

Public Accounts Committee

Report on the Battle of Flowers

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Presented to the States on 1st March 2007.

P.A.C.2/2007

REPORT

Introduction

1. In October 2006, the Comptroller & Auditor General (C&AG) published a report into the circumstances

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surrounding the 2006 Battle of Flowers (the 2006 Battle). That report sets out the circumstances surrounding the 2006 Battle in detail and they are not repeated here.

2. The Committee considered that report at its meeting in November 2006 and held 2 public hearings in December 2006 at which evidence was taken from Mr. Bill Ogley, Chief Executive to the Council of Ministers, and Mr. Mike King, Chief Officer of the Economic Development Department (EDD). This report sets out the conclusions which the Committee has reached as a result of its review of this subject.

3. In conducting its review, the Committee was not principally concerned to allocate blame to individuals for whatever mistakes may have been made in connection with the 2006 Battle of Flowers. In so far as mistakes may have occurred within the States, there are established disciplinary processes in which the Committee is not involved.

4. Nor was the Committee concerned to examine the internal workings of the Battle of Flowers Association: that is a matter for the Association itself and those charged with governance within that Association.

5. Rather, the Committee embarked on its review because the C&AG's report raised issues concerning the adequacy of financial management within the EDD, and, by implication, the States generally. In view of the importance of these issues, the Committee considered them together with the actions being taken by both the Department and the States to deal with these issues. The principal questions considered by the Committee were:

- (1) Were the EDD's processes correctly applied in reaching decisions concerning its relationship with the Battle of Flowers Association (BOFA)?
- (2) What are the processes which should be applied to decisions of his nature?
- (3) Are appropriate steps being taken within the EDD to ensure that appropriate processes are followed in future?
- (4) Are appropriate steps being taken within the States more generally to ensure that appropriate processes are followed in future in situations which are similar to those of the 2006 Battle and more generally?

6. The Committee's views on these matters are set out below.

Events within EDD

Introduction

7. There are a number of points at which the EDD's decision-making either failed to follow the appropriate process, or can be seen, with the benefit of hindsight, to have been imprudent. Each of these will be reviewed in turn below.

BOFA's corporate governance

8. For some years, the EDD's agreement with BOFA under which grants had been paid to support

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succeeding Battles of Flowers , had required that BOFA should comply with proper standards of corporate governance. In particular, BOFA was required to submit to the EDD annual budgets, accounts, and customer satisfaction surveys. It is common ground that BOFA failed to honour this commitment in substance although some documents were submitted to the EDD. Yet the EDD continued to make grants to BOFA:

“Mr. T. Grimes: In August 2005 the department expressed concern over the current management [of the Association] ... questioning the capability of management and saying that the granting of public funds was not necessarily the best way forward. Given that and also the fact that it was clearly a contravention of the Financial Direction, how do you get to the stage that £95,000 of public money was advanced to this Association?”

Mr. M. King: I think what led to the conclusion of the awarding of the grant was that in discussions between officers in the department and the Association, the shortfalls ... in the past were highlighted and, indeed, the Association did sign an SLA (Service Level Agreement), which we believed on the basis of the outputs that had been defined by the department at that time, if

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delivered, would address some of the issues that obviously had arisen previously.”

9. The Committee recognises that the EDD faced a difficulty in dealing with the Battle of Flowers. After all, the annual event is a major element in the Island’s calendar and is a major feature in the Island’s tourist marketing. Consequently, the EDD would naturally be nervous that the withdrawal of a grant would be a decision of some gravity even though an Internal Audit report had warned in 2005 that:

“... grants should only be approved if all required documentation was in place to the acceptable

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quality in the required time.”

10. Whilst this the EDD’s nervousness may be understandable, the consequence of repeatedly awarding grants without insistence upon compliance with the terms of the BOFA’s agreement with the EDD was that, over a number of years, in the words of Mr. King:

“I have no doubt in my own mind that the Battle of Flowers Association , and indeed other grant-aided bodies as well - had developed perhaps what one might describe as a grant culture and a

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dependency culture.”

11. Consistency matters. A grant aided body that agrees that its grant should be subject to conditions must comply with those conditions. Any department which awards a grant upon conditions must insist upon compliance with those conditions. Otherwise, the system will fall into disrepute.

Clarity in the provision of grants

12. In 2006, in addition to a grant of £95,000 which had come to be regarded as the EDD’s ‘normal’ grant to the BOFA, the EDD awarded a second grant of £50,000. A question arose about the precise terms on which this second grant was awarded. Reference to this further grant was made in a letter dated 24 February 2006 from Mr. David de Carteret (EDD’s Director of Tourism) to the BOFA. In Mr. King’s words, this letter:

“... made it very clear, in my view, that money would not be available simply to increase the funding to reproduce exactly what the Battle of Flowers had previously delivered but, indeed would be associated with clear conditionality and gave some general direction as to where that conditionality should be. Where the weakness and where the errors occurred was that we did go on and subsequently, clearly define in an unambiguous way to the Battle of Flowers Association,

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what the conditionality associated with that £50,000 was.”

13. If a department fails to specify precisely the conditions attaching to a grant and the terms upon which a grant is awarded, then it can be no surprise that performance is sub-optimal.

Third grant

14. In 2006, a further grant was offered to the BOFA on condition that it was linked to matched funding by

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way of corporate sponsorship. The precise terms upon which that offer was made were not formally recorded.

Payment of the third grant

15. In the event, the third grant of £45,000 was paid to the BOFA even though there was no matching corporate sponsorship. As Mr. King admitted, the EDD did not record the basis upon which this decision was made:

“What did not happen . . . is that – particularly on that third tranche of mone – when that

conditionality was lifted what we did not do then is record our advice and that was in contravention of the Codes

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of Direction.”

16. This appears to be a further example of the department making payment of a grant subject to a condition but subsequently ignoring that condition when it was breached.

Recording Ministerial decisions

17. Certain of the steps taken by the EDD during 2006 in connection with the BOFA resulted from Ministerial decisions. The precise nature of the decisions and the EDD’s advice relating to them were not appropriately recorded:

“Mr. King: I think it is also fair to say that following the advent of ministerial government, the Minister came in and was sent a policy which was somewhat contrary to the previous Economic Development Committee which had perhaps de-emphasised the level of grant funding to major events and was determined to make the Battle of Flowers as the premier event, something that could differentiate Jersey and act as something which was much more attractive to the visitor. The officers in the department expressed very clear concerns that perhaps by giving the Battle of Flowers Association additional money we would not necessarily achieve that objective. . the process broke down within the department in that we did not document that in a way that was clear and consistent and, indeed, it could be said that if we had taken that to its logical conclusion and recorded that our advice was not to do that the Minister should have then issued us with a letter of instruction thereby absolving is of the financial responsibility. We did not do

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that. That is a clear breakdown in process.”

18. A further breakdown in process occurred when it was decided by the Minister that the final grant payment of £45,000 should be made from the Tourism Development Fund but not formally recorded as a decision until the end of September, after the payment had in fact been made:

“Mr. King: [The Minister] advised the [Tourism Development Fund] Advisory Panel that it may be necessary for him to use his power of ministerial direction to effectively use TDF monies to

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provide grants to the Battle of Flowers Association. . .

Deputy A Breckon: And the retrospective ministerial decision, would you like to comment on that?

Mr. King: The retrospective ministerial decision, that is not good practice, that is not good

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governance. I am not happy that that happened but it was done to complete an audit trail.”

19. The risk created in situations such as this by such breakdowns in process is that officers and Ministers act upon the basis of what their impressions of what each other wants without perhaps appreciating the gravity of the advice being given and without proper respect for their responsibility and accountability.

Instructions to staff

20. Throughout many of these exchanges, a member of EDD’s staff acted as a co-opted member of the

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BOFA’s Council . The basis for that appointment was not clearly specified when it was made:

“Mr. R. Bignell: Did the person seconded to the committee have a clear term of reference given to them?

Mr. King: A sub-committee of the Battle of Flowers Association . . . was put in place to ensure the additional elements of the Battle that were associated with the additional money were delivered. . . Were they recorded properly; were they written down; was there a direct link between the

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additional monies? The answer is no and that was an error because there should have been.”

21. This further breakdown in process was regrettable because:
- (1) it permitted a short-circuit in the Association’s accountability to the EDD (i.e. the EDD was made even more directly aware of the BOFA’s failures in terms of corporate governance but, it could be argued, was prevented from complaining about those failures once the staff member’s involvement had implied acceptance of the way in which decisions had been reached); and
 - (2) it was unfair to the staff member concerned that the terms of the appointment had not been specified in advance.

Conclusions

22. The Committee’s conclusions can be summarised in the following manner:

- (1) **The number of instances of poor judgement or failure to comply with FDs is disturbing.**
- (2) **In view of the number of failures and the Internal Audit Division’s 2005 report, there seems reason to suppose that if other grant-aiding relationships were examined, more instances of**

non-compliance would be found.

- (3) This suggests either that EDD's staff were not aware of the requirements of the newly issued FDs or, if they were aware, that EDD's staff were not convinced that they were required to comply with FDs.**

The prescribed processes

Introduction

23. The particular interest of the EDD's actions in relation to the 2006 Battle of Flowers lies in the fact that the problems arose after the introduction of Ministerial government and the coming into effect of the Public Finances (Jersey) Law 2005. They offer a first opportunity to examine the way in which the new arrangements have been operating.
24. In questions put to Mr. Ogley during the public hearings, the Committee sought to establish the nature the new arrangements and processes. The next paragraphs summarise the outcome.

Financial decision-making

25. The position is as follows:
 - (1) Under the previous Public Finances (Administration) (Jersey) Law 1967, Codes of Directions had been issued which set out how the parameters within which financial decisions should be made by committees and departments. In practice, compliance with these Codes had declined.
 - (2) Under the Public Finances (Jersey) Law 2005, the Treasury and Resources Minister may issue Financial Directions (FDs) with which departments are expected to comply. The FDs are drafted in consultation with the Finance Directors of all departments.
 - (3) For each department, an Accounting Officer is appointed (generally the Chief Officer) who is personally responsible for ensuring that the department complies with the FDs and for confirming, at the end of each period that the department had complied with the FDs.
 - (4) Training was arranged for Accounting Officers in the nature and implications of these new requirements.
 - (5) Recognising that the implementation of these new arrangements might cause some transitional difficulty, at the beginning of 2006 Accounting Officers were invited to confirm their acceptance of their new responsibilities under the Public Finances Law 2005 and to identify any aspects of the new FDs with which compliance might present some difficulty in the short term.
 - (6) Financial Direction 5 (FD 5) sets out the general rules concerning the award by any department of a grant and the specification in a formal document of the relationship between the department awarding the grant and the recipient organisation.

Relationships between Ministers and Accounting Officers

26. Under the Public Finances (Jersey) Law 2005, Ministers were not given a direct responsibility for ensuring that departments comply with FDs and the law generally. That responsibility was given to Accounting Officers.
27. This allocation of responsibility, and the fact that Ministers may make decisions which have financial consequences create the possibility of tension. This possibility was dealt with by guidelines published in October 2005 and then by supplementary guidelines issued by the Chief Executive in the light of concern over the 2006 Battle of Flowers. They were published in the form of R.93/2006. These supplementary guidelines are reproduced as Appendix 1 to this report.

Monitoring performance

28. Apart from the fact that Accounting Officers have a responsibility for ensuring that their departments comply with the Public Finances (Jersey) Law 2005 and with FDs in particular, the Corporate Management Board (CMB) has put in place arrangements for monitoring the extent of compliance with the new arrangements:
- (1) Departmental finance directors are members of the Finance Advisory Board, chaired by the Treasurer, which discusses proposals for new FDs, problems in implementing FDs and financial management arrangements in general.
 - (2) the Internal Audit Division of the Treasury & Resources Department undertakes a programme of internal audit reviews covering all departments.
 - (3) in 2006, the CMB created an Internal Audit Committee which considers the reports made by the Internal Audit Division together with any other evidence of the effectiveness of financial management and the considers the effectiveness of arrangements made to deal with any identified weaknesses or failures to comply with FDs.

Conclusions

29. In summary, the Committee concluded that:
- (1) **The introduction of Ministerial government and implementation of the Public Finances (Jersey) Law 2005 provided an opportunity for the financial management practice of the States to be materially improved.**
 - (2) **The significance of the situation revealed by the C&AG's report is that whilst the design of the new systems may be appropriate, their implementation has not attracted sufficient attention with the result that demonstrably the opportunity has not been seized.**
 - (3) **The Corporate Management Board would be failing in its duty if it does not insist on full compliance within all departments let alone grant-aided bodies.**

Steps taken by EDD

Introduction

30. The EDD has taken actions in two areas to deal with the outcome of the 2006 Battle of Flowers and the subsequent investigations:
- (1) actions to deal with general issues of financial management within the department; and
 - (2) actions to deal with its relationship with the BOFA.

General issues

31. Mr. King told the Committee that the following steps had been taken:
- (1) All officers have been asked to re-confirm that they had read the FDs and that they are aware of

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the obligations that the department had to discharge.

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- (2) Copies of the FDs have been provided to all grant aided bodies.
- (3) The Committee is aware that EDD's finance director has prepared a checklist of FD requirements and of significant elements of governance practice which can be provided to grant-aided bodies to assist them in checking the extent of their compliance.
- (4) All grant aided bodies have been told that unless conditions included in grant agreements are

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satisfied, then grants will not be awarded.

- (5) All grant agreements will contain claw-back provisions so that if outputs and outcomes agreed by the grant-aided body and the department are not achieved either the money will not be paid or, if

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it has already been paid, the money will be clawed-back.

32. Mr. King acknowledged that this approach may cause some difficulty:

"... this may be at conflict with perhaps quite understandable political desire to support major events or bodies that provide events because it is a fundamental component of that which is Jersey, particularly in the summer, but we must be absolutely adherent to the rules that exist and that is where the fundamental weakness in the department existed and I have taken very, very clear steps in writing - both within the department and to the grant-funded bodies - to ensure that

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is very, very clear to all concerned.”

33. Mr. King reinforced this point in a later exchange at the public hearing:

“Senator J.L. Perchard: You would be prepared, if necessary, to pull the plug on those events.

Mr. King: Yes [1] would ... perhaps we have to treat this as an experience that we certainly do not wish to repeat but it is something that the department has learned from and I think it is something

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that those who organise and undertake the events will have to learn from as well ...”

Battle of Flowers

34. Mr. King told the Committee that the following steps had been taken:

- (1) as a part of the general communication with grant-aided bodies mentioned above, the BOFA has been told that the Association must comply with the conditions in existing agreements which must be met before further grants can be awarded.

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- (2) the department has accepted and endorsed the recommendations of the C&AG’s report.

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- (3) Mr. King will sit as an observer on the board of the BOFA.

Committee’s reactions

35. The Committee was concerned about two implications of Mr. King’s description of the steps that have been taken.

36. Firstly, there was a concern that the EDD may be taking an unduly strict approach:

“Senator Perchard: Can I just ask, it seems to me you have gone from one extreme where you are being bit liberal, laissez faire with public funds, to another where you are prepared to pull the plug on an event, or see it die, and perhaps there is somewhere in the middle where the responsibility of corporate governance... where your department should take some of that, particularly if you are to balance that with your requirements or your policy of staging these public events ...

Mr. King: Just to make it absolutely clear, it is not as if we send out a letter to the grant-funded bodies and say: ‘If you do not send us this you will not get a cheque.’ ... but the starting point has to be, in my view, compliance with the [Financial Directions] or I fear that – well the last thing I

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want to do is to reappear in front of you again.”

37. Many grant-aided bodies rely upon volunteer support for their administration and are likely to need assistance if they are to meet the States’ reasonable requirements. It is important that if the EDD and the States more generally are not able or prepared to offer appropriate support, grant-aided bodies may not be able to comply with the States’ requirements.
38. Secondly, the Committee asked whether Mr. King’s role as an observer at BOFA board meetings may prove an embarrassment:

“Mr. King: My view is that as Accounting Officer and someone who is perhaps more painfully aware of the shortfall in the department than any other, the most appropriate thing for me to do is for me to give up some of my time to ensure that the Battle of Flowers Association is advised on how their work is or is not heading towards the situation of compliance. That does not mean to say that I am involved in the decision-making process in any way, shape or form but it does mean, for want of a better word, I am giving them business advice and I am in a better position

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than, I think, anybody to give them that advice.”

Committee’s conclusions

39. In summary, the Committee’s conclusions were:
 - (1) **Mr. King’s acceptance that his department had fallen short and his determination to ensure that there is no recurrence of these failings are to be commended.**
 - (2) **However, success in ensuring that there is in fact no recurrence will depend upon consistent and long-lasting insistence upon compliance with Financial Directions and thus upon the development of a culture within EDD that demands compliance from grant-aided bodies.**
 - (3) **Mr. King’s obvious personal commitment to improvement of the Battle of Flowers does not offer a way of improving relationships with all other grant-aided bodies and, in this sense, is**

not a substitute for development of an appropriate culture within EDD.

- (4) EDD and the States generally should try to ensure that appropriate support is available to grant-aided bodies to assist them in complying with the States' requirements.**
- (5) the Chief Executive and Treasurer of the States should ensure that, after a suitable interval, perhaps at the end of 2007, the Internal Audit Division should review the relationships between EDD and the bodies to which it awards grants (and those to whom grants have been denied) to assess the extent to which the necessary improvements have been made.**

Steps taken by the States generally

The general position

40. In the public hearings, Mr. Ogleby was asked to comment on the general position within the States, with particular reference to Ministerial decisions which might require departments to breach FDs:

"I have to say that what we have here is an error. I keep saying we have an error. It has reminded everybody of the need to be totally and utterly vigilant. It is useful that things happen in any change. I am not minimising it. I think it is very important, and that is why I am talking about due internal process taking place about what has happened here. I am not minimising it but I do not think there is a major problem. I do not believe this is endemic. I have been back with all of my chief officers and asked them to both check and to affirm to me that these processes are properly in place. We have the Financial Advice Board, which is the finance director for each department, who now work together and answer to the Treasury Minister and they have been asked to assure

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themselves. We do not believe there is an endemic problem ..."

41. Thus, apart from issuing supplementary guidelines on Ministerial decisions, the discussions which took place at both the CMB and the Finance Advisory Board which may have led departments to review their relationships with grant-aided bodies, and the continuation of normal training programmes, no other steps have been thought necessary.
42. Constant attention will however be required to ensure that in practice all departments follow the guidance.

Conclusions

43. The Committee's conclusions may be summarised in the following way:
- (1) The Committee recommends that the Internal Audit Division should, as part of its normal programme, review the relationships between major grant-aiding departments (e.g. Education Sport and Culture and Health and Social Services) within a reasonable period (e.g. by the end of 2007) with a view to ensuring that the requirements of the Financial Direction have been applied consistently.**
 - (2) The Committee recommends that the Internal Audit Division should, as part of its normal programme, review the records of Ministerial decisions within a reasonable period (perhaps by the end of 2007) with a view to ensuring that the relevant guidance has been followed consistently.**

APPENDIX 1 ~ MINISTERIAL DECISIONS ~ SUPPLEMENTARY DECISIONS

GUIDELINES ISSUED BY THE CHIEF EXECUTIVE IN NOVEMBER 2006

R.C.80/2005 presented on 18 October 2005, set out the basis and process for making and recording Ministerial Decisions.

Whilst the R.C. set out the formal process there are some associated points which will ensure that there is an appropriate governance arrangement in relation to the separation of advice to Ministers, the actual process of decision making and the implementation of decisions. Those points are as follows:-

- (1) It is inappropriate for Ministers to take decisions without receiving advice from their officers. Where matters are particularly significant or controversial that advice should, whenever possible, be reviewed by the Chief Officer.
- (2) A Minister must make it clear at the beginning of a meeting where no officer is present that no decisions can be taken at the meeting. In all but the most urgent of cases the Minister should not be expected to make a decision on the spot. The Minister should be afforded the opportunity to reflect upon the matter and consider appropriate advice and evidence.
- (3) A Minister might indicate his or her intent verbally or by other means, but a decision will only be made when the Ministerial decision is signed or, *in extremis*, agreed remotely.
- (4) The decision form must as far as possible be fully completed and supported by appropriate information and a trail to relevant documents.
- (5) The officer providing advice and/or completing the decision form is accountable for the advice given. It should be complete and balanced and reflect the officer's best professional advice. Ministers, as the decision takers, are free to take a different view and a contrary decision to the advice received. The Minister's reasoning should be recorded as far as possible.
- (6) Officers will be expected to implement Ministerial decisions regardless of the advice given. If, however, a decision were to result in an illegal act, contravene financial directions or create a significant risk to the States or the Island the officer should refer the matter to the Chief Officer of the department or, if the officer is a Chief Officer, to the Chief Executive to the Council of Ministers.
- (7) Those senior officers will be expected to discuss the matter with the Minister or the Council of Ministers in order to resolve it appropriately.
- (8) In the case of a decision which contravenes financial directions or would otherwise contravene the role of Accounting Officer the Minister will have to issue a direction. The Accounting Officer will then follow the rules laid out for such matters.
- (9) Chief Officers are personally responsible for ensuring that Ministers are appropriately supported and that all appropriate officers are fully aware of and trained to fulfil their responsibilities.
- (10) Ministers are personally responsible for ensuring that they follow the rules and guidelines to ensure that their actions are subject to sufficient governance and that there is appropriate separation of advice and recording of decisions.
- (11) In order to ensure appropriate segregation of responsibilities Ministers should whenever possible refrain from implementing their own decisions.

- [2] *These agreements were in fact renewed annually. The grants paid under these agreements for some years had amounted to £95,000 in each year.*
- [3] *Transcript pages 30 and 31.*
- [4] *Transcript page 30.*
- [5] *Transcript page 31.*
- [6] *Transcript page 34.*
- [7] *See Mr. King's answer, transcript page 40.*
- [8] *Transcript page 40.*
- [9] *Transcript page 35.*
- [10] *In the event, management of the EDD's budget has meant that the grant will have been met from the EDD's budget and thus not from the Tourism Development Fund.*
- [11] *Transcript page 37.*
- [12] *In the public hearing, Mr. King suggested that this member of staff became a member of a small group established by BOFA to look at developments of the 2006 Battle. In fact, the Association regarded this member of staff as a member of the Council and attended the Council's meetings.*
- [13] *Transcript page 38.*
- [14] *Mr. King told the Committee that this had been done earlier at the beginning of 2006 and in April 2006: transcript page 28.*
- [15] *Transcript page 32.*
- [16] *Transcript pages 31 and 32.*
- [17] *Transcript page 32.*
- [18] *Transcript page 32.*
- [19] *Transcript page 42.*
- [20] *Transcript pages 43 and 44.*
- [21] *Transcript page 43.*
- [22] *Transcript page 43.*
- [23] *Transcript page 44.b*
- [24] *Transcript pages 16 and 17.*