

**WORKING WITH THE AGLG**

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*Bill Buholzer*

## WORKING WITH THE AGLG

This paper reviews the statutory basis for the activities of the Auditor General for Local Government, compares that office with similar positions established in other provinces, takes a look at the AGLG's first two reports issued in the spring of 2014, and describes what local governments can expect when the AGLG selects their programs, services or projects for audit.

### I. WHAT IS THE AGLG?

The position of Auditor General for Local Government (AGLG) was created by the Legislature in 2012 by enactment of the *Auditor General for Local Government Act* S.B.C. 2012 c. 5. The Act authorizes the Cabinet to appoint an AGLG (on the recommendation of the Minister of Community, Sport and Cultural Development) for a term of 5 years, which appointment can be renewed once only. The first AGLG, Ms. Basia Ruta, was appointed in 2012 on the recommendation of an "audit council" established under the Act, whose role is described below. Ms. Ruta has an accounting background and held several senior positions in the federal government prior to her appointment. Unlike the provincial Auditor General, the Information and Privacy Commissioner, the Commissioner appointed under the *Members' Conflict of Interest Act* and the Ombudsperson, the AGLG is not an officer of the Legislature appointed directly by that body; she is accountable only to the Cabinet. This reflects the fact that her duties don't pertain directly to the governance of the province, and independence from the executive branch of government is therefore not essential. The AGLG's duties are, in administrative law terms, somewhat analogous to those carried out by commissioners appointed under the *Agricultural Land Commission Act*, and similar administrative bodies. The office is simply an aspect of the government's current program of supervision and support of local government.

The purpose of the AGLG is set out in the Act as follows:

The purpose of the auditor general is to conduct performance audits of the operations of local governments in order to provide local governments with objective information and relevant advice that will assist them in their accountability to their communities for the stewardship of public assets and the achievement of value for money in their operations.

A "performance audit" is described in the Act as follows:

(a) a review of the operations of a local government, as the operations relate to a matter or subject specified by the auditor general, to evaluate the extent to which

(i) the operations are undertaken economically, efficiently and effectively,

- (ii) financial, human and other resources are used in relation to the operations with due regard to economy and efficiency,
  - (iii) the operations are effective in achieving their intended results, or
  - (iv) procedures established by the local government are sufficient for the local government to monitor the economy, efficiency and effectiveness of those operations, and
- (b) recommendations to the local government arising from the review referred to in paragraph (a).

Such audits are usually referred to as “value for money” audits. The AGLG may also “identify and develop and publish or otherwise provide information about recommended practices, arising from a performance audit, that the auditor general considers may be applicable or useful to other local governments”. If permitted by regulation (and no such regulation yet exists), the AGLG could “on request of a local government and in accordance with the regulations, enter into an agreement to conduct a performance audit of the operations of the local government that relate to a matter or subject that is specified in the agreement”. Otherwise, the selection of local governments to be subjected to performance audits is entirely up to the discretion of the AGLG. This additional power seems oriented to the possibility that particular local governments may wish, for internal reasons, to subject themselves to performance audits. There are as yet no regulations that would enable the AGLG to enter into such an agreement with a local government, presumably because the AGLG’s resources are currently dedicated to a backlog of “value for money” concerns identified by the provincial government. Like her counterpart at the provincial level, the AGLG is expressly forbidden to “call into question the merits of policy decisions or objectives” of a local government. In other words, while the AGLG may be critical of, for example, the procurement practices that a local government has used to construct a new municipal hall, the Auditor General cannot be critical of the spending priorities that created such a project in the first place.

The Act also provides for the appointment by the Cabinet, on the recommendation of the Minister, of a 5-person audit council to give direction to the activities of the AGLG and make recommendations to the Minister on who the Minister should recommend to the Cabinet for appointment as the AGLG. Council members must have knowledge, skills, education or experience in accounting, auditing, local or regional governance or governance of the Province (though the Cabinet can add alternative qualifications by passing a regulation). Prior to making recommendations to Cabinet on appointments to the audit council, the Minister must consult “in the manner and to the extent he or she considers advisable”, with both UBCM and “persons or organizations that the minister considers are representative of business, taxpayers or local government professionals”. The current members of the audit council are Anthony Araginello, Rick Heney, Donalda MacDonald, Lisa Payne and Tim Wood. Mr. Wood appears to be the only

member of the council who has any substantial experience in local or regional governance, being a lifetime member of the Local Government Management Association (LGMA) and having managed several large municipal governments in the province.

The AGLG is required to prepare “service plans” for review and comment by the audit council, covering the upcoming and two subsequent fiscal years, and having considered any such comments, must finalize the plan, provide it to the Minister of Community Development and the audit council, and publish it. A service plan is not allowed to specify the local governments whose operations will be the subject of a performance audit until the audit is actually initiated. In addition, the Act requires the preparation of annual reports on activities for the year, again providing an opportunity for the audit council to comment. The audit council may comment both on the report, and on the performance of the AGLG in performing his or her duties, and in the latter case the AGLG must include any such comment in the annual report. The annual report must then be given to the minister and the audit council, and published. The AGLG’s service plans and annual reports can be reviewed on the AGLG website.

The office of the AGLG currently has a \$2.6 million annual budget. The government is required, after the Act has been in force for 5 years (that is, sometime in 2017) to begin a review of the effectiveness of the Act and the functioning of the office of the AGLG.

## **II. WHY DOES BRITISH COLUMBIA HAVE AN AGLG?**

A logical place to start in answering this question is to review the remarks of the Minister of Community, Sport and Cultural Development, made in the Legislative Assembly on second reading of the enabling legislation:

Existing local government legislation features a large number of financial accountability rules. However, there is a gap. There is no requirement for independent value-for-money performance audits, and this legislation is about filling that gap and, in the process, enhancing the strength of our local government system. Performance audits add value because they can help point to best practices, to opportunities for improvement and increased efficiencies.

Performance auditing is different from other external audits, such as financial audits. As many will know, financial audits focus on whether financial statements are an accurate representation of actual financial position. Performance auditing, however, focuses on the economy,

efficiency and effectiveness of the design and delivery of programs and services.<sup>1</sup>

The Minister's reference to a "gap" anticipated criticisms of the legislation as overlapping and duplicating existing requirements and opportunities for review of local government financial operations. There is in the *Community Charter* a long-standing requirement for an independent annual audit of the financial operations of local governments, the core purpose of which is, as the Minister's remarks indicated, to determine whether local government financial records accurately depict its financial status. Municipal auditors also have a duty, however, not mentioned by the Minister, to report to the municipal council on the subject matter of any complaint made to the auditor by a person who considers that there has been a "misuse" in the funds, accounts, assets, liabilities and financial obligations of the municipality, and both the municipal council and the Inspector of Municipalities may require a municipal auditor to report to the council on matters other than the representativeness of the municipality's financial records. The municipal auditor may also prepare a report on such other matters on their own initiative. While "value for money" or performance audit reports would appear to fit comfortably within each of these categories, neither municipal councils nor the Inspector's office seem to have requested such reports from municipal auditors in the past. Nor are we aware of members of the public having complained about misuses of public funds in the sense of the municipality having failed to obtain "value for money" expended on projects or programs, with the result that municipal auditors have decided to perform such audits, or of auditors having initiated such audits themselves. In all such cases, of course, the cost of the audit would have to be borne by the municipality itself, so the local government would have to, in effect, authorize the audit. The Minister was correct in stating that there was no statutory requirement for performance audits at the local government level.

Another factor, also not mentioned by the Minister in the Legislative Assembly in early 2012, is a series of "independent" reports on municipal spending by organizations like the Canadian Taxpayers Federation and the Fraser Institute,<sup>2</sup> and the related media coverage of such reports. The reports created the impression that municipal spending overall was out of control in British Columbia, though rarely did the authors allege that particular programs or projects failed to achieve value for money; there just seemed to be too many of them, with an overall cost to taxpayers that was generally characterized as excessive. Media reports, meanwhile, implied that the provincial government was standing idly by while its creatures, the municipalities, engaged in these spending sprees. (Rarely did these studies acknowledge the extent to which senior government responsibilities, such as affordable housing, flood hazard management and riparian area protection, have been downloaded to local governments, or the extent to which

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<sup>1</sup> *Hansard*, February 14, 2012, Page 9100.

<sup>2</sup> For some current examples, see "Comparing Municipal Government Finances in Metro Vancouver" at <http://www.fraserinstitute.org/research-news/display.aspx?id=21886>, and the "Municipal Ratepayers Guide" at <http://www.taxpayer.com/media/MunicipalRatepayerGuide.pdf>.

the federal government had relied on local governments to undertake “shovel-ready” infrastructure projects to counter the effects of the 2008-2009 recession.) Superficially, the establishment of the office of the AGLG may have seemed responsive to these criticisms of local government spending, though the fine print, the prohibition on “calling into question the merits of policy decisions or objectives of a local government”, plainly ruled out any AGLG criticism of the overall level of spending within any particular municipality, or the level of property taxation that is required to support it.

### III. HOW DOES OUR AGLG COMPARE WITH OTHER AUDITORS-GENERAL?

#### A. Province of British Columbia

The position of Auditor General is well-established at the federal and provincial government levels. B.C.’s *Auditor General Act* permits the Legislative assembly to pass a resolution appointing a provincial Auditor General for an 8-year term, upon the unanimous recommendation of a committee of the Legislature appointed for that purpose. The Auditor General is an officer of the Legislature, and therefore cannot be dismissed by the Premier or the Cabinet. In addition to duties analogous to those of municipal auditors as regards the preparation of audited financial statements of government operations, the Auditor General must report to the Legislative Assembly at least once each fiscal year “and call attention to anything resulting from the work undertaken to exercise the powers and perform the duties of the Auditor General that the Auditor General considers should be brought to the attention of the Legislative Assembly, including any assessments concerning whether ... the government, a government organization or a trust fund is operating economically, efficiently and effectively”. The latter clearly includes performance or “value for money” audits, which the Auditor General performs regularly. Such a report may not “call into question the merits of program policies or objectives of the government”. Like the AGLG, the provincial Auditor General is required to prepare an annual service plan and report to the Legislature each year on the attainment of the goals and objectives set out in the service plan.

A recent example of the B.C. Auditor General’s work is a May 2014 report on “Receiving Value for Money from Procured Professional and Advisory Services”.<sup>3</sup> (The B.C. government currently spends about \$560 million each year on contracted professional and advisory services.) This report examined the procurement practices of four ministries (Advanced Education; Energy and Mines; Transportation and Infrastructure; and Technology, Innovation and Citizens’ Services). The audit revealed situations where the ministries were “putting themselves at risk of not receiving value for money from awarded contracts”. It concluded that the four ministries should “pay more attention” to “assessing whether procurement is necessary; providing assurance that procurement opportunities are competitive to the extent required for the value of the contract; ensuring contracts are directly awarded only when specific conditions apply;

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<sup>3</sup> Available at [www.bcauditor.com](http://www.bcauditor.com).

defining the outcomes sought and evaluating whether those outcomes were achieved; conducting vendor evaluations after contracts are complete; and considering vendor past performance when making procurement decisions". These conclusions, though they pertain to the procurement of services rather than capital procurement, have much in common with the recommendations contained in the AGLG's Rossland report, referenced later in this paper.

## **B. City of Toronto**

The *City of Toronto Act*, 2006 requires the City itself to appoint an Auditor General, who is "responsible for assisting city council in holding itself and city administrators responsible for the quality of stewardship over public funds and for achievement of value for money in city operations". The Auditor General's powers also come from the city council rather than the Government of Ontario. Under the Act, Toronto's Auditor General "may exercise the powers and shall perform such duties as may be assigned to him or her by city council in respect of the City, its local boards and such city-controlled corporations and grant recipients as city council may specify". All such entities are required to give the Auditor General "such information regarding their powers, duties, activities, organization, financial transactions and methods of business as the Auditor General believes to be necessary to perform his or her duties".<sup>4</sup> There are similar powers in Ontario's *Municipal Act* that apply generally to other municipalities in the province, but the appointment of a municipal Auditor General isn't mandatory. They have been appointed in several of the larger cities including Oshawa, Windsor, Markham and Sudbury. This fall Ontario's Ombudsman, who is supporting legislation expanding the jurisdiction of his office to include municipalities, referred to municipal Auditors General as a "flavor of the month" trend and a "dismal failure", noting that "in many cases, cities that have appointed their own AGs have ended up sidelining the role after it caused too much political trouble".<sup>5</sup> The implication is that, by contrast, a provincially-appointed official would be above local politics.

## **C. Halifax Regional Municipality**

The *Halifax Regional Municipality Charter* similarly makes the appointment of a municipal Auditor General mandatory, and requires the council to make the appointment. The duties of the office are described almost identically to those of the Toronto Auditor General, with reference to achieving value for money in the municipality's operations. However, the Nova Scotia statute sets out the powers and duties of the Auditor General, rather than leaving this up to the municipal council to determine. These are, essentially, to examine the accounts, procedures and programs of the municipality and any of its municipal bodies, to evaluate

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<sup>4</sup> The auditor general is one of four "accountability officers" employed by the City of Toronto; the others are an ombudsman, an integrity commissioner, and a lobbyist registrar. Their activities and reports can be reviewed at the city's website [www.toronto.ca](http://www.toronto.ca).

<sup>5</sup> *Hamilton Spectator*, October 18, 2014. The legislation referred to is the *Public Sector and MPP Accountability and Transparency Act, 2014*.

whether there is effective control over revenues and expenditures, adequate safeguarding and control of public property and appropriate records management; if money has been spent with due regard to economy and efficiency and with proper authorization; if applicable procedures and policies encourage efficient use of resources and discourage waste and inefficiency; and whether programs, operations and activities have been effective. The Auditor General may also examine particular programs, policies and procedures at council's request.<sup>6</sup> There is no provision for this position in the general municipal enabling legislation in Nova Scotia.

#### IV. WHAT HAS THE AGLG BEEN UP TO SO FAR?

##### A. Current Service Plan

Since her appointment in 2012, the AGLG has initiated seven performance audits and released two substantive reports on capital procurement. Audits for which particular local governments have been selected for attention are the following, with the planned date of release of the audit report indicated:

- **Operational procurement** (Comox Valley, Delta, Fraser-Fort George, Revelstoke, Vernon, West Vancouver) - 2015
- **Policing** (Merritt, New Westminster, Port Alberni, Surrey, Victoria, Williams Lake) - 2015
- **Capital procurement and asset management** (Campbell River, Cranbrook, Dawson Creek, North Vancouver, Rossland, Sechelt) – 2015
- **Ensuring clean drinking water** (Kelowna, RDOS, Spallumcheen) - 2016
- **Managing risks in limited human resources in small local governments** (Port Edward, Greenwood, Anmore) - 2016

The AGLG has also identified **fire services** and **building permitting and inspections** as the next performance audit topics to be addressed, with subject local governments yet to be determined.

The capital procurement and asset management audit led to the publication of the AGLG's first reports, which appear to have been issued out of sequence with the originally planned publication schedule due to the urgency with which the AGLG considered her conclusions needed to be brought to the attention of local governments and the public. The first report is entitled "Learnings from Local Government Capital Procurement Projects and Asset Management Programs" and deals with capital procurement in the City of Rossland, which as

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<sup>6</sup> Auditor General reports can be reviewed at <http://www.halifax.ca/auditorgeneral>.

indicated above is one of six municipalities selected for performance auditing on that topic. (A second Rossland report will deal with asset management.) In her introductory message in this 67-page report, the AGLG explains that “we are releasing this report prior to our reports on the five other local governments we are auditing on this topic because, in the course of our audit, we noted serious unresolved issues relating to capital procurement that require urgent and prompt steps by the City of Rossland”. The second report is entitled “Oversight of Capital Project Planning and Procurement” and is the first of a planned series of “perspectives” documents that generalize from performance audit findings to provide higher-level guidance. Directed in this case at elected local government officials, the 40-page report presents “questions you can ask yourself, fellow elected officials and staff to help carry out your oversight responsibilities. It summarizes good practices in the area of capital project planning and procurement”. The Rossland report indicated that the AGLG “found that City Council’s monitoring of the procurement function could be strengthened”; she clearly considered that this was an area in which other city councils might also benefit from immediate advice.

## **B. Audit on Capital Procurement in Rossland**

The AGLG’s audit of capital procurement projects at Rossland included seven projects, two of which are addressed in detail in her report: an arena complex roof replacement originally budgeted at \$1.2 million, and a downtown infrastructure revitalization project with an original budget of \$5.95 million. (All of the other projects had budgets of \$100,000 or less.) The scope of the arena project was expanded by City staff without council approval when the roof replacement bids came in under budget. The City awarded a \$30,000 contract to a firm owned by its building inspector for some of the work on this project, without tendering the work, and subsequently paid this firm about \$150,000 for work on other project components as well. The firm’s invoices for the work were sketchy, and some of the work on the arena project was subsequently found by independent contractors to be deficient.<sup>7</sup>

The scope of the infrastructure project was modified several times between the council’s initial approval of a financial plan line item at \$5.95 million and the ultimate expenditure of \$7.18 million, without corresponding amendments to the financial plan as to the budget for the project and the calendar year in which the expenditures would be made. The City awarded the engineering and contract administration contract for this project to an engineering firm following a tender process, which firm engaged as a sub-contractor the person who, as City building inspector, had been in charge of the tender process and who had resigned after the City’s finance department had raised concerns regarding his dual role in the arena project. City expenditures on this aspect of the project totaled \$.99 million compared with \$1.19 million identified in the financial plan and \$500,000 actually approved by council for expenditure.

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<sup>7</sup> Local citizens didn’t need the AGLG to point out that there were problems in the City’s procurement process; see <http://castlegarsource.com/news/city-rossland-asks-bc-auditor-general-local-government-investigate-governance-issues-arena>.

Payments to the construction contractor also exceeded the initial value of the contract, on the basis of change orders the majority of which were missing from the City's files, and most of the change orders of which the City did have a record had not been properly authorized.

The AGLG's recommendations to the City with respect to capital procurement are set out in Appendix I to this paper. While those aspects of these projects that involve conflict of interest on the part of a City employee are obviously unique to the project, the Rossland report examines some practices and problems that appear from our perspective to be quite common in local government procurement. For example, the AGLG notes that "by means of its Delegation Bylaw and its procurement policy, Rossland Council has fully delegated its authority in procurement for values up to \$100,000 to the City's chief administrative officer, as long as the expenditure is provided for in an approved City budget". She notes further after suggesting that council monitoring of procurement authority delegated to the CAO was inadequate due to insufficient reporting by the CAO, that as her report was being written, the City had been without a full-time CAO for more than three months, that the person acting as CAO was holding down "three critical senior management jobs" and that the City's remaining small core of senior staff "simply may not have the capacity to fully manage the City's affairs". The AGLG indicates in her current service plan that she intends to address, via future performance audits, "human resources in small local governments", with attention to Port Edward, Greenwood and Anmore. Rossland has a larger population than these three municipalities combined, and it will be interesting to see whether the human resources challenges that will likely be identified in these audits include the same type that contributed to capital procurement deficiencies in Rossland. Municipal governments across British Columbia are facing constant pressure from citizens, "watchdog" groups and various media as regards both staffing levels and staff compensation rates and employee benefit programs. The Rossland report includes a recommendation that the City "add additional qualified resources" to its management team. Attracting fully qualified senior management personnel to smaller rural communities in B.C. requires salary and benefits packages that are often perceived to be out of line with the local salary structure, notwithstanding that the municipal operation may be the largest and most complex in the community. One hopes that the AGLG will, going forward, ensure that previous reports such as the Rossland report inform her recommendations on closely related audit topics such as human resources.

A final point that deserves mention in regard to the Rossland report is the municipal council's response, which was not limited to the local government comments set out at p. 50 of the report and the City's 5-page action plan, in which the council states it will "improve policies and procedure, tendering, record keeping, and reporting on all capital projects". The council also issued a media release in which it stated that while it had expected that the AGLG's first audit would involve "a learning curve for all", it did not expect "a huge drain on resources to complete the first phase of this audit, which took more than six months, and an end result that

was predetermined from the outset”.<sup>8</sup> Clearly, a staff organization that the AGLG was concluding, in the audit that was underway, had insufficient time to properly manage Rossland’s capital procurement, had to spend major amounts of time participating in the audit process – a particularly onerous burden because the CAO who had been in office at the relevant times had left the City and was unavailable for consultation, while the acting CAO was away on extended leave. Unlike the more limited audit conducted by the municipal auditor, which often monopolizes the attention of senior financial management for a matter of weeks every year, “value for money” auditing is likely to engage numerous staff members over a lengthier period of time, depending on the nature and magnitude of the program that’s being audited. These are some of the local government costs that the Rossland council, in its media release, suggests be compared with the benefits of AGLG audits, in a “value for money” examination of the AGLG’s own activities.

### **C. Perspectives: Oversight of Capital Project Planning & Procurement**

Concurrently with the report on Rossland’s capital procurement practices, the AGLG published the first in what is intended to be a series of documents that use the information obtained from performance audits to provide specific suggestions and recommendations on local government practices, in this case those dealing with the planning and management of capital projects. The primary audience for this report is local elected officials, who the AGLG says in the introduction to the report have “oversight responsibilities” in this area but may have “relatively little experience in dealing with local government capital project planning and procurement”. The tenor and content of the document, and its close relationship to the AGLG’s conclusions in the Rossland report, can be summarized by setting out the questions it sets out to answer:

- What is the “tone at the top”?
- How do council/board members participate in capital procurement?
- What level of delegation of council/board powers to local government staff is appropriate?
- What information should we as a council/board expect to see?
- What comes to us for our review and approval?
- What do we do if our staff doesn’t have enough time or expertise to effectively manage a capital project?
- Do our policies and procedures support sound practices by staff?

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<sup>8</sup> See [http://www.rossland.ca/sites/default/files/city-hall\\_public-notice\\_news-release-aglg-completes-first-audit-of-the-city-of-rossland\\_2014-04-30.pdf](http://www.rossland.ca/sites/default/files/city-hall_public-notice_news-release-aglg-completes-first-audit-of-the-city-of-rossland_2014-04-30.pdf).

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- Is the project included within our five year financial plan?
  - Should staff provide a business case for the project?
  - How accurate does a project budget need to be?
  - How might trade agreements affect our project?
  - How do we contract for outside resources?
  - Why do we need a written contract?
  - How does our local government assess project risks?
  - How do we protect against staff not following our policies?
  - How do we manage ethical requirements and the potential for conflict of interest?
  - What are our legal responsibilities relating to conflict of interest?
  - Do we have adequate conflict of interest and other ethical requirements for staff?
  - How do we hold contractors accountable for potential conflicts of interest?
  - Does our local government carry out a post-completion assessment of capital projects?
  - How can we make sure our capital projects are successful and provide good value for money?
  - How does our local government monitor and report on progress and changes?
  - How do we know expenditures are accurately reported?
  - Are project documents complete, accurate and readily available?
  - What happens if a project goes off the rails?
  - What do we do if our ethical rules are broken?

It would be fair to characterize this as a “Procurement 101” approach, with very little detail on any particular aspect of capital procurement oversight. For example, the answer to the third question on an appropriate level of delegation to staff in regard to capital procurement (a key issue in the Rossland situation) is, essentially, “whatever level your council or board thinks is

appropriate”. It would surely have been helpful to council and board members to have set out in the report the levels of delegation that prevail in the six local governments that are involved in the capital procurement audit, with some commentary on whether that level of delegation does or doesn’t appear from the AGLG’s perspective to have contributed to a satisfactory level of oversight, and perhaps a larger sampling of levels of delegation in municipalities and regional districts of comparable size and complexity to these six. The high-level approach of this document may reflect the urgency with which the Rossland audit suggested that B.C. local governments ought to receive guidance from the AGLG on their capital procurement practices.

## **V. WHAT AUTHORITY DOES THE AGLG HAVE OVER LOCAL GOVERNMENTS?**

For local governments that are involved in AGLG performance audits or might be involved in the future, the Rossland council’s media release of last April suggests that significant workload consequences can be expected. This paper concludes by reviewing the AGLG’s powers and practices in this regard.

Section 13 of the *Auditor General for Local Government Act* requires a local government whose operations are subject to a performance audit to give the AGLG access to records, information and things, access to its facilities and works, and provide “explanations” necessary for the conduct of the performance audit. This includes any person or organization with whom the local government has entered into an agreement or arrangement that relates to the operations that are the subject of the performance audit, or to whom the local government has granted money in relation to the operations. This requirement applies despite any claim of confidentiality or privilege other than solicitor-client privilege. The AGLG’s interpretation of s. 13 is included in the “Engagement Protocol” reproduced as Appendix II to this paper. Appendix III is a table from the AGLG’s current service plan that describes the steps involved in a performance audit, including steps for which the local government is responsible. Note that each of the questions regarding the local government role in the third column of the table begins with “who”, not “whether”.

A performance audit begins with a letter to the local government setting out the scope of the audit and the audit criteria that will be applied, and Appendix II indicates that the local government must acknowledge not only the scope of the audit but the “suitability of the criteria”. (A local government would not be in a position to block an audit by refusing to acknowledge either of these.) During the “examination” phase, the AGLG will according to the Engagement Protocol be “conducting enquiries, site visits and reviews, inspecting records and performing analyses and other activities”. Local governments that are familiar with the fact that they are not required to create records that are responsive to FOI requests will need to adjust their thinking when it comes to information requests from the AGLG, in that they may not only have to create written explanations as to why particular things have been done, but staff involved in the program or project being audited may have to attend meetings with the AGLG’s staff to answer questions about those explanations. Appendix II indicates that when meetings with the AGLG are scheduled, “the local government must ensure the appropriate staff are in

attendance so the audit team can collect the information they need”. The AGLG may order a person to answer questions pertaining to a performance audit, including answering questions on oath or affirmation, or to produce a record or other thing in their control, and a person who fails to comply with such an order may be liable to be committed for contempt as if in breach of a Supreme Court order. Penalties for contempt can include fines and imprisonment.

The investigation phase of the performance audit may, according to Appendix II, be followed by a “fact clearing meeting” in which the AGLG’s preliminary audit findings will be laid out to provide an opportunity for the local government to confirm all factual underpinnings for those findings and correct or complete them as necessary. A proposed final performance audit report will then be produced in draft form for review and comment by the local government within a 45-day review period. The local government will have to produce supporting evidence for any changes it proposes in the report. At this point the local government may also correct factual information on which the audit report is based, if a “fact clearing meeting” has not previously been arranged. A summary of the local government comments on the audit, prepared by the AGLG’s office, is then included in the report and the report submitted to the audit council for its review and comment prior to publication. The AGLG is not required to implement any audit council comments on a performance audit report, or include the comments in the report.

Local governments are prohibited by the Act from releasing to the public any information that the AGLG provides in the course of an audit, including any letter advising of the final audit scope; any local government documents that are prepared to assist the AGLG with the audit; any preliminary audit findings; and any proposed final performance audit. This is perhaps intended to discourage the local government from publishing material in advance of the release of the AGLG’s report, that would tend to reduce the impact of the report or undermine its credibility. Section 90(2) of the *Community Charter* requires that a portion of a meeting must be closed to the public if the subject of the meeting is a review of a proposed final performance audit for the purpose of providing comments to the AGLG on the proposed report.

The AGLG has no authority to require a local government to implement the recommendations that may be contained in a performance audit, and unlike the Ombudsperson has no authority, in the event that a local government fails to implement a recommendation following a performance audit, to report that failure to the Cabinet or anyone else. To that extent, the Legislature seems to have left it up to local electorates to deal with any failure of their local government to achieve “value for money” in the delivery of programs or services.

## Appendix I

### AGLG Recommendations to the City of Rossland on Capital Procurement

#### Arena Deficiencies

1. The City of Rossland should undertake a thorough risk assessment of any remaining arena complex deficiencies and proceed with repairs as required.

#### Conflict of interest

2. The City of Rossland should implement effective measures to mitigate the risk of conflict of interest, both by strengthening policies and by ensuring City policies are consistently adhered to.

#### Council Oversight

3. Rossland City Council should:
  - ensure all City expenditures are properly authorized
  - exercise proper oversight over the City's operations by balancing the extensive authority delegated to the chief administrative officer with a requirement for clear and comprehensive reporting to Council. Such reporting should include at a minimum:
    - results of procurement processes
    - exception reporting on situations where procurement policies and procedures were not followed, including related rationale
    - Information on budgeted, actual and forecasted expenditures on ongoing capital projects
    - regular progress reports on major capital projects

#### Documentation

4. The City of Rossland should ensure that documentation and records on procurement projects and processes are properly managed and maintained.

#### Role of the Finance Department

5. The City of Rossland should ensure that its finance department plays an active role in designing and implementing effective financial controls over procurement

activities and in ensuring that the City's financial and procurement policies and procedures are consistently followed.

### **Further Examination**

6. The City of Rossland should further examine the nature, cause and extent of breaches of controls as well as the resulting financial loss due to the breaches. The City should implement corrective measures arising from the examination.

### **Procurement Policy**

7. The City of Rossland should improve its procurement policy to reduce risks in the future.

### **Payment Processes**

8. The City of Rossland should improve its payment procedures to ensure all payments are appropriate.

### **Project Management**

9. The City of Rossland should develop and implement a comprehensive set of policies and procedures, tools and templates to enhance capital project management effectiveness and achieve value for money.

### **Staff Capacity and Leadership Issues**

10. The City of Rossland should assess the capacity, qualifications and experience of its current management team and, if necessary, add additional qualified resources. In particular, the City should pay attention to:
  - addressing the absence of a full-time chief administrative officer
  - the fact that the person acting as chief administrative officer was handling up to three critical senior management jobs at one time
  - the capacity of the City's small core of senior staff

## Appendix II

### Engagement Protocol with Local Governments for Performance Audits

#### Conducted by the Office of the Auditor General for Local Government under the

#### *Auditor General for Local Government Act*

### I. KEY AUDIT EVENTS

#### **Audit Notification**

The Auditor General for Local Government (AGLG) initiates the audit with a notification letter to the Mayor (if the audit is of a municipality) or Chair (if the audit is of a Regional District or Greater Board) with a copy to the Chief Administrative Officer (CAO). The AGLG may publicly announce the performance audit the day following the delivery of the audit notification letter. The information contained in the public announcement of the planned performance audit will be the only public information about the audit until the performance audit report is published by the AGLG.

#### **Kick Off Meeting with the Local Government**

The AGLG will contact the CAO to schedule a “kick off” opening meeting with the local government to confirm the audit protocol, explain the audit process, confirm the decision points required by the local government during the phases of the audit, answer questions, share the initial lines of enquiry and confirm key contacts and information sources

#### **Audit Scope and Criteria**

The local government will be advised by letter of the final audit scope and criteria and will be required to acknowledge the final scope and suitability of the criteria.

#### **Examination**

During the examination, the audit team gathers further information with regards to the local government's performance in the context of the final audit scope and criteria. This includes conducting enquiries, site visits and reviews, inspecting records and performing analyses and other activities.

#### **Fact Clearing Meeting**

Once the examination phase is completed, the AGLG may schedule a fact clearing meeting(s) with the CAO and other appropriate staff or elected officials to discuss preliminary audit findings. The local government is responsible for confirming all fact statements, advising the AGLG if the information is incorrect or incomplete, and providing corrected information with documentary support. In the event that a fact clearing meeting does not take place, the local

government's responsibilities for confirming all fact statements and providing corrected information with documentary support will happen at the proposed final performance audit report.

### **Proposed Final Performance Audit Report**

The AGLG may produce a draft Proposed Final Performance Audit report for the local government's initial review and comments. This draft will include the AGLG's findings, conclusions and recommendations. Any changes proposed by the local government will need to be supported by the appropriate evidence. Any comments by the local government must be provided within the time frames established by the AGLG at the time the draft Proposed Final Performance Audit Report is provided to the local government.

The AGLG will produce the Proposed Final Performance Audit Report which may be informed by the local government's comments received within the timeframes set by the AGLG on the draft. The local government may comment on the Proposed Final Performance Audit Report within 45 days of receiving the Report. Comments are expected to include the local government's response to the recommendations in the Report.

The AGLG must then include a summary of the comments given by the local government in the Proposed Final Performance Audit Report and then submit the Proposed Final Performance Audit report to the Audit Council prior to publication. The Audit Council may provide comments on the Proposed Final Performance Audit Report including comments on the summary of the local government's comments.

After considering comments from the Audit Council, the AGLG will finalize the Proposed Final Performance Audit Report. The Proposed Final Performance Audit Report may be provided to the local government in advance of publication by the AGLG. Until published, the Proposed Final Performance Audit Report (including all drafts) is to be treated as confidential by the local government as required by the *Auditor General for Local Government Act*.

### **Final Performance Audit Report**

The AGLG will provide the local government with the Final Performance Audit Report and then publish the report.

## **II. ACCESS TO RECORDS AND CONFIDENTIALITY**

### **Access to Records and Information**

Under section 13 of the *Auditor General for Local Government Act*, a local government whose operations are subject to a performance audit must give to the AGLG access to records, information and things, access to the local government's facilities and works and explanations necessary for the AGLG to conduct the performance audit.

The local government must provide the audit team with access at all reasonable times to information, reports and explanations as the AGLG deems necessary to complete the audit.

When meetings are scheduled, the local government must ensure the appropriate staff are in attendance so the audit team can collect the information they need.

### **Confidentiality**

The local government must not disclose:

- any proposed final performance audit report;
- the comments prepared by the local government for any proposed final report; and/or
- any other records or information created by the local government to prepare the comments.

In addition, the local government must not disclose a record or information provided by the AGLG for purposes of exercising a power or performing a duty under the *Auditor General for Local Government Act*. This includes all audit working papers provided by the AGLG to the local government. All documents, information, records and any other material relating to the audit must be kept confidential by the local government. The Proposed Final Performance Audit Reports, will be delivered by courier, in numbered print copies, must not be photocopied or reproduced and which must be returned to the AGLG office by the deadlines set by the AGLG.

Similarly, the AGLG is also required to protect the confidentiality of audit information and records. The AGLG must not disclose a record or information obtained in the exercise of a power or the performance of a duty under the *Auditor General for Local Government Act*, except:

- To conduct a performance audit;
- To formulate the grounds for a recommendation contained in a performance audit report;
- To the members of the audit council and their staff; and
- To prepare and publish an annual service plan, performance audit reports, an annual report and other authorized reports.

### **III. COMMUNICATION**

The AGLG audit team will facilitate on-going and regular communication during the audit, specifically, regarding changes to the audit plan (objectives, scope, approach and timetable) and on the audit progress including emerging findings and potential recommendations.

The audit team will also offer briefings to local government management staff and elected officials to seek their views on the validity and completeness of the audit evidence, audit observations, conclusions and recommendations.

The local government is expected to ensure that all staff affected by the audit are sufficiently informed about the purpose, nature and timetable of the audit as early as possible in the audit process.

The local government must immediately inform the AGLG in the event of any breach of the non-disclosure requirements on any audit document and information. This includes the loss of any audit documents if any document or audit information is made public.

### **Key Contacts**

The local government is to identify one contact person for the audit and provide a list of key contact persons with contact information. Key contacts are to be aware of their obligations to co-operate with the audit. The AGLG contact person for the performance audit is the Senior Audit Manager.

### **Dispute Resolution**

The local government is expected to discuss and attempt to resolve any issues with the audit team quickly, professionally and respectfully. Issues which cannot be resolved by the audit team will be referred to the local government contact person and the Deputy Auditor General for Local Government for resolution.

## Appendix III

### Performance Audit Phases

#### PHASES OF AN AGLG PERFORMANCE AUDIT

INITIATING THE AUDIT		
Phase Activity	Action Required by Local Government	Considerations for Local Governments
<ul style="list-style-type: none"> <li>• Notification letter</li> <li>• Protocol document</li> <li>• Information on website</li> <li>• Confidentiality requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Formally acknowledge start of audit</li> <li>• Agree to confidentiality requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Who should be the key contact on the audit?</li> <li>• Who should formally acknowledge the audit and agree to confidentiality requirements?</li> </ul>
SURVEY (PLANNING)		
<ul style="list-style-type: none"> <li>• Gather information on lines of enquiry</li> <li>• Assess auditability and audit worthiness</li> <li>• Scope the audit</li> <li>• Determine criteria for audit</li> </ul>	<ul style="list-style-type: none"> <li>• Assist audit team, as requested, in gathering information</li> <li>• Acknowledge scope and suitability of audit criteria</li> </ul>	<ul style="list-style-type: none"> <li>• Who should acknowledge scope and suitability of audit criteria?</li> </ul>
EXAMINATION		
<ul style="list-style-type: none"> <li>• Periodic audit team meetings with local government staff</li> <li>• Collect evidence against criteria</li> <li>• Fact clearance/debriefing with local government staff</li> </ul>	<ul style="list-style-type: none"> <li>• Assist audit team, as requested, in collecting evidence</li> <li>• Participate in fact clearing and key findings debrief</li> </ul>	<ul style="list-style-type: none"> <li>• Who should participate in the fact clearing debrief?</li> </ul>
REPORTING		
<ul style="list-style-type: none"> <li>• Draft audit report may be shared with local government for review</li> <li>• Proposed final audit report submitted to the local government for comment (45 day review period)</li> <li>• Revised proposed final audit report prepared including summary of local government's comments and submitted to Audit Council for comment</li> <li>• Final audit report given to local government prior to publication</li> </ul>	<ul style="list-style-type: none"> <li>• Provide comments on draft audit report, if provided</li> <li>• Provide comments on proposed final audit report</li> </ul>	<ul style="list-style-type: none"> <li>• Who should review and provide comments on the draft audit report?</li> <li>• Who should review and provide comments on the final audit report?</li> </ul>
AUDIT REPORT PUBLISHED ON AGLG.CA		

NOTES