 prior to the start of ticket sales. It is reasonable, therefore to assume the cash available in the Halifax Metro Centre account was primarily due to advance ticket sales for another unrelated event. Again, if the available cash relates to advance ticket sales, it must belong to Ticket Atlantic and therefore should only have been released based on the approval of TCL officials. On another occasion, the HRM CAO, prior to approving the advance, asked if there were sufficient funds in the account. The TCL CEO replied that there were sufficient funds from event sales, however, tickets for the event in question had not yet gone on sale, and there were no tickets on sale through Ticket Atlantic at the time for other events with the promoter in question. It would appear this resulted in the use of funds belonging to an unrelated promoter which are, according to the Ticket Atlantic contracts, to be held in trust for the benefit of that promoter.

8.2.8 Halifax Metro Centre – Other Matters

8.2.8.1 Ongoing Interaction with HRM

Typically, there is very little interaction between HRM staff and TCL staff managing and operating the Halifax Metro Centre. The extent of involvement of HRM Administration is limited to an annual review of year-end financial statements and approval of the budget. The business plan for the Halifax Metro Centre is integrated into the annual plan for TCL and its operating divisions which is approved by the TCL Board. In addition, the current TCL CEO meets with the HRM CAO and the Mayor on occasion, and the Mayor and three Councillors from HRM sit on the board of TCL. However, we were advised the extent of discussion around the Board table is at a very high, strategic level.

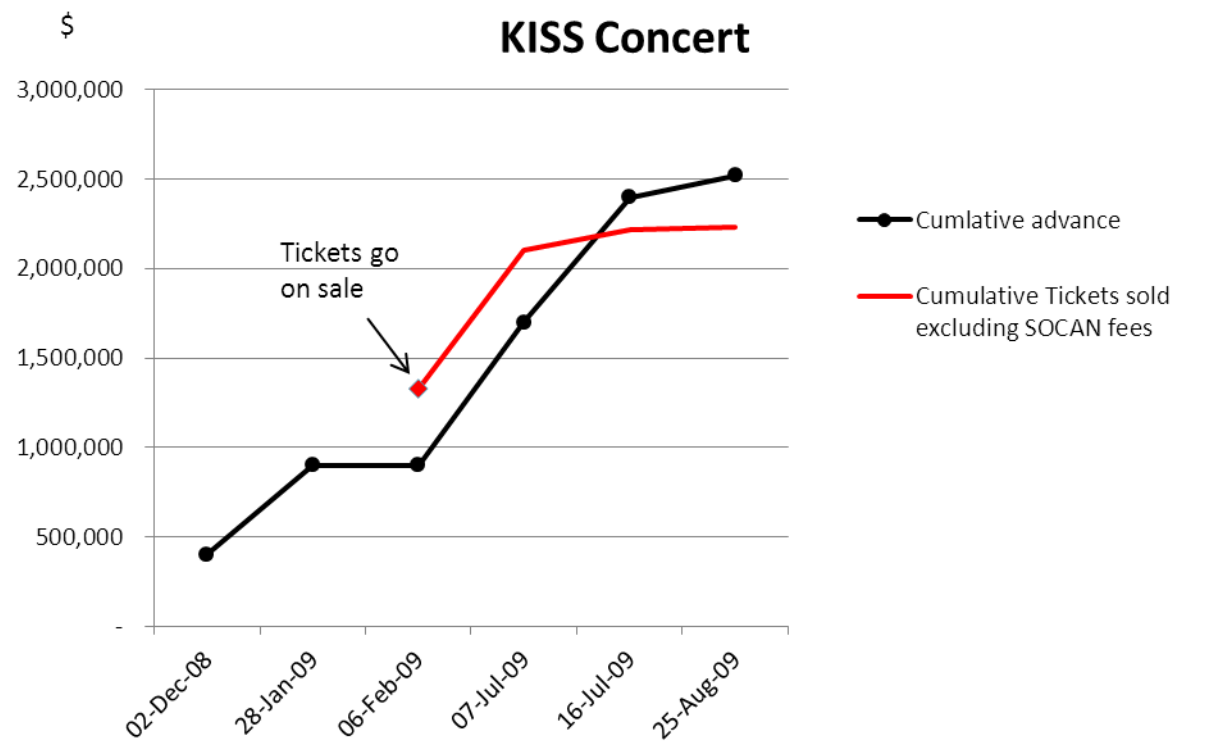
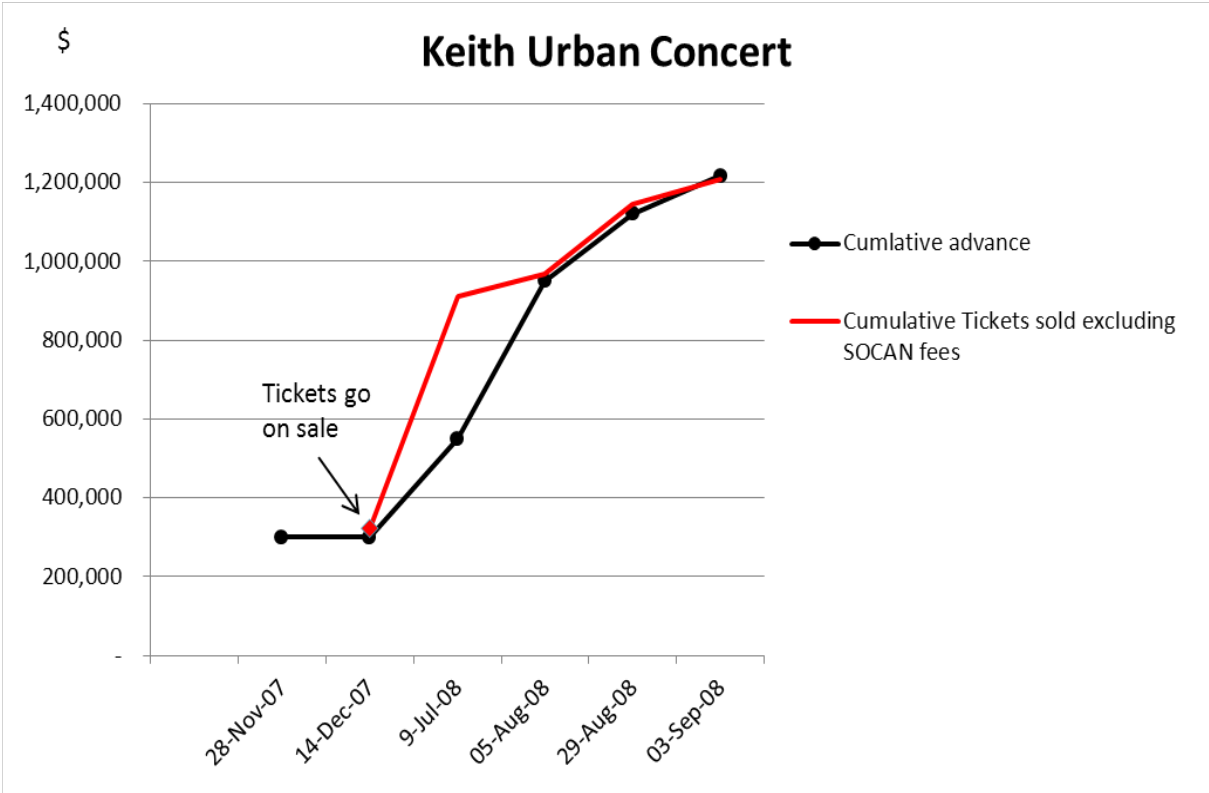
8.2.8.2 Financial Risk

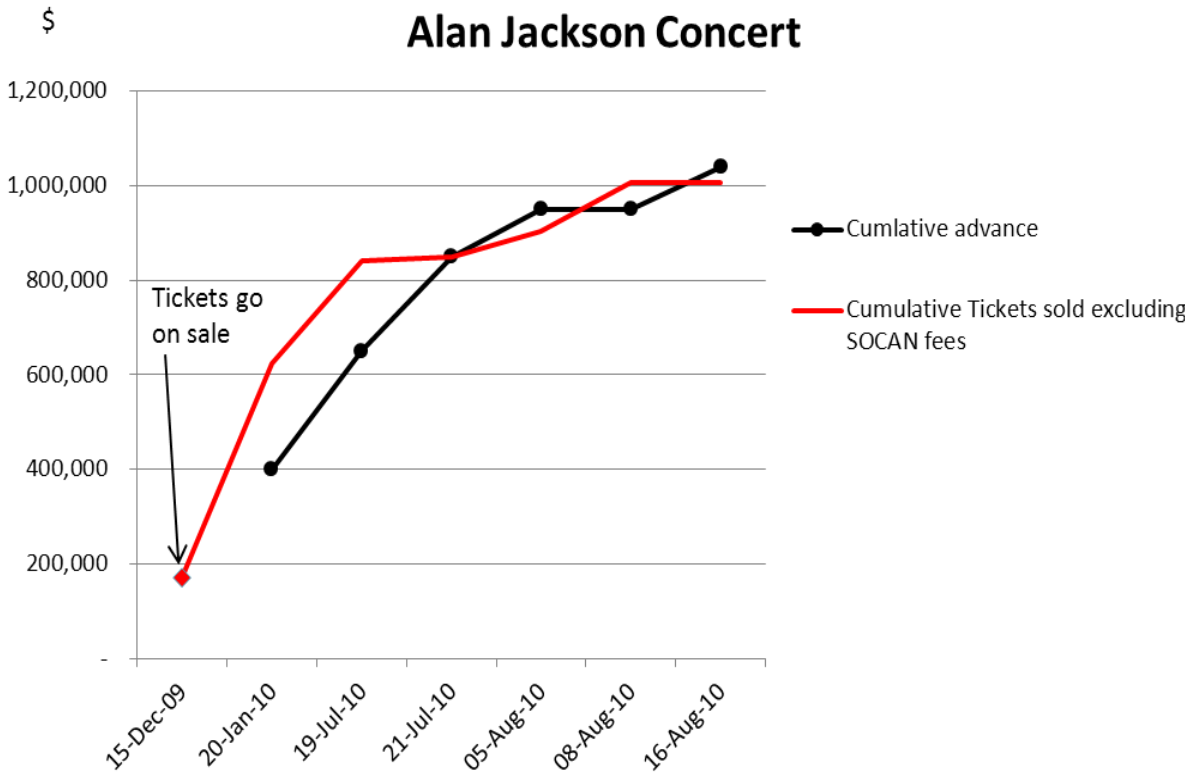
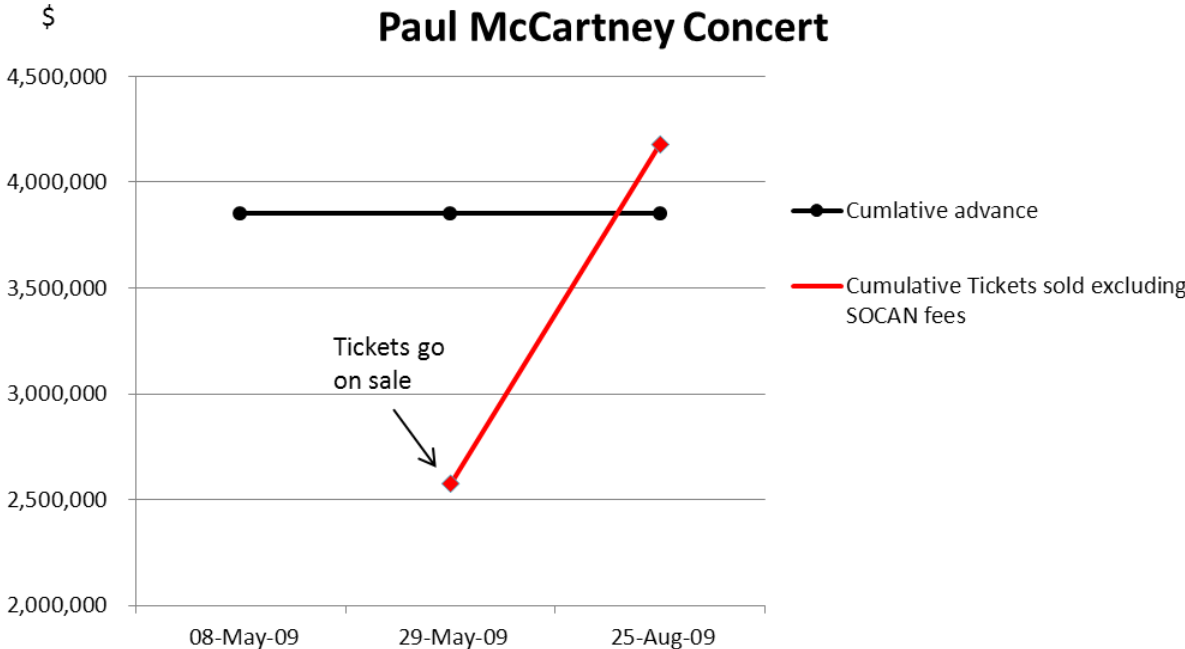
In reviewing the cash on hand in the Halifax Metro Centre bank account, it became apparent there was significant financial risk undertaken when funds were advanced to the promoter for a concert on the North Common. Should the event be cancelled, Ticket Atlantic had the responsibility to refund all ticket sales. If the advanced funds were not returned by the promoter, then the ticket refunds would have to have been provided from other sources. For example, on July 19, 2010, \$1,750,000 had been advanced to the promoter for two concerts based on ticket sales of only \$1,721,281 (net -\$28,719). If both concerts had been cancelled and the promoter unable to repay the advances, Ticket Atlantic would have been forced to refund \$1,721,281 without having the corresponding cash on hand from the ticket sales. This would have resulted in a possible total payout of \$3,471,281. In another situation, \$3,850,000 was

⁵ See Section 8.1.3.5, of this report, page 28

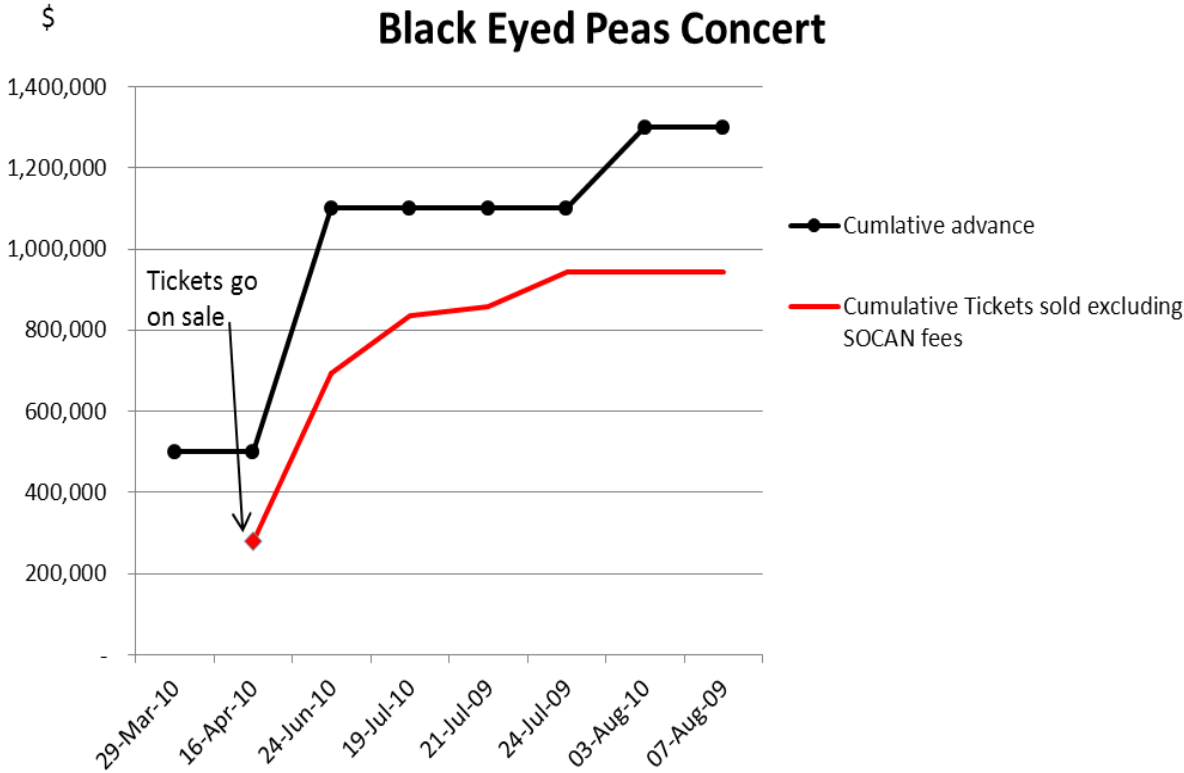
advanced to the promoter against ticket sales of \$4,292,311. In this case, the financial risk if the concert was cancelled could have ranged between \$3,850,000 to \$7,700,000 if you assume that the advance funds would not be repaid, as they formed a deposit made to the artist, which we understand is normally not refundable if the promoter cancels the contract.

The following graphs show the time line of the advances issued to ticket sales for each concert and highlight the risk accepted, as with four of the five concerts held on the North Common, advances were issued prior to tickets going on sale.





*Note: the advances include the \$200,000 repayable grant.



*Note: the advances include the \$200,000 repayable grant.

Given the amount of advances issued, there was a significant amount of risk accepted without an apparent risk mitigation strategy or even a discussion with the affected parties: HRM Regional Council and the Board of the Trade Centre Limited.

8.2.9 Audited Financial Statements

The financial statements of the Halifax Metro Centre are prepared by TCL Management and upon which an audit opinion is expressed. The Halifax Metro Centre does not currently have a legal status as a business entity. It is a unit of HRM and its financial position and operations are included in the consolidated financial statements of the HRM.

We have noted the HMC audited financial statements include advance ticket sales and the associated cash related to tickets sold through Ticket Atlantic. Additionally, the audited financial statements for the Halifax Metro Centre are directed to the Board of Directors of TCL and are signed as approved by the Chairman of the Board and CEO for TCL.

Recommendations:

- 8.2.9.1 The appointment of the external auditor for the Halifax Metro Centre should be made through the HRM Audit and Finance Committee, to assist with governance.
- 8.2.9.2 HRM Administration (through Finance) with respect to the Halifax Metro Centre should be engaged in the audit planning process, and be made aware of any matters as would normally be expected to be brought to the attention of an audit committee. The HRM Audit and Finance Committee should also retain the right of final approval of the financial statements prior to their being incorporated into the consolidated financial statements of HRM.
- 8.2.9.3 HRM should request clarification from TCL on the inclusion of advance tickets on the Halifax Metro Centre financial statements.
- 8.2.9.4 The on-going use of inter-corporate accounts be immediately eliminated. Any balance due between the two separate organizations should be eliminated on a regular basis and any balance be kept to a minimum.
- 8.2.9.5 The balance in the advance ticket sales currently reported in the HMC accounting records, which relate to the activities of Ticket Atlantic be immediately removed along with the appropriate cash, transferred to the Trade Centre accounts and represented on that organization's balance sheet.

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation.

8.2.10 Halifax Metro Centre Management Agreement

There are a number of concerns related to the Halifax Metro Centre operations as it is being managed by TCL, many of which reach beyond the concert on the North Common events. However, based upon various sections above, we offer the following overall recommendations.

Recommendations:

- 8.2.10.1 The management agreement between the Province of Nova Scotia, Halifax Regional Municipality, and the Trade Centre Limited for the Halifax Metro Centre should be updated to include numerous matters such as the specific levels of authority of all parties, performance measures, reporting requirements, and details of the basis for the compensation of TCL as the management company.
- 8.2.10.2 After the recommendation in 8.2.10.1 is completed, HRM Administration should establish and document clear expectations of what it expects from its relationship with TCL. This documentation might include:
- what exactly do both parties expect from the relationship;
 - with respect to the management of the Halifax Metro Centre, what is the common definition of operated and managed? Is the Metro Centre operated essentially in a “blind trust “ or is there a presumption of HRM expecting to be able to exert some ongoing managerial influence;
 - what types of returns does HRM expect from the use of its asset;
 - what industry benchmarks should be used for performance measures;
 - what actions might HRM consider should performance not meet budgeted expectations.
- 8.2.10.3 Once the recommendation in 8.2.10.2 is undertaken and in order to ensure adequate and appropriate levels of oversight take place over the Halifax Metro Centre, HRM Administration, likely with the lead of Finance, should develop stated and approved guidelines to govern where and under what methods they feel it appropriate to engage the TCL Board. The OAG might suggest as a starting point, a review of the following items:
- what written correspondence and regular reporting should take place;
 - what the content of various reports which may be requested should be and the format;
 - how should requests for information be submitted to the board;
 - what the relationship with and responsibilities of the TCL Audit Committee might be as they relate to Halifax Metro Centre;

- what ongoing dialogue should take place between HRM Audit and Finance Committee and the Audit Committee of TCL;
- what oversight capacity should HRM Finance undertake with respect to internal controls;
- what mechanisms does TCL have in place to ensure its Board is made promptly and thoroughly aware of potentially troublesome issues which may require analysis and on-going discussion; in other words, what “exception” reporting process should be in place;
- what mechanisms does TCL Board use to refer matters as described above to its Audit Committee;
- under what circumstances would the TCL Audit Committee refer a matter with respect to the Halifax Metro Centre to the HRM Audit and Finance Committee;
- HRM Administration should ensure it is satisfied there is appropriate role clarity around positions influencing the operations and reporting around Metro Centre; this should include all levels of management including financial positions, as well as Halifax Regional Council and TCL Board of Directors;
- yearly, HRM Administration should review and prepare a report to Regional Council outlining the proposed business plan and budget for Halifax Metro Centre for the upcoming year; the proposed service lines and product lines should be clearly set out;
- once an annual business plan is in place, HRM Administration should satisfy itself TCL has the appropriate structures and controls in place to achieve the objectives;
- yearly, HRM Finance should likely satisfy itself, TCL has appropriate policies and controls in place to minimize unintended risks; and
- HRM Administration should consider the viability of retaining the Manager of the Halifax Metro Centre as an HRM employee.

8.2.10.4

To provide specific direction around earlier recommendations, the OAG strongly believes HRM Administration should increase its oversight of the operation of Halifax Metro Centre through the review of quarterly operating results. This review should include the financial statements, details of all costs split between TCL and the Halifax Metro Centre, the calculations supporting the commission received from TA, a profitability analysis for events held, and other items deemed appropriate. Formal and scheduled meetings with TCL staff should be held on at least a quarterly basis, or more frequently when appropriate.

HRM Finance should regularly review, for example, the reconciled bank balance account and transactions, and make-up of the accounts receivable and deferred liability accounts.

- 8.2.10.5 HRM Administration should clearly define what is expected of HRM staff in their quarterly review of the HMC results, so that the oversight of both the operational and financial aspects of the management of the Halifax Metro Centre is reviewed.
- 8.2.10.6 Where Trade Centre Limited has an interest in Halifax Metro Centre activities, TCL, in consultation with HRM, should develop and implement clear delineations between the operations and goals of TCL from those of the Halifax Metro Centre in order to avoid a potential conflict of interest.
- 8.2.10.7 HRM Administration, in consultation with TCL, should implement a clear, documented approval process for significant changes in the Halifax Metro Centre operations (i.e. the move of Ticket Atlantic from Halifax Metro Centre to TCL, or the change in the basis for calculation of the management fee).
- 8.2.10.8 TCL, in consultation with HRM, should immediately implement a formal risk assessment policy and process for Halifax Metro Centre operations, including specifically the assessment and mechanism of transactions or processes outside of normal business practice.
- The OAG is pleased to advise, after discussions with the President and the Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation with a completion date of second quarter of fiscal 2011/12.
- 8.2.10.9 HRM Administration should immediately instruct TCL to update the banking arrangements so the cash transactions for each entity (TCL/TA, HMC) take place in separate bank accounts. This would be in keeping with normal business practices.
- The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation.
- 8.2.10.10 A formal agreement should be developed between the HRM Halifax Metro Centre and TCL, Ticket Atlantic, verifying the terms of use and cost of the space occupied by Ticket Atlantic for use of the Halifax Metro Centre facility, as well as the commission to be received by the Halifax Metro Centre. This agreement and any subsequent changes to it should be approved by both TCL and HRM before they are implemented.

- 8.2.10.11 TCL, in consultation with HRM, should update the Halifax Metro Centre events contracts so it is clear which organization is being contracted with, including the specifics of the Ticket Atlantic agreement and details specifying when advance ticket monies will be released.
- 8.2.10.12 Bank signatories on the Halifax Metro Centre account should be updated and maintained on a regular basis by TCL. At the time of our review, the former CEO of TCL was still a signatory on the Halifax Metro Centre account. These bank signatories should be reviewed and confirmed on an annual basis.
- To enhance direct control over the HMC bank account and assist with oversight, HRM Administration may wish to retain some level of signing authority over the account. As an example, the CAO may be required to co-sign all cheques over a pre-determined amount.
- The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation. The former CEO of TCL signatory on the Halifax Metro Centre account has been removed as of April 5, 2011.
- 8.2.10.13 HRM Administration should ensure the assigned staff in HRM have the responsibility and recourse to follow up if/when they see changes or actions that do not appear to be in Halifax Metro Centre and HRM's best interests.
- 8.2.10.14 HRM Administration should include the financial results for the Halifax Metro Centre in the quarterly financial reports currently submitted to Regional Council.
- 8.2.10.15 TCL, in consultation with HRM, should prepare the annual budget and initiate the development of an operating plan for the Halifax Metro Centre which is separate and apart from the TCL plan. These plans should be included in the annual HRM budget process, including approval by Council. The documentation provided to support the budget submission should include separate and clear identification of the costs split between TCL and the Halifax Metro Centre in the annual budget.
- 8.2.10.16 TCL should document the process for items such as the timing of event settlement rather than assuming all parties understand and accept the general "industry norms".
- 8.2.10.17 HRM should consider conducting an assessment of whether they should continue to hold the ownership and operating responsibility of the Halifax Metro Centre.

- 8.2.10.18 As management of risk is one of the focal points of this report, it is recommended at least yearly, HRM Administration engage the Trade Centre Limited Board in a structured discussion around risk.
- 8.2.10.19 HRM Administration should consider creating internal standards to guide their expectations around the quality of reporting. They may wish to engage in discussions around the quality and quantity of disclosures around activities, governance, risk oversight and on-going areas of operational risk including, for example, collectability of accounts receivable.

8.3 Historical Synopsis Found in Various Documents and Email Accounts

The facts and comments included in this section have been compiled and developed from interviews and a review - to the extent possible - of email accounts and from other documentation obtained by the Office of the Auditor General in its review of the circumstances relating to this matter.

8.3.1 2006 Concert Season

The public provided feedback on the use of the North Common as a concert venue via email to the Mayor's Office or through their local Councillor after the Rolling Stones Concert was held in 2006. General concerns expressed related to the suitability of the venue and the potential financial risk to HRM. A number of concerns were based on the assumption HRM was putting on the event. In one constituent's words, "Promoters should pay for all of it; I believe City should not have to pay a cent."

In a response email, Mayor Kelly confirmed, "HRM is not actually going into the promotions business" and decisions to use the North Common is a "democratic process of Council." The email further supported the then CAO's publically stated position (Dan English) that HRM's role is to provide a venue, following the signing of a contract and the risk belongs solely to the promoter.

In a follow up report to Regional Council on the success of the Rolling Stones Concert on the North Common, the author provided feedback from the promoter of the Rolling Stones Concert regarding the services provided by Trade Centre Limited on behalf of HRM. The promoter compared the experience of using and renting the North Common venue to the experience of using the Halifax Metro Centre. In the report to Council, dated March 6, 2007⁶ staff stated the promoter characterized his experience as unnecessarily bureaucratic resulting in delays during the event execution. However, the final report finished on a positive note, reiterating the North Common and Halifax as a viable venue for major concerts. Council adopted staff's recommendation to enter into a Memorandum of Understanding with the Trade Centre Limited, Events Halifax (EH!) to explore future concerts, pending a formally adopted "events strategy" by Council.

⁶ See Section 8.01, this report, page 15.

8.3.2 2007 Concert Season

As far back as March 2007, the Mayor's Office received concert ideas from the public, councillors and other promoters. Included in the 2007 documentation was discussion regarding the work provided by EH! on behalf of HRM. In addition, documentation reviewed by the OAG indicated the Mayor initiated, with staff assistance, the development of a Concert Event Rack Card which created some animosity with EH! and TCL. Following an email exchange with Fred MacGillivray, then CEO of Trade Centre Limited and Council members appointed to the TCL board, the card was eliminated. Various councillors expressed displeasure with the approach taken by the Mayor. Mayor Kelly responded to the email by reiterating his understanding of Council's instructions to assist in achieving Council's desire to have concerts on the North Common. The Mayor also acknowledged that giving the "draft rack card" to the press without first providing time for Council to review and comment was premature. This occurred in August 2007, prior to Council giving authority to the Mayor and CAO to enter into contracts which did not occur until November 13, 2007.

Numerous examples of documentation throughout 2007 highlighted Mayor Kelly's interest and involvement in the day-to-day process of acquiring artists for the North Common, ranging from his office writing various agents/promoters to ask for assistance in signing an artist to receiving and forwarding suggestions from the public on artists, to Power Promotional Concepts. In one email exchange between the Mayor and a councillor, Mayor Kelly thanks the councillor for their support and states "I hope my pushing for proactive events promotion [sic] is successful over time....the right time to bring this issue to Council is when we have concrete proposals."

In correspondence dated November 13, 2007 between Mayor Kelly and Creative Events Group (CEG), a broker of various artists, there was indication the Mayor was under some pressure "and the pressure of Council to announce a MAJOR rock and roll concert before the end of November (especially given the negative reaction to the cancellation of the Celine Dion concert scheduled to take place in August 2008.)" The public announcement of the cancellation of the Celine Dion concert did not occur until November 16, 2007.

Subsequent to this, on November 20, 2007, an email was sent by Mr. Wayne Anstey to the Province requesting the Province "provide to HRM by way of loan/grant the amount of \$500,000 to be paid in turn by HRM to Power Promotional Events Inc., (Harold MacKay and Ed Goguen) to promote an Eagles Concert on the North Common in June 2008 if they are successful in winning the competition for their services. \$150,000 of the said amount will constitute an **un-repayable grant** in any event...." This email was coded as "Security: Top Secret" and was sent to R. Fowler and K. Dean, of the Province of Nova Scotia and Mr. English, blind copied to Mayor Kelly.

The HRM venue came into strong competition for the Eagles to perform. According to the documentation, Power Promotional Concepts, through Creative Entertainment Group (CEG) entered into a bidding process against another promoter to attract the Eagles to Halifax. In August 2007, Mayor

Kelly wrote to the Creative Artists Agency group requesting assistance on behalf of Power Promotional Concepts and HRM to secure the KISS band for 2008. In September 2007, the Mayor and Mr. Anstey met with Mr. Harold MacKay to discuss 2008 concert opportunities and in October 2007, Mayor Kelly sent an email to CEG confirming CEG had “the exclusive right to negotiate on behalf of the Halifax Regional Municipality (City of Halifax) for the Eagles, for one concert on the North Common in 2008.” This occurred without Council’s direction or knowledge, prior to the November 13, 2007 directive giving the Mayor and CAO authority to contract.

In October 2007, Mr. Anstey received word from Mr. MacKay (blind copied to Mayor Kelly) that another band might be available in 2008 for a concert but this appears to have not panned out for HRM. In the email exchange three concerns were discussed:

1. What was the capacity of the local market to support potentially three concerts (2008): financially for the promoter, and the reputational impact on HRM should one of the concerts fail to attract a large crowd?
2. What was the political ability of the North Common to sustain three or more events over one summer, especially given the multiple uses of North Common and noise concerns?
3. What was the financial ability of HRM and the Province to subsidize the cost of municipal services for multiple concerts in one season?

Mr. MacKay was asked to consider whether, under the multiple concert scenarios, Power Promotional Concepts would be willing to either absorb some of these costs or enhance the possibility of HRM recovering some or “all of its investment through ticket sales or otherwise.” It would appear this is the first indication, HRM, had moved beyond just providing a venue to becoming an investor or partner in holding concerts on the North Common.

Publically however, the official position was, HRM was only a venue provider, as can be seen in a statement made by the Mayor when writing to a constituent who had a concern “a flop of a concert could cost the City a huge amount of revenue.” Mayor Kelly wrote back on November 8, 2007, “Council’s part in this is simply to provide a third date when we are open for business on the Commons. The promoters and Events Halifax guarantee the success of the show.”

On November 7, 2007 the day Council recommended giving the Mayor and CAO authorization to contract for concerts on the North Common, Mayor Kelly responded to an email from another constituent with a similar response to the above, indicating he was well aware of who guarantees a concert.

Council’s part in this is simply to provide a third date when we are open of [sic] business on the Commons. The promoters and Events Halifax guarantee the success of the show.

In an email exchange to another constituent on November 21, 2007, Mayor Kelly wrote “HRM is not actively trying to attract a particular act. We have indicated that we will make available the Commons as a venue for a concert if a strong business case indicates success.”

By the end of December 2007, Power Promotional Concepts was successful in confirming Keith Urban for August 30, 2008. Mr. MacKay made inquiries of Mr. Anstey and Mayor Kelly, relative to their participation in a press event, making the announcement. As noted in the email exchange, the request was declined based on a number of factors:

- if HRM attends the press conference questions may focus on “how much money we put into the event”;
- what is HRM’s relationship with EH!; and
- questions around the cancellation of the Celine Dion concert.

Mr. Anstey suggests with Ticket Atlantic being the ticket sellers “you may want to have Scott Ferguson there. As a “partner” in this event, with an opportunity to profit from it, he will have to put a positive spin on the concert.” It should be pointed out Mr. Anstey, not Mr. Ferguson wrote the contract for the Keith Urban concert which stipulated a cash advance “authorizing” Ticket Atlantic to advance cash on ticket sales to Power Promotional Events.

8.3.3 2008 Concert Season

During January 2008, Mr. Anstey (blind copy to Mayor Kelly) approached the Province of Nova Scotia through the then Deputy Minister of Tourism, Ms. Dean, regarding possible funding options for a potential 2008 concert being pursued by another promoter other than Power Promotional Concepts. The email exchange suggests Mr. Anstey actively negotiated down the financial request with the promoter from \$700,000 to \$500,000. Mr. Anstey requested “that the Province put up \$500,000 as a concert sponsorship plus up to \$150,000 against 50% of the municipal costs to bring this to HRM this summer.” This was in addition or to replace the November 2007 request for financial assistance of \$500,000 for the Eagles concert being pursued by Power Promotional Concepts.

On January 21, 2008 Mr. MacKay wrote to Mr. Anstey advising him of concerns with his (Mr. MacKay’s) financial offer to secure the Eagles Concert. Mr. MacKay stated if his offer was accepted “our offer of ... up front would not be acceptable to them and that it needed to be We cannot do that on our own; however, Edgar and I said nothing and decided to just let it play out and see if they can actually get them here and then we would figure things out.” Both Mayor Kelly and a staff member were forwarded the email by Mr. Anstey.

It is therefore apparent even before Power Promotional Concepts had put on their first concert in HRM in August 2008, the company may not have or wished to provide sufficient backing to support the full financial risk of promoting a major event on the North Common.

At the end of January 2008, Mr. MacKay advised Mr. Wayne Anstey and Mayor Peter Kelly the Eagles concert was won by another promoter and they would be playing in Moncton. Shortly, thereafter, “someone” broke the news the Eagles were going to play in Moncton and emails were exchanged among councillors concerning the perceived lack of participation of EH! in promoting concerts on the North Common (the organization to whom Regional Council felt they had delegated authority to promote concerts on the North Common) and HRM’s role in becoming involved in an open negotiation with another promoter. Mr. Anstey advised the MOU with EH! was not exclusive and if EH! had been working on the Eagles concert on behalf of HRM, they should have advised HRM of that. In addition, Mr. Anstey reiterated:

Council told us to go out and get events. We got one and are trying to get more. In trying to get concerts, it is our opinion, we should deal with anyone who is interested, not just select promoters. That’s where we differ from EH!. If DKD wants to put the Eagles on the Commons, we would be happy to take them, since Power has withdrawn their bid. We will be willing to provide municipal services as we would have done with Power. **Other than these municipal services, we have guaranteed nothing.**

Interestingly, on February 28, 2008 Mr. MacKay wrote to Mr. Anstey, Grant MacDonald of TCL and the Mayor regarding a second concert being proposed for the Labour Day weekend by another promoter. Mr. MacKay stated the second concert “would be competitive to our show” and “the result would greatly affect financial viability of our Country Rocks (Keith Urban) show.” He goes on to say “as residents and business owners, Edgar and I are contacting you to ask that you not approve his use of the Garrison Grounds or the Halifax Commons on the Labour Day weekend for the reasons mentioned above. If you wish to do business with him on some other weekend that is your business and not ours.” The second concert did not occur.

During the remainder of February 2008, HRM, through Mr. Anstey, continued to maintain contact with the promoter and the Province regarding possible funding opportunities for yet to be confirmed concerts for 2008. Council had given “authority to contract” up to 3 concerts for the 2008 season and only one had been confirmed by this time, the Country Rocks 2008 with Keith Urban. CEG, on behalf of Power Promotional Concepts, confirmed with Mr. Anstey the desire for the Province to make a financial commitment. Discussion occurred regarding the possibility of securing Sir Elton John in 2008. CEG wrote, “Elton’s US manager... are now combing through the specifics of our financial proposal – in particular, they had several questions about the amount of City and Provincial investment, so your email is timely.”

On February 12, 2008, CEG advised Mr. Anstey and Mayor Kelly that “on behalf of the City of Halifax” they had made a highly confidential formal offer to Sir Paul McCartney to play during the summer of 2008. Early in April 2008, Mayor Kelly met with another promoter, who advised in an email, the purpose of the meeting was “get the info from the Mayor” prior to flying to Los Angeles to meet with agents on an opportunity. At the same time, a decision on whether or not Sir Paul McCartney (PMC) would accept

an offer to play in Halifax was pending. Shortly after meeting with the PMC representatives, Mayor Kelly advised Council of the potential for PMC to perform in Halifax during 2008. However, circumstances arose which resulted in PMC deferring the concert during 2008. From the correspondence, it would appear Mayor Kelly played a key role in the attempts to acquire Sir Paul McCartney for Halifax.

The public response to the news that PMC was not coming to Halifax was generally around who would have been underwriting the concert costs. Mr. Anstey responded to one constituent "HRM would not have had any contractual relationship with the performer to expose HRM to any financial obligations to him." His email finished with "the City of Liverpool is actually promoting the concert there, a role that HRM does not intend to take on." However, later in 2009, HRM did step in to assist in the promotion of the 2009 concert, completely opposite to Mr. Anstey's statement.

Shortly after the Country Rocks 2008, Keith Urban concert is held in August, Mayor Kelly responded to a constituent's complaint about the condition of the North Common by advising Council acted to allow "the use of the commons with a sense that it would provide economic benefit to the municipality and that it had the support of the public. As with all things new **we will carefully monitor** that these assumptions are borne out by experience over time."

At the end of September 2008, Mr. MacKay was able to confirm the band KISS for one show for the next summer (2009). Mayor Kelly requested Mr. MacKay advise of the dates "so that we can commence talks with the province!"

In October 2008 Mayor Kelly and another councillor met with CEG and PMC representatives to discuss the potential 2009 Sir Paul McCartney Concert.

8.3.4 2009 Concert Season

On February 3, 2009, Power Promotional Events announced the band KISS would perform on the North Common on July 18, 2009, with tickets going on sale February 6, 2009 through Ticket Atlantic Box Offices. In responding to a request to assist a constituent in helping his daughter's charity, Mayor Kelly advised "Halifax Regional Municipality is not the organizer for this concert. You should contact Events Halifax at Trade Centre Limited or Harold MacKay of Power Promotional Events."

Early in May 2009, Power Promotional Events, through CEG, advised through email they were close to announcing having secured Sir Paul McCartney for July 11, 2009. On May 21, 2009, a joint announcement took place involving Power Promotional Events, the Halifax Regional Municipality and the Province of Nova Scotia. Announced at the press conference was provincial funding of a grant in the amount of \$300,000 from the Department of Tourism, Culture and Heritage to Power Promotional Events for "marketing." The Province of NS eventually gave an additional \$300,000 as a "repayable grant" to Power Promotional Events and guaranteed \$3.5m performance fee to PMC. Mr. MacKay was not required to repay this "repayable grant". A payment in the amount of \$3.85m occurred through the Halifax Metro Centre (HRM) bank by Trade Centre Limited, based upon what we were advised to be,

direction from both the Province of Nova Scotia and Mr. Anstey. Subsequent emails between the Mayor and constituents emphasized the HRM was not taking any financial risk with these concerts.

From the documentation and emails reviewed by the OAG, concern with ticket sales had been mounting as early as late May. It has been suggested by June 20, 2009 ticket sales had not yet reached the 20,000 mark. On July 3, 2009 CEG wrote to the parties looking for “any whisper from Harold on how the tickets are doing?” On July 5, 2009 Mr. MacKay met with Trade Centre Limited and Mr. Anstey to review their financial position. Tickets sales for the Paul McCartney concert had only reached 20,200. In an email dated July 5, 2009, Mr. MacKay stated:

I met with TCL (Carrie and Grant) this week to review our financial position and they agreed to assist us with a possible funding shortfall to make certain this show gets produced on the 11th. The funding will come from funds on hand for both this show and our KISS show however if PMC incurs a loss we will have a huge problem. We are currently looking at a ... loss and without this assistance the event is in serious danger unless of course we get the attendance we need to get us to a breakeven.

The July 5th email to Kelliann Dean, David Ross, Wayne Anstey, Grant MacDonald and Scott Ferguson went on to say:

The reason we are writing all of you today is to explain that we urgently need a commitment from some level of Government that any loss we incur on this show will be immediately covered. As you are aware the Premier guaranteed the artist on this event however if sales are below 32,000 there will be a funding shortfall that we cannot handle.

On July 6, 2009 we understand a meeting was held in the Mayor’s Office with Harold MacKay, Edgar Goguen and Mayor Kelly present, just five days prior to the July 11th concert date. Also on July 6th HRM staff, supported by CEG staff and an HRM councillor were actively promoting the upcoming PMC concert. HRM purchased and installed street banners, CEG staff and an HRM councillor drove 300 km playing Beatles and McCartney songs around HRM and created an amateur movie. On July 10th, one day before the PMC concert, the Mayor and CAO offices announced the unprecedented act of affording HRM staff the ability to purchase tickets to the Paul McCartney concert and pay for them on a “payroll purchase plan.”

After the Paul McCartney concert, on July 14th, Mr. MacKay wrote to the parties noted in the July 5th email above, and advised the concert did not meet the numbers needed (paid attendance of 26,564) to require repayment of the \$300,000 provincial “loan” and had experienced an event loss. Mr. MacKay further stated:

As you know the artist received his guarantee money through us [actual ticket sales] and now we need to know how we can mutually resolve this [sic] move forward.

In a subsequent email dated July 15th, Mr. MacKay advised the parties that he was speaking with Mr. Ferguson who told him “there wasn’t anything he could do about our loss as it would be out of his hands. We have always said if we had a loss on this event we would need help and we are not certain as to whom we talk with.”

On July 21, 2009 a meeting was held between Mayor Kelly, HRM staff, Deputy Minister Kelliann Dean and CEO of TCL Scott Ferguson to discuss “McCartney concert shortfall.” On July 29, 2009 Mr. MacKay wrote to the Mayor, copied to Wayne Anstey and Edgar Goguen, advising he had had a meeting with Scott [Ferguson] and “Scott mentioned today that it might be possible to have funds covered through TCL as long as he had coverage from his end from the City or Province. The concept would be that TCL holds as an advance on next year shows which we should have locked down by Nov/Dec as that is our strategy.” Mr. MacKay requested the Mayor “peruse”, [sic] prior to a meeting with the Premier or Minister. Mr. Ferguson acknowledged participating in the meeting, but stated he did not suggest the proposed arrangement.

We understand a meeting was held on August 8, 2009 with Minister Percy Paris, Mayor Kelly, Harold MacKay and Edgar Goguen. Mr. MacKay followed up the August 8th meeting with an email thanking Honourable Mr. Paris for the recent meeting, copied Mayor Kelly and Edgar Goguen. In the letter Mr. McKay reiterated the positive economic spinoffs accruing to the Province from major concerts and comments, “As we explained, our financial position has taken a severe blow and without your [province] assistance our sustainability will be impossible”. The proposal from Mr. MacKay was:

What we would like to purpose is that the Province and the City authorizes the Trade Centre Limited to advance us the funds and here is how they will be paid back:

1. Our plan as I mentioned is to host two artists at two events next July. Attendance estimates for one would be 22,000 to 32,000 and the other would be 27,000 to 40,000.
2. We will formally apply for a 2010 grant of \$150,000 for each show and based on what we all know about return on investment we believe that this would be considered a reasonable request that should find its way through to approval. Two shows mean \$300,000 and that would be paid to TCL immediately upon receipt.
3. We will pay \$10.00 from every ticket sold for each show and that would be taken out from the moment we put tickets on sale which could begin in December at the earliest and March at the latest. We would need to sell 35,000 to get the balance paid and we do believe that to be very achievable for the artists we are pursuing.

On August 27, 2009, Mr. MacKay received a negative response from the Minister. Mr. MacKay stated, in an email to Mayor Kelly, Wayne Anstey and Edgar Goguen, "This puts us in a very precarious position and we need to know asap if there is any other hope in resolving this?" In a follow up email dated August 28th to Scott Ferguson, Mayor Kelly, Wayne Anstey and Edgar Goguen, Mr. MacKay reiterated the "precarious position" they were in and "we need to find someone to assist us. We have explained several times what the downside is to everyone however we need to know if there is any hope in finding a solution." A meeting was scheduled for September 1, 2009 between Mr. MacKay, Scott Ferguson, Wayne Anstey, Mayor Kelly and other HRM staff "to discuss assistance with the loss they took on the PMC show." The meeting location was noted as the Mayor's office.

The next correspondence relating to Power Promotional Events and concerts on the North Common was dated December 9, 2009 when Mr. MacKay advised Mr. Anstey, copied to Mayor Kelly and Mr. English, that they were planning a press conference to announce Country Rocks 2010. Included in this email was a reference to following up with meetings with "NS Gov't to solicit some assistance." He also included a PS to his email which stated:

PS We should get a contract signed and I hope we can do like last year. Stay tuned for a couple of other shows I am trying to close.

8.3.5 2010 Concert Season

The 2010 concert season started with three tentative concert dates planned by Power Promotional Events. Proposed was the Country Rocks 2010, headlining Alan Jackson and Halifax Rocks 2010, headlining Kid Rock on the first night and the Black Eyed Peas on the second night. By late January 2010, separate to these events another promoter had advised staff in Community Development he was pursuing another band for a concert to be held in HRM. Later correspondence in March 2010 between the promoter and Mr. Anstey indicated the promoter pursued another band to play in Halifax, believing he had confirmation for use of the North Common. Mr. Anstey advised "in the absence of an application and research supporting the attendance of 30,000 or greater, he would not be prepared to consider another band." The year 2010 was the first year applications were required for consideration to use the North Common. Power Promotional Events did submit two applications for the 2010 concerts on January 29, 2010. However, this was after HRM had already indicated the concerts were a go and had agreed to pay an advance on ticket sales to Power Promotional Events.

Approximately 40 emails were exchanged among the parties during the period of February to August 2010, relating to the pursuit of cash advances by Power Promotional Events and requests to the Province of Nova Scotia to assist with funding. Based on emails dated in late 2009, and subsequent to losses from the Paul McCartney Concert, Mr. MacKay had proposed two concerts for 2010 as a means to improve his financial position. Mr. MacKay wrote to Mr. Anstey on March 26, 2010 to confirm the July 24th show. He stated, "We are now 100% confirmed for our 24th show and I need to know asap on funds

as this will be followed by a planned on sale date of April 5th week.” Mr. Anstey followed up a previous conversation with Mr. Ferguson regarding funding and replied to Mr. MacKay with the following, later in the day of March 26th.

Scott just got back to me. If you recall we have been cash flowing your advances out of Metro Centre Surplus which is the HRM money in the Trade Centre business. At the present time, there is only \$200,000 net in the account since we advanced \$400,000 to you in respect of the Country Concert. There may be more in the next few weeks, can't be sure, but as of now we (HRM) are only in a position to cover an advance of \$200,000. If that will make this work, I can get the paper work together...

Pressure to advance the full \$500,000 requested by Mr. MacKay continued in a series of emails. At one point, Mr. Anstey wrote back to Mr. MacKay, copied to Edgar Goguen, and Scott Ferguson advising he didn't "have any more money to cover the advances with." Instead, he proposed Ticket Atlantic cover \$300,000 of the risk on the Country show, "thereby freeing up \$300k of Metro Centre money for this show or alternatively, take on 300K of the risk for this show...." Mr. Ferguson responded to this suggestion,

Wayne. My problem is the auditor general has already put us on record regarding risk as a result of the past world events we hosted. I am not permitted to do so again. I could advance the funds from hmc [Halifax Metro Centre] if it was approved from your end. The risk would only be short term as I expect the additional 300k would be returned within a week of the on sale.

In a March 29, 2010 email exchange between Scott Ferguson, Grant MacDonald, Robert Kanchuk and Carrie Cussons, Mr. Ferguson instructed his staff to contact Mr. Anstey on the process. He stated, "Grant. Could you connect with Wayne on the process, letter from him. The letter will have to be very clear that this is approval from the city to advance funds to Harold from HMC,..not Ticket Atlantic. Robert connect with Grant assuming the cash is there and we are ok from a cash flow perspective." It is clear from this series of emails that Mr. Ferguson of TCL knew advancing funds from Ticket Atlantic might not comply with provincial directives. However, he was still prepared to advance funds from the Halifax Metro Centre, an entity for which he had a responsibility.

On March 29, 2010 in a letter to Minister Paris from Harold MacKay and HRM, the parties requested funding consideration for the 2010 concert season. Minister Paris responded on April 15, 2010, the Province was unable to assist with "\$400,000 toward infrastructure costs or an additional \$300,000 towards project development incentive to be used to acquire capital assets." Mr. MacKay replied to Minister Paris on April 24, 2010, expressing his disappointment and requested a meeting. A meeting was held on May 27, 2010 with the Province, who continued to deny the funding request.

Mr. MacKay wrote to Mayor Kelly on May 27, 2010 advising him of the results of the day's meeting and stated the Province suggested there may be other ways "they could help us with our events." Mr. MacKay reiterated his belief he was promised financial assistance to help, after last year's "huge loss on

PMC event.” On June 24, 2010 another advance of \$600,000 was provided to Mr. MacKay through TCL and the Halifax Metro Centre account. The Country Fest 2010 and the Black Eyed Peas Concert contracts were signed by HRM on July 15, 2010. The Kid Rock concert was cancelled on June 30, 2010. Ticket sales for the two concerts did not appear to proceed as strongly as expected. According to email records a meeting was arranged by Mr. Goguen with Mayor Kelly for Saturday, July 10th in the Office of the Mayor. The meeting location was changed by the Mayor’s Office staff on July 9th and Mr. Anstey was advised of the change. According to email correspondence dated July 12, 2010 sent by Mr. Anstey to Mr. Ferguson of TCL, he was advised of a meeting which took place at a local Bedford restaurant and the invitees were Mr. Anstey, Mayor Kelly, Mr. Goguen and Mr. MacKay. We were not able to confirm all parties attended this meeting, what was specifically discussed or agreed to or by whom. However, according to public statements made by Mr. Anstey, the issue of cash flow and event losses was discussed and arrangements were made to provide financial assistance to Power Promotional Events due to serious concerns the concerts would be cancelled and the financial risks associated with Power Promotional Events having already received \$1.5m dollars through the TCL and Halifax Metro Centre bank account. In a Monday, July 12th email sent by Mr. Anstey to Mr. Ferguson, he advised:

The Mayor and I met with Harold and Edgar about the advance of funds to help with their cash flow prior to the upcoming shows. We feel the City has gone as far as it can go so the Mayor is going to approach Minister Percy Paris today to see what the Province can do by way of a loan. This is just to give you a heads up in case you get a call from his office.

Mayor Kelly arranged a second meeting with Minister Paris, Ian Thompson (Deputy Minister of the Department of Economic and Rural Development), Harold MacKay, Wayne Anstey and himself for July 15, 2010. The first concert, the Black Eyed Peas, was set to occur on July 24th. As background to the July 15th meeting, the Mayor’s Office forwarded a promotional plan created by Power Promotional Events which outlined the estimated ticket sales needed to break-even and the corresponding economic spin-offs likely to Provincial coffers. After the meeting and having received a negative response from the Province, Mr. Anstey arranged another meeting between Mayor Kelly, Harold MacKay, Scott Ferguson and Grant MacDonald of TCL for July 16th. On Monday, July 19, 2010 an additional advance of \$250,000 was made to Power Promotional Events but not before one more call was made by Mayor Kelly directly to the Premier’s Office around 4:23 p.m. A phone meeting was set up for 3:00 p.m. July 20th. Meanwhile, Mr. Anstey had faxed a letter of agreement and guarantee to Mr. MacKay providing for two instalments of \$200,000 assigning the grant as forgivable if ticket sales for Country Rock 2010 were less than 9,000 and Halifax Rockfest 2010 were less than 10,000. This occurred at 11:22 p.m. on July 19th, before the conversation with the Premier’s Office scheduled for the following day.

Following the July 20th conversation with the Premier, the Mayor forwarded a copy of the March 29th letter sent previously to Minister Paris. Included with this correspondence was an amended request for funding of \$200,000 for each concert. The email suggested they may not be able to pay the balance owed to artists or the set up fees. Later that day, a meeting was arranged for early morning July 21st in the CAO’s office. In attendance at this meeting are thought to have been Mayor Kelly, the Mayor’s

Office Manager, Harold MacKay, Edgar Goguen and Wayne Anstey. Following this meeting, at 12:03 p.m., Mr. Anstey sent an email to Scott Ferguson of TCL, advising him of the outcome of the morning's meeting with Harold MacKay and Edgar Goguen. Mr. Anstey stated,

Will be proceeding as discussed this morning. Mayor and I were able to get the repay threshold numbers down for both shows. I am drafting a letter for Harold and Edgar now. Will likely need first cheque for \$200k this afternoon. Will send copy of executed letters when received. Wayne.

At 12:49 p.m. the Mayor sent off another request as follow up to the July 20th phone conversation asking as an alternative for the province to consider \$100,000 loan for each concert, "thereby increasing their cash flow and the chance of success." It is our understanding in the afternoon of July 21st, the Mayor notified a member of his staff that Wayne had made arrangements for the money through Ticket Atlantic. At 6:17 p.m., the Premier's Office emailed back a response advising they would not be assisting.

The Black Eyed Peas Concert took place on July 24th. Following the concert, both Mr. Anstey and the Mayor's Office received a number of concerns regarding the perceived low attendance figures and general management of the event site. Concerns were also received from a number of councillors. On July 28th, in response to an email from one councillor, Mr. Anstey wrote, "the contract for the use of the Common does not provide for any refund if the concert does not in fact draw 30,000. FYI the actual money we spend providing support services is now down to approximately \$100,000 this year from \$150,000 last."

The next concert was scheduled for August 7, 2010. In series of emails dated August 3, 2010, Mr. MacKay emailed Mr. Anstey, "as you know our cash flows are needed for next week as we are committed ...and I would like to meet Tuesday am to go over numbers and access additional funds." Mr. Anstey responded to Mr. MacKay, copied to Edgar Goguen, Scott Ferguson, Grant MacDonald and Robert Kanchuk of TCL, he would only be available around 9 a.m. but "if it can be worked out under the current agreements without me that would be great because Tuesday is a Council day and I will be very busy." Mr. MacKay advised Robert Kanchuk "you and I can figure this out and we need to meet today if possible."

According to the email exchange, Mr. MacKay held a phone conversation with Mr. Kanchuk who followed up with an email outlining his estimation of ticket sales, costs and advances made to date. Mr. MacKay noted "the city commitment to second show \$200,000. Grant mentioned they will absorb box office charges to help out." A cheque was prepared for \$200,000 but due to vacation absences, could not be authorized as the value was above the available signatories. Mr. MacKay responded at 12:00 p.m. the cheque was required by the weekend and went on to state, "the city committed to \$200,000 per show which was over and above the Ticket Atlantic balances and Wayne has our signatures up to \$2 mil of TA funding." Mr. Anstey, at 12:16 p.m. on August 3, 2010 in an email to Harold, Edgar, Scott, Grant, Carrie and Robert stated, "Harold is right. In addition to the \$200,000 per show, an agreement was signed for advances against ticket sales up to \$2.0m of which \$1.75 has already been advanced. It looks

like potentially another \$150k could be advanced against this second agreement.” At 1:54 p.m., Scott Ferguson wrote back to his staff, “do we even have it in advance. City providing guarantee. Grant could you seek clarification from Wayne on repayment. I assume a cheque but within what time frame?”

The series of email exchanges regarding these payments continued to occur between August 3rd and August 5th and resulted in Power Promotional Events receiving \$500,000 in advances against ticket sales. Final settlement of the account occurred on August 16, 2010 with Power Promotional Events receiving another cheque in the amount of \$89,903 which was net of SOCAN fees, ticket sale expenses, \$40,000 rental for the North Common and \$450 payment towards the \$400,000 repayable grant.

On September 20, 2010 Mr. Anstey wrote to Mayor Kelly presumably in his role as a member of the Trade Centre Limited Board. Mr. Anstey wrote:

Subject: HEADS UP. I had a call from Grant MacDonald at TCL this weekend who told me that the auditors might raise the issue of the advances to Power Promotions and the unrecovered \$356K at the Board/Audit meeting this week. I am passing this on so you are not taken by surprise.

Trade Centre Limited sent an invoice to Halifax Regional Municipality, addressed to Mr. Anstey in the amount of \$359,550 on September 30, 2010.

In October 2010, Power Promotional Events announced it was experiencing financial difficulties. Mr. MacKay wrote to Mr. Anstey - who forwarded the email to Mayor Kelly and other HRM staff - providing an explanation of poor press he was receiving and outlined his plan to pay smaller vendors over the larger vendors with what he could. No further email communication was received from Mr. MacKay or Power Promotional Events until early 2011 when Mr. MacKay wrote to Mr. Anstey and advised he had secured another artist. Mr. MacKay wrote, “I do have a financing problem which I would appreciate discussing with you.” In response and included in the forwarded email to Mayor Kelly, Mr. Anstey stated, “the answer is no! I told Harold last summer the days of us advancing money from ticket sales was over.”

A final exchange of emails occurred between the Mayor’s Office and a number of councillors which refer to an interview held by Mayor Kelly in his office. One councillor quoted a news story found in The Chronicle Herald, where the Mayor was quoted as saying, “I don’t have the authority,” he said. “Only Council has the authority to give those dollars in that direct fashion.” “But even then, they’d have to go through a process.”

8.3.6 Trade Centre Limited Involvement, Knowledge and Participation

According to a public statement made by Trade Centre Limited CEO, Scott Ferguson to CBC in early March 2011, funds provided to Power Promotional Events was with the understanding Mr. Anstey had the authority to do so. However, according to documentation reviewed by the OAG, Trade Centre Limited, under the authority of Scott Ferguson, began advancing funds to Power Promotional Events in November 2007, with the signing of the first contract with HRM. Noted throughout the review, was documentation Trade Centre Limited facilitated the use of the Halifax Metro Centre bank account to enable the likely unwarranted use of funds which were to be seemingly held in trust. The argument raised by the Trade Centre Limited staff was the money advanced was HRM money as it came from the Halifax Metro Centre account. The argument raised by the promoter was it was his money. While much of the funds were derived from the promoter's on-going ticket sales, there were numerous occasions where funds were advanced before ticket sales had begun and, therefore, some other source of the funds was advanced. Based on both normal industry and good business practices, the funds should have been held in trust until the event had occurred, therefore the money advanced was neither HRM's nor the promoters at the time it was advanced.

Additional detail surrounding the actual processes used to advance and record the funds can be found in the Financial Section of this report and the potential breach of standard of care is explored in the section on Governance.

8.3.7 Venue Provider to Financial Backer

It is not clear why HRM moved from the original direction of Regional Council to provide a venue for major concerts, at no or low risk to HRM to its end state of cash flowing the concerts through the Halifax Metro Centre, which led to the final issuance of a repayable grant which ultimately became a non-repayable grant. However, the documentation indicates, after a resolution made by Regional Council to allow contracting with promoters, an escalation of involvement of the DCAO and Mayor took place starting with the first concert HRM entered into with Power Promotional Events (PPE): the Keith Urban Concert.

Under the Halifax Charter, the Municipality may not grant a tax concession or other form of direct financial assistance to a business or industry⁷. The question of whose money was actually advanced has been raised numerous times, both publically and throughout this review. It is our view should any of the advanced funds be determined to be the property of HRM, then it would appear a form of "direct financial assistance" was likely provided through the advancement of non-interest bearing funds.

Based on interviews and a review of correspondence among a number of parties, it is clear the Mayor's Office was actively engaged and committed to developing the North Common in Halifax as a major

⁷ Halifax Regional Municipality Charter, Sections 71(2), 79

event location. The Mayor's Office assisted in bringing Power Promotional Events and the Paul McCartney contact - Creative Events Group (CEG) - together, and the Mayor's Office appeared to remain in frequent contact with CEG and PPE with respect to other potential events as they unfolded. The Mayor's Office initiated and participated in numerous meetings regarding potential and acquired concerts and responded to and was copied on many emails pertaining to the relationship with Power Promotional Events, HRM and Trade Centre Limited. Later the Mayor's Office appears to have actively "led the charge" to obtain additional financial assistance from the Province of Nova Scotia.

When this assistance was not forthcoming, the parties actively participated in what was sometimes described as a "rescue operation". The fact that some have referred to the discussions in this manner and the fact the terms of the advance(s) were significantly changed from the prior advances, to provide for a non-repayment component, highlights the concerns around the expected financial success of the concerts.

We know a number of individuals were involved in varying degrees with the decision to "advance" Power Promotional Events the final \$400,000 from the "surpluses" of the Halifax Metro Centre bank account. Not everyone's recollections of events or meeting discussions are consistent and to our knowledge, no minutes or notes were taken.

What seems clear is the instructions given by Council to the CAO and Mayor on November 13, 2007 were confined to the provision of in kind services only, to be paid with funds from the Special Events Marketing Levy Reserve account.

Recommendation:

8.3.7.1 The OAG would recommend Regional Council seek legal advice on the validity and necessity of paying the \$359,550 invoice. We believe the funds likely became direct financial assistance at the point Mr. Anstey offered his assurance on repayment of the funds and Mr. Ferguson accepted it. However, the transactions were likely not legal under the HRM Charter.

8.3.8 Conclusions with Respect to Historical Synopsis

HRM:

The volume and content of email exchanges between the administrative and political branches of HRM provides reasonable conclusions as to the level of engagement and involvement of various parties leading to - what we believe to have been contrary to Council's direction and intentions - the evolution of HRM from venue provider to promoter and risk taker of concerts held on the North Common.

The OAG believes the following persons at a minimum, were directly involved, to various degrees, in the decisions around the handling and advancement of funds: Mr. Anstey (who has publically admitted his

involvement) and Mayor Kelly who both had access to information and the opportunity to raise concerns through a variety of policies and business practices.

It is our thought, given the level of experience and involvement of Mr. Anstey and Mayor Kelly in the public sector, each of these individuals should have known something out of the ordinary was occurring and should have asked more questions to determine if what they were contemplating and/or doing was appropriate, especially given the method of arranging for payments to be made to Power Promotional Events.

Trade Centre Limited:

Mr. Ferguson has agreed, given his experience in the public sector, he should have known these transactions were out of the ordinary and should have asked more questions. Documentation suggests Mr. Ferguson was an active participant in the process of issuing the advances on ticket sales for the concerts on the North Common, and the advances in question were, in fact, made with his full knowledge and at least two advance payments were made by Mr. Ferguson without the written approval of Mr. Anstey. In addition, Mr. Ferguson personally signed a number of the cheques.

OAG Comment:

It has become apparent from our review of the documentation and from interviews related to this matter, Mayor Kelly, Mr. Anstey and Mr. Ferguson all felt pressured to ensure the concerts happened, but for different reasons. This led to a “group think” perspective which resulted in qualified, intelligent professionals taking actions they likely would not have done in other circumstances. The idea of “group think” and its effects are explored further in Section 8.4 Soft Controls.

8.4 Internal Controls - Soft Controls

8.4.1 Governance

The reporting focus of the report to this point, has addressed the issue of “what” happened, “who” participated in the activities and to some extent, “how” the activities occurred. This section of the report will further expand on the underlying “how” and “why” the activities occurred and what needs to change to prevent them from happening again in the future.

To a large extent, the following questions have been addressed from the perspective of what took place and by whom in previous sections of this report including:

- what HRM accounting systems or oversight were not in place or not functioning as expected;
- what management override took place as they relate to accounting or reporting systems;
- what the ongoing relationship is between HRM and the Trade Centre Limited;
- what the quantity and quality of information provided to Trade Centre Limited Board members was with respect to the operations of the Halifax Metro Centre;
- what the quality and quantity of information provided to HRM Management or Regional Council was with respect to Halifax Metro Centre operations;
- how the ticketing aspect of the Halifax Metro Centre ultimately become part of the Trade Centre operations; what decision process was in place when the operations were “transferred/sold/exchanged” with Trade Centre Limited and what Regional Council discussions and decisions took place, and what documentation is available to support the transfer; and
- what should have been known about the co-mingling of funds within the Halifax Metro Centre bank account which were the property of Ticket Atlantic.

In summary form, the one aspect which appears to underlay all of the questions with respect to concerts on the North Common is the on-going question of governance, within HRM and with its partner, the Trade Centre Limited. In addition, the following questions pertain directly to the overriding issue of governance:

- what reporting systems or oversight were not in place or not functioning as expected;
- what is the role of HRM Councillors and the Mayor as members of the Trade Centre Board;
- what impact did the lack of role clarity have with respect to the matters;
- what impact did the lack of understanding of the HRM Charter have, and is there a need for “update/refreshing” to take place on a regular basis;
- what “onboarding” processes are in place to ensure all senior management and elected officials are aware of their roles and responsibilities/authorities as set out in the HRM Charter;
- what support /consultative mechanisms are in place to assist a senior HRM official either elected or not when faced with a difficult decision?

- is the established governance structure for HRM's relationships with its boards and commissions appropriate?

A complete analysis and understanding of all aspects of governance is well beyond the scope and timing of this report. However, to assist with the immediate strengthening of controls, certain governance matters are presented, with recommendations being broken down into the following sub-sets.

8.4.1.1 Corporate Culture - Evaluation through a Review of Internal Controls

The effect of corporate culture on organizational behaviour and performance is well explored, discussed and documented within current business literature. This level of thinking has evolved into a complete subset of controls often referred to as "soft controls".

One of the purposes of these so called soft controls is to "combat" what is often thought to be the subcultures which exist within an organization. We raise this point as the OAG feels it is clear HRM subcultures were often guiding various individual behaviours with respect to dealing with concert undertakings, financing and regulation. What also appears clear is the actions of some were based upon a subculture in complete contradiction to the tone set by HRM Regional Council and its expectations.

Jim Roth, author, in his book, Best Practises: Evaluating the Corporate Culture makes what the OAG considers to be a very powerful statement which as is often stated, "explains a lot". Mr. Roth makes the comment, "the corporate culture is the most powerful control in any organization."

The difficulty with completely understanding the impact of soft controls is because of what they evaluate and control. They are, by nature, not as clearly definable or measurable as are other financial controls with which most people are far more familiar. Also, to suggest it is difficult to audit these controls and develop performance measures is an understatement.

Various examples will likely serve to more fully explain the concepts and effects of soft controls. Examples often cited include⁸:

- Tone at the top
- Morale
- Competence
- Ethical climate
- Expectations
- Motivations

⁸ Excerpt from Tone at the Top, Issue 50, March 2011, published by Institute of Internal Auditors

What is interesting, of course, is the tie-in to various other sections of this report where governance and motivational matters are revealed in the actions and correspondence of those involved.

In his writings around soft controls, Jim Roth uses the “Committee of Sponsoring Organizations of the Treadway Commission’s Internal Control-Integrated Framework” (COSO) components to prepare categories of soft controls. One of these categories is, of course, the control environment. The study goes on to suggest to fully understand soft controls in the control environment, among other things, the structure of the reporting relationships and information flow must be evaluated. We could not but help notice the further tie-in to other sections of this report which centre around reporting, the flow of information between the CAO/Mayor and Regional Council and the somewhat blurred reporting relationships which appeared to exist with Regional Council having given both the Mayor and the CAO “authority to contract” with promoters. This change in Council direction appears to have occurred without sufficient discussion around the experience of those authorized to negotiate and enter into contracts and without any constraints, contrary to their original position.

As part of the overall question of governance, it became apparent to the OAG that the HRM culture must be considered in order to fully understand governance.

The following comment will likely be considered by many to be too severe, however it is the belief of the OAG to be supportable based upon the facts which are now known and through the actions and behaviours of many. The overriding business culture of HRM does not always or consistently appear to be one of inquisitiveness, questioning or challenging of actions which do not appear reasonable. Simply put, one of the root causes for why this happened can be explained by understanding the HRM culture around these types of transactions.

On the premise or assumption the above comment has merit, the following questions then become relevant:

- what degree of impact did the HRM culture in fact have with respect to the actions of each and every person who had knowledge of this matter;
- does this appear to be a matter which was essentially “thought out” from the beginning or one which caused a series of cascading events from one “tipping point”?

Recommendations:

- 8.4.1.1.1 The HRM Audit and Finance Committee should adopt as part of its terms of reference an appropriate level of responsibility with respect to soft controls in addition to those controls normally thought of as more measurable or definable.

8.4.1.1.2 The OAG, as a result of this work and the perceived impact of the likely lack of soft controls, has concluded a specific project around soft controls is warranted. As it may be some time before this work can be completed, it is recommended HRM Administration be briefed on the need for and importance of soft controls, and this concept become part of the ongoing work of the Administrative Committee of Council.

8.4.1.2 Consistency in Business Practices

As the OAG undertook the review of financing around concerts on the North Common, what became clear very quickly and was able to be answered quite early on was the question of consistency. The OAG concluded there was little or no consistency in how HRM was involved in the concerts. This question was answered both in terms of whether the handling of all concerts was consistent with normal and established business policies and also whether each concert which HRM was involved with was treated in a consistent manner.

However, what was consistent was the “unwritten desire” on the part of HRM to have outdoor concerts take place in HRM and the involvement of senior members of both the administration and executive branch. We have gathered from conversations from various sources, a strong desire - at times almost consuming - on the part of various levels of government (municipal and provincial) to see concerts take place on the North Common. It would also seem this interest stemmed from a desire to respond to constituents who either wished to attend outdoor summer concerts or those who felt it “would be good for the economy” and bring significant sums of money to HRM merchants, which in turn is thought to add to the growth of the economy.

Also, we cannot help noticing, if the wishes of the residents of HRM and to a lesser degree Nova Scotia really were to have major outdoor summer concerts, why was the attendance not greater for events leading up to the latest series during the summer of 2010?

The initial “tipping point” for the 2008 and subsequent concerns is thought to be the Rolling Stones concert held in 2006. This is thought to have created a renewed interest in HRM as a major outdoor concert venue in Atlantic Canada. We believe at that time, a major outdoor concert venue was defined as one which could draw in excess of 40,000 people.

We also noted at the time when major events were being considered for the North Common, events which would be better placed at Citadel Hill or other sites were also being considered. These events had a defined management process through the HRM Special Events Task Force where known policies and processes were in place and generally consistently applied. It was expected these types of events would require considerably less financial and staffing resources and hence, would be much easier to manage.

8.4.1.3 Motivation

It is appropriate to speak to controls and divisions of duties in an overall HRM sense. Among many of the questions which are now being asked with respect to the lack of approval for the repayable grant which brought many matters concerning concerts to light, is the question of how - with all the systems in place, controls and separate business units - did the transactions around advances and grants come to take place, outside the appropriate process and seemingly unnoticed by HRM?

During the examination of this matter, it became clear there were arguable differences in what was motivating those who were involved with the concerts. Motivation of the various parties becomes one of the more interesting aspects of the review. It would seem those who were involved (the number appears to be large) had motivations which spanned the entire spectrum. In some cases individuals in positions of significant authority advised they personally did not support the perceived motives and actions of others and therefore wanted no part in the development of concerts and delegated their responsibilities, while clearly others seemed to personally support the concerts to the point where grants were provided in clear violation of established authorities. What we have concluded is there were various motivations at play. For example, motivations might include:

Regional Council:

- the desire to keep constituents “happy” in the belief HRM wanted concerts,
- the desire to put HRM on the map as it related to summer concerts,
- as concerts are generally thought by many to be a good thing, they became motivated to do “a good thing”.

The Mayor of HRM:

- to be seen as a leader and moving HRM forward,
- have HRM be competitive with other Atlantic cities,
- personal interest.

The Province of Nova Scotia:

- many of the same reasons as Regional Council but with a wider Nova Scotia accent,
- some direct economic spinoff as to revenues from the provincial component of the HST, and also, for example, increased corporate taxes as a result of higher profits,
- some provincial competition.

HRM Management:

- in the case of the CAO, complete the request of Council as provided in Council motion.

HRM Staff:

- complete assigned tasks by Management to the best of their abilities.

Trade Centre Limited:

- participate in the economic spinoffs through the generation of revenue from ticket sales through Ticket Atlantic.
- participate in the development of a large scale event with the belief it was part of their business model in that they were responsible for events being booked at the Halifax Metro Centre and they had expertise in these matters.

While we acknowledge the comments above are clearly our thoughts around what seemed to be motivating various actions, we cannot help but comment around what appears to be a significant diversity in these motivations and whether, for example, this great diversity simply created a collision of actions due to the lack of controls in place to oversee and direct behaviours after the initial Regional Council direction.

For example, to try to understand the impact these very different motivations might have had on the events, we would point to the practise of advances. From the onset of concerts on the North Common, it was clear, be it right or wrong, advances of ticket sales to a particular promoter would need to occur if the concerts were to take place, resulting in the feeling of risk being assumed on the part of many. This leads to the question of what was motivating those who undertook unusual means to make the advances even after conversations and advice suggested the practice as a “bad business practise”. It is interesting to note, those who gave advice around the business risk, then went on to assist with the transactions with what appeared to be an unusual authority.

8.4.1.4 Role Clarity

Another of the points discussed in various forms throughout this report is the apparent lack of role clarity among the parties which we feel was a large contributing factor to the matter which ultimately led to this review.

As noted in the minutes of the November 13, 2007 Regional Council meeting, the Mayor and CAO had authorities with, what we believe are, clear limitations and reporting requirements. Of greater concern is the fact that there is/was no formal control mechanism in place to limit the actions of individuals who were progressively exceeding their authorities over an extended period of time and with a number of concerts. As an example, various contracts were prepared and executed by the DCAO, with little input from Legal Services. Also, the number and magnitude of advances increased over various concerts. Finally the direct and active involvement of the then DCAO/CAO and Mayor may well have left an inadvertent reporting and authority void as well as a sense of tacit approval for transactions, given their significant involvement in discussions with the promoter, TCL and the Province of Nova Scotia.

8.4.1.5 Risk Management

Given all the known facts with respect to this matter, questions are raised with respect to the role of risk management in the governance model. Given the events which took place, the organizational understanding around the possible risk of individual/individuals acting outside their authorities was poorly understood or not contemplated fully. As discussed in other sections of this report, role clarity and competing individual motivations facilitated or assisted the desire of certain individuals within HRM to have major concerts on the North Common. As the work around this report was researched and completed, it became apparent to the OAG, the continuing and repeated ignoring of obvious risks would ultimately lead to HRM incurring an unintended and unapproved financial obligation. It was not a question of whether this would happen, but when it would happen.

From reading Council minutes from both open session and in-camera, it is apparent Regional Council was clear as to the level of financial risk it was prepared to take. It set out dollar contribution limits and at least initially, reporting mechanisms.

With respect to risk, it did not however, set out to define a level of acceptable organizational (reputational) risk nor how this should be measured or reported. The potential loss of reputational risk from the possible cancellation of concerts to be held in the summer of 2010, was of course one of the reasons cited by both Mayor Peter Kelly and then DCAO/CAO Wayne Anstey as to why they became so intertwined in the events leading up to the “forgivable grant”. However, there is little evidence to strongly support this position, except as generated among the parties.

8.4.1.6 Group Think

“Groupthink” is defined as “a mode of thinking that people engage in when they are deeply involved in a cohesive ingroup, when the members’ strivings for unanimity override their motivation to realistically appraise alternative courses of action”⁹. While group cohesiveness is often desirable, it should result from individual, creative, unique and independent thinking.

It has been written¹⁰, one of the dangers of group think is that hasty, irregular decisions are made so as to preserve the groupthink balance. Groupthink also results when members of the group have very similar outlooks. It is more unlikely they will raise questions.

From our readings, it is very interesting to also note, the following are the hallmarks for many of the accepted reasons for groupthink and how it can continue unnoticed. With the help of one source of

⁹ Janis, I.L. (1972). *Victims of Groupthink*. Boston: Houghton Mifflin

¹⁰ Janis, I.L. (1982). *Groupthink: A psychological study of policy decisions and fiascos*. Boston: Houghton Mifflin Company

information around the symptoms of groupthink, we have concluded the facts and activities observed in this matter appear consistent with those described by the author.¹¹

This includes:

- excessive optimism and which, by default, encourages excessive risk taking;
- rationalizing of warnings which either challenge group assumptions or encourage excessive risk taking;
- strong belief in the goals of the group, which affects the moral compass of the group and could blind members as to the possible consequences of their actions;
- the use of self-control rather than systems control;
- the mistaken belief that their actions are acceptable simply due to lack of feedback to the contrary, which creates a situation of high risk, particularly when many actions are being undertaken outside “normal” business processes and controls and unknown to most who may speak out against the actions.

With this in mind, the need for well-functioning and appropriate external systems is that much more important. Systems including soft controls and policies might be defined as the antidote for groupthink. There must be processes to prevent insulation of the group, to combat traditional relationships, traditional leadership, and consistency in ideologies.

It is interesting to note, on more than one occasion, when the OAG asked various people how they thought this might have happened and gone “unnoticed”, we received surprisingly consistent answers, which included comments around:

- Strong personalities
- People too comfortable in their positions
- Command and control styles of leadership
- Isolation of the group from controls and lack of directed information and analysis
- The effect the “published” attendance numbers had on decision makers
- Political or community concerns overriding good business practices.

The OAG cannot also help but notice, one of the reasons given as to why the “forgivable” grant was made, was because there was a risk of loss of advanced funds. It would seem the comment was made in isolation of the full facts. When questioned, it did not appear alternative solutions were discussed or considered, or outside help found to develop alternative solutions.

¹¹ Janis, I.L. (1982). *Groupthink: A psychological study of policy decisions and fiascos*. Boston: Houghton Mifflin Company

8.4.2 Specific Comments with Respect to Risk Management

Nowhere in our review of documentation, or through interviews with the parties, was there an acknowledgement of a formal risk assessment having been applied. Where HRM's actual aggregate risks with respect to concerts exceeded its risk appetite, major changes to business models or activities were needed to be implemented immediately. Our comment is made in the context of this review and has focused on the events leading up to grants for concerts and has not focused on what other matters may exist which are as yet undetected.

We have included all of the above background information contained in this report as some indication of the types of discussions and thinking which were taking place as HRM started to actively become engaged in regular concerts on the North Common. As can be seen from the excerpts of various meetings and reports, reasonable thinking was taking place and reasonable risk management analysis occurred in the early stages of involvement in concerts on the North Common. HRM also acknowledged financial and operational risks and set out to limit these risks with the number of concerts which could be held each year and also the financial resources and their source which would be made available. We also note HRM recognized its lack of experience in concerts and the need for compensating experience while the initial concerts were being held. HRM also acknowledged some limitations around the experience of Events Halifax as they relate to major outdoor events, but saw value in the greater knowledge of Events Halifax.

It is obvious various outcomes of concerts on the North Common were not within the accepted range of performance for the organization both in the minds of Regional Council and its residents. Where contracts were provided to Legal Services, they were reviewed and amended as needed, to mitigate HRM's contractual risks and assumed obligations. However, not all contracts or signed agreements were provided by Mr. Anstey to the appropriate staff which would have, perhaps, alerted staff to the significant risks being assumed by HRM. Is this a failure of risk management planning or simply the overriding act of one person?

Key Risk Indicators (KRI) have, as a component of their development, a forward looking element which can give an organization early warning signals of potential risk and failure. For example, one KRI may be out-dated management agreements as exists with HRM and Trade Centre Limited around the operations and management of the Halifax Metro Centre.

Another KRI is the lack of role clarity shown through the level of involvement of the Legal Services in the oversight and diligent inquiry regarding the negotiation and the drafting of contracts. Mr. Anstey's role as a former municipal solicitor may have affected the level of objectivity of those observing or involved in the process. It is not unreasonable to understand, however given Mr. Anstey's vast experience in municipal operations and the law, how many may have felt no need to question his actions. The risk could have been better managed with the more active involvement of other lawyers and staff in the

drafting and execution of contracts and agreements. Certainly, Mr. Anstey's participation in the negotiating and writing of contracts clearly reached a loss of objectivity culminating in a real or perceived conflict of interest.

The OAG believes some of the transactions which took place may have occurred due to an abdication of responsibility or lack of active management in an area of expected authority. For example, we are aware the CAO delegated responsibility to a DCAO for something which Regional Council had delegated to him with what we believe was essentially no personal follow-up or observed formal reporting of the events. It is our view this abdication of responsibility helped facilitate the results achieved.

As noted earlier, it is clear to the OAG a number of people had knowledge of various matters leading up to the awarding of an improper forgivable grant. When asked why they did not "speak up" or raise "alarm bells" the answer often was "I really did not support concerts in the first place, so wanted to stay away from them", or "I forwarded the matter along to a different person in a different business unit, and when it came back I ASSUMED it was ok." HRM Council and Administration needs to carefully consider the impact of these attitudes and resulting actions. Regional Council then needs to think about whether the prevalence of "group think" helped achieve this outcome. Paraphrasing one writer on governance matters, what needs to happen is that HRM needs to create a new and refreshing way to think - they cannot depend on others to do their thinking for them.¹²

One of the natural reactions with respect to this matter will be the call for greater regulations, more rules and more government. While this reaction is warranted and has the support of the OAG, one simple fact cannot be forgotten. While new regulations and policies are required, the ultimate goal is not to completely manage the affairs of City Hall with rules, policies and by-laws. It would be practically and operationally impossible because no amount of rules, regulation and policy can make an individual or group of individuals reach the right decision. Rather it is hoped by the OAG that stronger governing bodies or committee members who are free from any personal bias or conflict of interest, coupled with a balanced response to non-compliant acts will encourage a greater sense of "self-responsibility." Finally these bodies need to be empowered with significant authoritative roles to sanction acts where "self-responsibility" is ignored or self-motivation prevails. Many of the recommendations presented in this report focus on strengthening oversight and responsibility of the various parties.

As implied earlier, many of the questions around "how did this happen", "how could we not have known" can certainly, in part, be answered by looking at the process of risk management. In order for risk management to be effective, there must be a formal and well defined process to identify all forms of risk and transfer this information throughout HRM, so that appropriate action can be taken toward identified risks. One of the contributing factors to how the various transactions took place and

¹² Managing the Grey Swans 20/20 Hindsight Not Required, Jose Tabuena, Conference Board of Canada Risk Watch Sept. 2010

potentially remained unknown was the involvement of very senior individuals in two of the organizations. Based on interviews and documentation reviewed, there appeared a sense any risk identified was felt to be managed by either advising others a risk was being taken, or accepting the instructions of someone who was perceived to have both authority and expertise.

One of the recurring themes emanating throughout this report is the nature of the HRM corporate culture and its relationship to the management of risk as observed through the actions of its employees. It would seem reasonable to conclude significant changes need to be made to this culture, starting with the “tone from the top”.

On the assumption Regional Council acts on the recommendations presented with respect to risk management and the HRM framework, a strong technical foundation for management and staff will hopefully be created. We wish at this point to be clear, it is our view this will not eliminate problems from taking place in the future but may serve to reduce the potential where role clarity and decision making processes are not properly modified.

Under the HRM Charter, Regional Council is responsible for the overall results of HRM activities and operations. It may be seen by some that bad decisions were made with respect to HRM’s overall involvement with concerts on the North Common. Some might suggest if Regional Council, for example, knew all of the risks associated with the actions taken by its employees and a less than positive outcome resulted, then a “bad decision” was made. In reality, any negative outcome resulting from a decision made based on the best available information at the time is not a “bad decision” but an opportunity to learn. Regional Council should have been made aware of all the risks and given the opportunity to make the choice on the actions to be taken. As significant milestones occurred, there was reasonable opportunity for Council to be made aware prior to the actions taken by staff. This deficiency in the forwarding of risk information perhaps highlights the lack of a suitable process to present Council with risk analysis.

Another theme permeating throughout is the need for HRM to establish a clear “appetite for risk” as it relates to this matter and other activities undertaken by staff on behalf of Council. An appetite for risk is simply a measurement and compass which provides staff with a better sense of what contemplated risks and actions are acceptable to the organization (i.e. what risks it will or will not take). Risks can be accepted, transferred or mitigated but they should not be ignored, as appears to have partially occurred in this case.

Some might suggest the HRM appetite for risk is set at zero, that is, no risk is acceptable to the organization. Certainly, this may be one explanation for not advising Council of the risks accepted in the overall involvement with concerts on the North Common. However, it does not adequately address why the risk was accepted in the first place. We acknowledge, with the benefit of hindsight, it is easier to see all the risks which HRM was facing as they relate to concerts on the North Common, starting with the

change in process approved by Regional Council at their November 13, 2007 meeting. In reviewing the myriad of information available, we cannot help but wonder if there was not a lack of perspective on the part of many with respect to HRM and the on-going risk. We think a fair conclusion is those very close to the negotiations and management of the HRM involvement with the concerts were simply too personally involved and hence simply “too close”. The end result was an inability to see or fully understand the ramifications of the decisions made.

We were pleased to be advised by the Director of Legal Services and Risk Management, the HRM Senior Management Team, in recognition of the need for additional focus on risk management, approved in April 2011 the corporate utilization of the ISO 31000 Risk Management - Principles and Guidelines.

Recommendations:

- 8.4.2.1 The OAG believes the full utilization of a risk management tool should take place in the immediate future and encourages the continued development by HRM Administration.
- 8.4.2.2 As part of the risk management priority project as suggested above, the OAG also recommends an emphasis be placed on the development of KRI’s, or key risk indicators, with a corresponding “appetite for risk” identified for each KRI.
- 8.4.2.3 The HRM culture around risk management should be reviewed and modified to reflect the established appetite for risk, as recommended above. HRM Administration should see, as a priority, the installation of a formal risk management process at all levels of the organization.
- 8.4.2.4 The OAG recommends Regional Council and HRM Administration work together to more accurately define roles in future events and how decisions should be made and by whom.
- 8.4.2.5 The OAG recommends it be made clear to the current CAO and future CAOs through performance management, that a delegated task is still one where the CAO has full oversight and outcome responsibilities.
- 8.4.2.6 The OAG recommends HRM Administration immediately review the process in place to enable individual business units and their management to understand HRM’s overall risk profile and those which would be specific to a particular future project, so that ALL risks are managed and risk management becomes more engrained in the HRM organizational culture.

- 8.4.2.7 In keeping with the evolving trend in both the public and private sectors around strong and accepted governance models and codes of conduct, the OAG recommends senior management develop a formal written policy regarding ethics training which would include the mandatory requirement for all staff and elected officials to participate in ethics training on a regular, recurring basis. We understand there is an intended business practice that would see all staff receive ethics and values training as they join the organization; however, we feel the requirements should be formalized, given higher priority, and should be more than a one-time event.
- In order to reinforce its importance and set the “tone from the top”, the OAG also suggests senior management and Regional Council of HRM, lead by example and be the first to participate in the training.
- 8.4.2.8 The OAG would suggest there may be benefit to a discussion around the need for a clear and strong delineation between oversight on the part of Regional Council and its representatives and day-to-day active management.
- 8.4.2.9 The OAG recommends HRM Administration and Regional Council work together to create a more vigorous overall risk analysis for HRM as a whole, as clearly the quality and quantity of current information is not leading to the most effective decision making. In other words, the OAG sees a deficiency in the relationship between the quality of risk information and the effectiveness of management’s risk decisions.
- 8.4.2.10 It is recommended in the future, as these types of matters are contemplated, a strong set of assumptions around strategies and financial involvement be prepared and these assumptions be immediately “stress tested” by a person or group not directly involved with their preparation; as negotiations continue, potential courses of action are continually measured against these assumptions. Any changes to assumptions should be immediately subjected to further stress tests.
- 8.4.2.11 Given the enormous complexities which exist in today’s modern public sector, it may be appropriate at this time to consider the overall roles and responsibilities of risk management. To effectively manage all aspects of risk is clearly a significant undertaking. With the implementation of a new risk management tool, this role in the organization will undoubtedly grow and achieve a certain level of independence.
- Given worldwide historical events in recent years, the development of the role of Chief Risk Officer was clearly seen as needed and beneficial to the management of organizational risks of all types including financial, reputational and operational.

The OAG recommends HRM should acknowledge the specialized knowledge required around all aspects of risk and consider the establishment of the responsibilities within a separate role.

9.0 Phase 2 Reporting

A number of issues have obvious implications with respect to the matter under review. Many of the “facts” which are central to this review are now widely known and for the most part not disputed by the parties involved.

With time and personnel matters in mind, the initial phase of this review as set out in the project charter did not look to specifically deal with any emerging issues.

It became clear to the OAG, as the initial work on this project commenced, the matter had more far reaching implications than was originally thought and certain aspects and recommendations which are contained in this report deserve greater and more in-depth attention. Any such matters which came to our attention will form part of the project charter for Phase 2 which at this time is envisioned as a follow up to this initial report.

Examples of additional review might include:

1. The financial implications relating to the transfer of Ticket Atlantic from the Halifax Metro Centre to Trade Centre Limited with a view to validating the current payment arrangements are indeed neutral to the bottom line, and in HMC’s best interest.
2. The current exchange of services and costs of the Halifax Metro Centre property are properly apportioned between the parties.
3. The report highlights the need for a stronger governance structure and improved oversight. HRM has over 25 management agreements with a variety of partners including many non-profit groups. The OAG is aware the HRM is in the process of reviewing these 3rd party relationships to develop and/or improve upon the services received. However, this process has been on-going for a number of years and yet a large entity such as the Halifax Metro Centre has not yet been reviewed. Larger third party entities managing HRM facilities such as the Dartmouth Sportsplex, Halifax Forum and Cole Harbour Place should also be reviewed sooner, given the higher potential of risk.
4. Many of the recommendations contained within this report speak to contracts, specifically with respect to their development, management and control. Some additional review of these matters appears warranted.

Summary of Recommendations:

(Reference # refers to the specific section in this report where the recommendation is found)

1. With respect to any future concerts or events where HRM is involved in any way with respect to contracts, the OAG recommends the practice of issuing cash advances not be allowed or supported by HRM. We believe they are in violation of the HRM Charter or the spirit of the Charter and go beyond the instructions given by Council regarding funding: “provided that any funding of municipal costs associated with the concerts be funded through the Civic Events Reserve”. Reference #8.1.3.7.1
2. HRM Administration should review and identify all potential work processes where legal advice should be sought; develop and implement a mechanism to ensure all issues requiring legal assistance are adequately captured and followed up on. Reference # 8.1.4.1.1
3. The OAG would recommend Regional Council obtain independent advice as to the review standard expected of Legal Services in the review of documents. Reference #8.1.4.1.2
4. a) The OAG would recommend HRM develop and adopt policies and business practices which require control of all legal contracts be vested in Legal Services. The timing and level of involvement should be at the discretion of Legal Services and not the business units.

b) HRM may wish to establish legal review criteria using, for example, a financial threshold which recognizes the signing authority of certain positions within the organization. For example, Legal Services could approve a standard procurement contract but only need to review the terms of a particular purchase if the conditions appear to fall outside of the standard (most likely to occur with an RFP versus a Tender) or where the value of the purchase is above a dollar threshold. Legal Services should review and approve all cases of sole source contracts or contracts entered into through use of the Province of Nova Scotia procurement process. Reference #8.1.4.1.3
5. HRM Administration should complete, in conjunction with Legal Services, an immediate review of staffing levels and performance measurements within Legal Services to determine if appropriate staffing is in place to support the total needs of HRM business units. Reference #8.1.4.1.4
6. The OAG recommends the policy and business practices developed by Legal Services include a discussion with the Clerk’s Office and include clear direction around who can affix signatures to which contracts and where the storage of these legal documents should occur. Reference #8.1.4.1.5
7. HRM Legal Services should develop and implement a policy and business practice which highlights the importance of and addresses the risks around ownership and version control of

developing and final contracts. There appears to be an unofficial policy respecting contracts whereby Legal Services are involved in the initial drafting of a contract with some business units, which often then use the original as a template and make changes themselves. This should be carefully reviewed to ensure the interests of HRM are adequately protected. Reference #8.1.4.1.6

8. With recommendation 8.1.4.1.6 in mind, the OAG would recommend a report be prepared immediately for review by Executive Management Committee outlining to what degree the practice appears to take place and what level of risk may potentially exist. Reference #8.1.4.1.7
9. The contract with the promoter should be written in a way that limits HRM's contribution to the maximum approved by Council. Reference #8.2.1.1
10. The cost of services provided should be coordinated and planned with one central contact point so that all costs can be collected, monitored and reported. Reference #8.2.1.2
11. Staff should undertake a regular review of the expenses as they are incurred to ensure HRM is staying within budget and to provide time to work with the promoter on any cost overruns. Reference #8.2.1.3
12. HRM staff should provide an Information Report to Council once the event has been held, identifying the total spent compared to that authorized, as well as identifying areas of success and areas for improvement. Reference #8.2.1.4
13. It is recommended any money deposited into, withdrawn or paid from the Halifax Metro Centre bank account should be specifically related to the operations of the Halifax Metro Centre only. Should use of Halifax Metro Centre funds be proposed for purposes other than for the operations of the Halifax Metro Centre, pre-approval should be sought and received from HRM Regional Council. Reference #8.2.4.1
14. On the basis TCL is authorized to loan funds on behalf of Halifax Metro Centre, it is recommended HRM review and approve on a yearly basis the types of loans or advances which can be extended, the terms, and what due diligence is required around repayment or recovery, should the need arise. Reference #8.2.4.2
15. The appointment of the external auditor for the Halifax Metro Centre should be made through the HRM Audit and Finance Committee, to assist with governance. Reference #8.2.9.1
16. HRM Administration (through Finance) with respect to the Halifax Metro Centre should be engaged in the audit planning process, and be made aware of any matters as would normally be expected to be brought to the attention of an audit committee. The HRM Audit and Finance

Committee should also retain the right of final approval of the financial statements prior to their being incorporated into the consolidated financial statements of HRM. Reference #8.2.9.2

17. HRM should request clarification from TCL on the inclusion of advance tickets on the Halifax Metro Centre financial statements. Reference #8.2.9.3
18. The on-going use of inter-corporate accounts be immediately eliminated. Any balance due between the two separate organizations should be eliminated on a regular basis and any balance be kept to a minimum. Reference #8.2.9.4
19. The balance in the advance ticket sales currently reported in the HMC accounting records, which relate to the activities of Ticket Atlantic, be immediately removed along with the appropriate cash, transferred to the Trade Centre accounts and represented on that organization's balance sheet. Reference #8.2.9.5

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation.

20. The management agreement between the Province of Nova Scotia, Halifax Regional Municipality, and the Trade Centre Limited for the Halifax Metro Centre should be updated to include numerous matters such as the specific levels of authority of all parties, performance measures, reporting requirements, and details of the basis for the compensation of TCL as the management company. Reference #8.2.10.1
21. After Recommendation 8.2.10.1 is completed, HRM Administration should establish and document clear expectations of what it expects from its relationship with TCL. This documentation might include:
 - what exactly do both parties expect from the relationship;
 - with respect to the management of the Halifax Metro Centre, what is the common definition of operated and managed? Is the Halifax Metro Centre operated essentially in a "blind trust " or is there a presumption of HRM expecting to be able to exert some on-going managerial influence;
 - what types of returns does HRM expect from the use of its asset;
 - what industry benchmarks should be used for performance measures;
 - what actions might HRM consider should performance not meet budgeted expectations. Reference #8.2.10.2
22. Once the recommendation in 8.2.10.2 is undertaken and in order to ensure adequate and appropriate levels of oversight take place for the Halifax Metro Centre, HRM Administration, likely with the lead of Finance, should develop stated and approved guidelines to govern where

and under what methods they feel it appropriate to engage the TCL Board. The OAG might suggest as a starting point a review of the following items:

- what written correspondence and regular reporting should take place;
- what the content of various reports which may be requested should be and the format;
- how should requests for information be submitted to the board;
- what the relationship with and responsibilities of the TCL Audit Committee might be as they relate to Halifax Metro Centre;
- what ongoing dialogue should take place between HRM Audit and Finance Committee and the Audit Committee of TCL;
- what oversight capacity should HRM Finance undertake with respect to internal controls;
- what mechanisms does TCL have in place to ensure its Board is made promptly and thoroughly aware of potentially troublesome issues which may require analysis and on-going discussion; in other words, what “exception” reporting process should be in place;
- what mechanisms does TCL Board use to refer matters as described above to its Audit Committee;
- under what circumstances would the TCL Audit Committee refer a matter with respect to the Halifax Metro Centre to the HRM Audit and Finance Committee;
- HRM Administration should ensure it is satisfied there is appropriate role clarity around positions influencing the operations and reporting around Metro Centre; this should include all levels of management including financial positions, as well as Halifax Regional Council and TCL Board of Directors;
- yearly, HRM Administration should review and prepare a report to Regional Council outlining the proposed business plan and budget for Halifax Metro Centre for the upcoming year; the proposed service lines and product lines should be clearly set out;
- once an annual business plan is in place, HRM Administration should satisfy itself TCL has the appropriate structures and controls in place to achieve the objectives;
- yearly, HRM Finance should likely satisfy itself, TCL has appropriate policies and controls in place to minimize unintended risks; and
- HRM Administration should consider the viability of retaining the Manager of the Halifax Metro Centre as an HRM employee. Reference #8.2.10.3

23. To provide specific direction around earlier recommendations, the OAG strongly believes HRM Administration should increase the oversight of the operation of Halifax Metro Centre through the review of quarterly operating results. This review should include the financial statements,

details of all costs split between TCL and the Halifax Metro Centre, the calculations supporting the commission received from TA, a profitability analysis for events held, and other items deemed appropriate. Formal and scheduled meetings with TCL staff should be held on at least a quarterly basis, or more frequently when appropriate.

HRM Finance should regularly review, for example, the reconciled bank balance account and transactions, and make-up of the accounts receivable and deferred liability accounts. Reference #8.2.10.4

24. HRM Administration should clearly define what is expected of HRM staff in their quarterly review of the HMC results, so that the oversight of both the operational and financial aspects of the management of the Halifax Metro Centre is reviewed. Reference #8.2.10.5
25. Where Trade Centre Limited has an interest in Halifax Metro Centre activities, TCL, in consultation with HRM, should develop and implement clear delineations between the operations and goals of TCL from those of the Halifax Metro Centre in order to avoid a potential conflict of interest. Reference #8.2.10.6
26. HRM Administration, in consultation with TCL, should implement a clear, documented approval process for significant changes in the Halifax Metro Centre operations (i.e. the move of Ticket Atlantic from Halifax Metro Centre to TCL, or the change in the basis for calculation of the management fee). Reference #8.2.10.7
27. TCL, in consultation with HRM, should immediately implement a formal risk assessment policy and process for Halifax Metro Centre operations, including specifically the assessment and mechanism of transactions or processes outside of normal business practice. Reference #8.2.10.8

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation with a completion date of second quarter of fiscal 2011/12.

28. HRM Administration should immediately instruct TCL to update the banking arrangements so cash transactions for each entity (TCL/TA, HMC) take place in separate bank accounts. This would be in keeping with normal business practices. Reference #8.2.10.9

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation.

29. A formal agreement should be developed between the HRM Halifax Metro Centre and TCL, Ticket Atlantic, verifying the terms of use and cost of the space occupied by Ticket Atlantic for use of the Halifax Metro Centre facility, as well as the commission to be received by the Halifax Metro Centre. This agreement and any subsequent changes to it should be approved by both TCL and HRM before they are implemented. Reference #8.2.10.10

30. TCL, in consultation with HRM, should update the Halifax Metro Centre events contracts so it is clear which organization is being contracted with, including the specifics of the Ticket Atlantic agreement and details specifying when advance ticket monies will be released. Reference #8.2.10.11

31. Bank signatories on the Halifax Metro Centre account should be updated and maintained on a regular basis by TCL. At the time of our review, the former CEO of TCL was still a signatory on the Halifax Metro Centre account. These bank signatories should be reviewed and confirmed on an annual basis.

To enhance direct control over the HMC bank account and assist with oversight, HRM Administration may wish to retain some level of signing authority over the account. As an example, the CAO may be required to co-sign all cheques over a pre-determined amount. Reference #8.2.10.12

The OAG is pleased to advise, after discussions with the President and Chief Financial Officer of TCL, immediate steps have been taken to implement this recommendation. The former CEO of TCL signatory on the Halifax Metro Centre account has been removed as of April 5th, 2011.

32. HRM Administration should ensure the assigned staff in HRM have the responsibility and recourse to follow up if/when they see changes or actions that do not appear to be in Halifax Metro Centre and HRM's best interests. Reference #8.2.10.13

33. HRM Administration should include the financial results for the Halifax Metro Centre in the quarterly financial reports currently submitted to Regional Council. Reference #8.2.10.14

34. TCL, in consultation with HRM, should prepare the annual budget and initiate the development of an operating plan for the Halifax Metro Centre which is separate and apart from the TCL plan. These plans should be included in the annual HRM budget process, including approval by Council. The documentation provided to support the budget submission should include separate and clear identification of the costs split between TCL and the Halifax Metro Centre in the annual budget. Reference #8.2.10.15

35. TCL should document the process for items such as the timing of event settlement rather than assuming all parties understand and accept the general “industry norms”. Reference #8.2.10.16
36. HRM should consider conducting an assessment of whether they should continue to hold the ownership and operating responsibility of the Halifax Metro Centre. Reference #8.2.10.17
37. As management of risk is one of the focal points of this report, it is recommended at least yearly, HRM Administration engage the Trade Centre Limited Board in a structured discussion around risk. Reference #8.2.10.18
38. HRM Administration should consider creating internal standards to guide their expectations around the quality of reporting. They may wish to engage in discussions around the quality and quantity of disclosures around activities, governance, risk oversight and on-going areas of operational risk including, for example, collectability of accounts receivable. Reference #8.2.10.19
39. The OAG would recommend Regional Council seek legal advice on the validity and necessity of paying the \$359,550 invoice. We believe the funds likely became direct financial assistance at the point Mr. Anstey offered his assurance on repayment of the funds and Mr. Ferguson accepted it. However, the transactions were likely not legal under the HRM Charter. Reference #8.3.7.1
40. The HRM Audit and Finance Committee should adopt as part of its terms of reference an appropriate level of responsibility with respect to soft controls in addition to those controls normally thought of as more measurable or definable. Reference #8.4.1.1.1
41. The OAG, as a result of this work and the perceived impact of the likely lack of soft controls, has concluded a specific project around soft controls is warranted. As it may be some time before this work can be completed, it is recommended HRM Administration be briefed on the need for and importance of soft controls, and this concept become part of the ongoing work of the Administrative Committee of Council. Reference #8.4.1.1.2
42. The OAG believes the full utilization of a risk management tool should take place in the immediate future and encourages the continued development by HRM Administration. Reference #8.4.2.1
43. As part of the risk management priority project as suggested above, the OAG also recommends an emphasis be placed on the development of KRIs, or key risk indicators, with a corresponding “appetite for risk” identified for each KRI. Reference #8.4.2.2

44. The HRM culture around risk management should be reviewed and modified to reflect the established appetite for risk, as recommended above. HRM Administration should see, as a priority, the installation of a formal risk management process at all levels of the organization. Reference # 8.4.2.3
45. The OAG recommends Regional Council and HRM Administration work together to more accurately define roles in future events and how decisions should be made and by whom. Reference #8.4.2.4
46. The OAG recommends it be made clear to the current CAO and future CAOs through performance management, that a delegated task is still one where the CAO has full oversight and outcome responsibilities. Reference #8.4.2.5
47. The OAG recommends HRM Administration immediately review the process in place to enable individual business units and their management to understand HRM's overall risk profile and those which would be specific to a particular future project, so that ALL risks are managed and risk management becomes more engrained in the HRM organizational culture. Reference #8.4.2.6
48. In keeping with the evolving trend in both the public and private sectors around strong and accepted governance models and codes of conduct, the OAG recommends senior management develop a formal written policy regarding ethics training which would include the mandatory requirement for all staff and elected officials to participate in ethics training on a regular, recurring basis. We understand there is an intended business practice that would see all staff receive ethics and values training as they join the organization; however, we feel the requirements should be formalized, given higher priority, and should be more than a one-time event.

In order to reinforce its importance and set the "tone from the top", we also suggest the senior management and the Regional Council of HRM, lead by example and be the first to participate in the training. Reference #8.4.2.7
49. The OAG would suggest there may be benefit to a discussion around the need for a clear and strong delineation between oversight on the part of Regional Council and its representatives and day-to-day active management. Reference #8.4.2.8
50. The OAG recommends HRM Administration and Regional Council work together to create a more vigorous overall risk analysis for HRM as a whole, as clearly the quality and quantity of current information is not leading to the most effective decision making. In other words, the

OAG sees a deficiency in the relationship between the quality of risk information and the effectiveness of management's risk decisions. Reference #8.4.2.9

51. It is recommended in the future, as these types of matters are contemplated, a strong set of assumptions around strategies and financial involvement be prepared and these assumptions be immediately "stress tested" by a person or group not directly involved with their preparation; as negotiations continue, potential courses of action are continually measured against these assumptions. Any changes to assumptions should be immediately subjected to further stress tests. Reference #8.4.2.10

52. Given the enormous complexities which exist in today's modern public sector, it may be appropriate at this time to consider the overall roles and responsibilities of risk management. To effectively manage all aspects of risk is clearly a significant undertaking. With the implementation of a new risk management tool, this role in the organization will undoubtedly grow and achieve a certain level of independence.

Given worldwide historical events in recent years, the development of the role of Chief Risk Officer was clearly seen as needed and beneficial to the management of organizational risks of all types including financial, reputational and operational.

The OAG recommends HRM should acknowledge the specialized knowledge required around all aspects of risk and consider the establishment of the responsibilities within a separate role. Reference #8.4.2.11

Abbreviations:

CAO	Chief Administrative Officer
DCAO	Deputy Chief Administrative Officer
HRM	Halifax Regional Municipality
PNS	Province of Nova Scotia
PPE*	Power Promotional Events Ltd.
PPC*	Power Promotional Concepts Ltd.
TCL	Trade Centre Ltd
TA	Ticket Atlantic
CEO	Chief Executive Officer
HMC	Halifax Metro Centre
SOCAN	Society of Composers, Authors, and Music Publishers of Canada
HST	Harmonized Sales Tax
KRI	Key Risk Indicator
CEG	Creative Events Group

* It was occasionally difficult to determine the appropriate vendor of the two companies to use, as over the review period, the promoting company changed. Both PPE and PPC were signatories to contracts and/or additional agreements, although all advance payments were made to PPE.