

# Chapter 5

## Departments of Social Development and Supply and Services

### Review of Nursing Home Contract with Shannex Inc.

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# Departments of Social Development and Supply and Services

## Review of Nursing Home Contract with Shannex Inc.

### Background

5.1 In April 2008, the Province issued a news release stating:

*The province is partnering with Shannex New Brunswick, Atlantic Canada's largest long-term care service provider, in a pilot public-private initiative to open 216 new nursing home beds. The new beds will open within the next two years, and will help address waiting lists and bed shortages. Construction will begin in July.*

5.2 A year earlier, in April 2007, Shannex approached the Department of Social Development during a series of long-term care consultations that were being held around the Province. The purpose of the consultations was to receive advice on how the long-term care system could be improved. The information collected formed the basis for the development of a long-term care strategy to be phased in over the next 10 years.<sup>1</sup> The consultation process involved meetings with representatives of seniors' clubs, home support agencies, special care homes and nursing homes, and included submissions of briefs from individuals and organizations.

5.3 The Department of Social Development told us that this was not the first time that Shannex had approached the Province with a proposal for a new model for supplying nursing home beds. The

1. Consultation process on long-term care system for seniors is launched (07/04/17) NB471 Family and Community Services

Department also told us that most nursing homes in the Province are operated by non-profit boards, as self contained operations, requiring significant government involvement on key decisions. Shannex is a for profit organization that operates integrated senior living campuses, which can include senior apartments, assisted living beds and nursing home beds. Shannex proposed a short term pilot project to the Province under which it would supply nursing home beds to the Province for a daily per diem.

**5.4** According to staff at the Department of Social Development, the Province was interested in Shannex's approach because of the short time frame to construct and open the nursing homes. This was important to the Department because of the increased demand for nursing home beds. A change in government policy in 2006-07 accelerated the demand for nursing home beds. In the new policy, the Department capped the fee charged to residents of nursing homes at \$70 per day and no longer required assets to be part of the calculation to determine the amount each client contributes for their long term care services.

**5.5** In January 2008, the Department of Social Development requested an exemption under the *Public Purchasing Act* (the Act) to enter into an agreement with Shannex to lease nursing home beds without going through a tendering process. The exemption was granted under section 27.1(1)(d) of regulation 94-157 of the Act. This exemption is used where the supply of services is required in the event of an emergency or urgent situation.

**5.6** The contract with Shannex will add 216 nursing home beds in New Brunswick, consisting of 72 beds at each of three facilities in Fredericton, Riverview and Quispamsis. Three separate five-year contracts with renewal options were signed in April 2008, one for each complex.

## **Our approach and findings**

**5.7** Before starting our work we discussed this matter with the Ombudsman who was considering examining the Shannex arrangement. The Ombudsman concluded that because his legislation does not provide him with jurisdiction over nursing home operations, the only area that could be examined at the moment is the procurement of the services. We agreed that our Office should review the decisions and conditions surrounding the tendering exemption granted to the Department of Social Development for the purpose of contracting with Shannex Inc.

**5.8** The Ombudsman has stated in the past that he should have the authority to investigate nursing home operations and complaints from residents of the homes. We believe that changes to the nursing home system such as implementing new service delivery model mean it is even more important to give the Ombudsman jurisdiction over nursing homes.

***Recommendation***

**5.9 We recommended the Province expand the Ombudsman's legislation to provide him with jurisdiction over Nursing Homes.**

***Response from the Department of Social Development***

**5.10** *The Department of Social Development is responsible to ensure that nursing homes comply with the Nursing Homes Act, the Regulations, and the departmental standards and policies. Staff of the Department inspects nursing homes at least annually. The unannounced inspection examines more than 200 items and takes place over 2 full days. As well, the Department is responsible for following up on complaints from the general public. The process is thorough and includes follow-up with all of the parties, a review of documentation and/or an unannounced inspection of the nursing home. We believe that this process works well and addresses the issues raised by residents and their families living in nursing homes.*

**5.11** In addition to discussing this issue with the Ombudsman, we reviewed a copy of a Notice of Motion, including the government response, where the Opposition had requested all documents, agreements, correspondence and any other information related to the transactions between government and Shannex.

**5.12** After discussing the issue with the Ombudsman and reviewing the Notice of Motion package, we identified a number of questions surrounding the Shannex contract. Exhibit 5.1 is a summary of our questions, as well as our findings.

Exhibit 5.1 Summary of Questions and Our Findings

Questions	Our Findings
1. Why was a tendering exemption needed?	<ul style="list-style-type: none"> <li>• The assessment of the length of time to tender was not documented before the Department of Social Development proceeded with the Shannex proposal.</li> <li>• No clause in contracts ensuring that beds go to individuals on the waitlist in hospitals.</li> </ul>
2. Did the Departments of Social Development and Supply and Services comply with the <i>Public Purchasing Act</i> ?	<ul style="list-style-type: none"> <li>• Determination of urgent situation is subjective; there are no definitions or guidelines used to assess exemption request.</li> <li>• The Department of Social Development complied with the Act in terms of the process for requesting an exemption.</li> <li>• The Department of Supply and Services is not ensuring that departments are properly documenting the justification for exemptions in emergency or urgent situations.</li> </ul>
3. Was the process fair to all possible service providers?	<ul style="list-style-type: none"> <li>• Because of the urgency of the situation, the services were not tendered and therefore the process was not fair to all possible service providers.</li> </ul>
4. How will the pilot project be evaluated?	<ul style="list-style-type: none"> <li>• The process to evaluate the success of the project has not been established yet.</li> </ul>
5. Did the Department of Social Development perform due diligence in assessing Shannex?	<ul style="list-style-type: none"> <li>• The Department of Social Development did not document the due diligence steps it took in assessing the Shannex proposal.</li> </ul>
6. What if this new approach doesn't work out?	<ul style="list-style-type: none"> <li>• New approach carries new risks.</li> <li>• The Department of Social Development did not carry out a full assessment of the risks associated with the new service delivery model or develop a plan for dealing with those additional risks.</li> <li>• The Department of Social Development has not obtained a legal opinion on the authority of the Minister and the Lieutenant-Governor in Council to take over the nursing home operations in the event of an emergency.</li> </ul>
7. Did the Departments of Social Development and Supply and Services comply with Notice of Motion #69?	<ul style="list-style-type: none"> <li>• The Departments of Social Development and Supply and Services complied with the Notice of Motion.</li> </ul>
8. Is the price of the nursing home beds reasonable?	<ul style="list-style-type: none"> <li>• The contracted rate with Shannex appears reasonable when compared to other newly constructed homes, but we cannot say whether it is the best rate that could have been obtained because the purchase of beds was not tendered and we do not know what rate other service providers could have offered.</li> </ul>

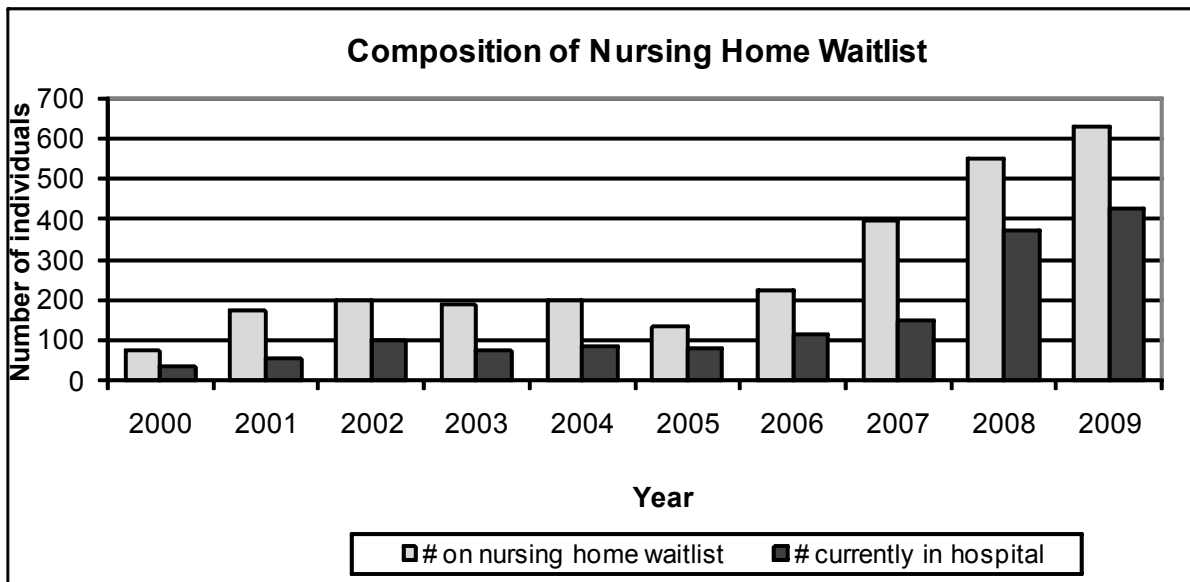
**Why was a tendering exemption needed?**

**5.13** We have also included some other observations we made during our review at the end of this chapter.

**5.14** Though it was reported in the media that Shannex was awarded the contract due to an “emergency” situation, the tendering exemption that was granted to Shannex was actually because of an “urgent” situation. The Department of Supply and Services emphasized that this is an important distinction.

**5.15** According to staff of the Department of Social Development, additional nursing home beds were urgently needed in order to vacate hospital beds occupied by individuals that, though medically discharged, remained in hospital awaiting a bed in a nursing home. In Exhibit 5.2, we look at the number of individuals on the nursing home waitlist that were in hospitals for the years ended March 31 2000 to 2009.

*Exhibit 5.2 Number of Individuals on Nursing Home Waitlist and Number that Remain in Hospital for the Years Ended March 31 2000 to 2009.*



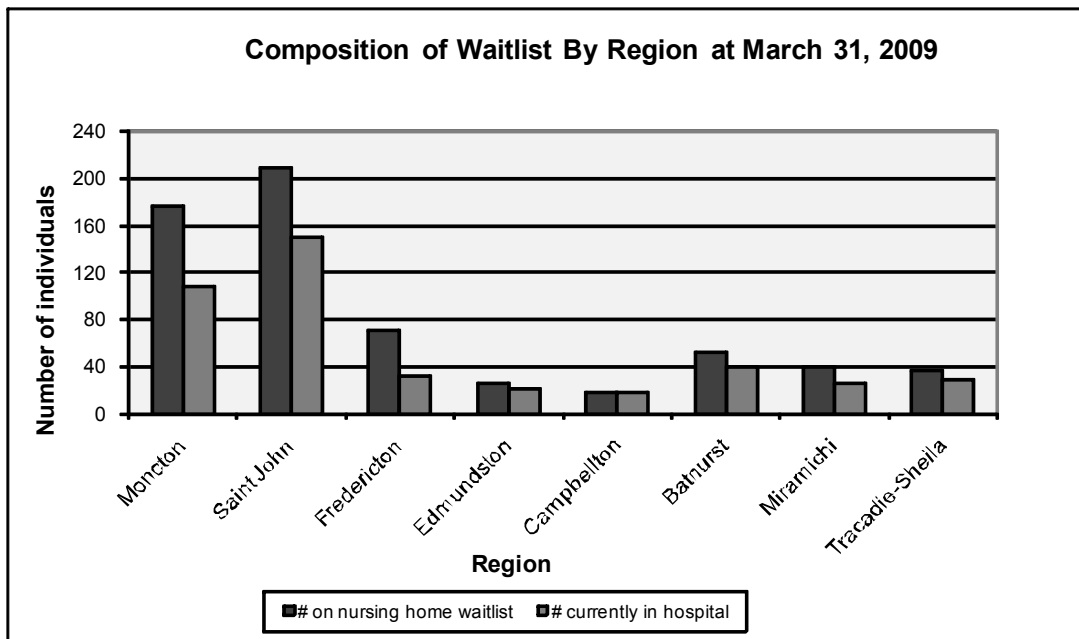
**5.16** Based on the *Nursing Home Services Annual Statistical Report* for the years 2000 to 2007, and additional information provided by the Department for 2008 and 2009<sup>1</sup>, we found that the

1. As of 2008, the Department no longer prepares the *Nursing Home Services Annual Statistical Report*. Therefore, we obtained data directly from staff at the Department to complete our exhibits.

number of people on the waitlist for a nursing home bed has been increasing. In fact, the number of people waiting for a bed more than quadrupled between 2000 and 2007, from 72 to 399. It increased an additional 38% between 2007 and 2008 alone. The most significant year over year increase occurred between 2006 and 2007, where the need increased by 175 or 78%. As we mentioned in the background of this report, this significant increase coincided with government’s changes to the nursing home policy. On average for the years 2000 to 2009, we found that 54% of people on the waitlist for a nursing home bed were in a hospital (though medically discharged). At March 31, 2009, 68% of people on the waitlist for a nursing home bed were in a hospital (though medically discharged).

**5.17** In Exhibit 5.3 we look at waitlist information by region for 2009 only. We found that Moncton and Saint John had a significantly larger waitlist than other areas in the Province. In those two cities, the number of nursing home beds added by Shannex will be less than the number of medically discharged people in hospital who are waiting for a nursing home bed. By contrast, the number of nursing home beds added by Shannex in Fredericton could, if the facility accepted all of the people that are in hospital who are waiting for a nursing home bed, free up all of the hospital beds so occupied and still allow for additional admissions.

Exhibit 5.3 Composition of Waitlist By Region at March 31, 2009



**5.18** According to staff at the Department of Social Development, if the government had tendered for the additional nursing home beds, the tendering process would have taken 24-36 months, not including construction time. Shannex, on the other hand, is expected to be build their facilities within 18 months. We found emails within the Department of Supply and Services files that indicated that tendering could have been accomplished within 15-24 months. We found evidence of a discussion Supply and Services had with another jurisdiction regarding the length of time needed to manage a tender; however, this discussion took place on June 25, 2008 after the contracts with Shannex were already signed. A full assessment of the length of time needed for the tendering process was done before the Department of Social Development decided to proceed with the Shannex proposal, but that there was no documentation of that assessment. While it is obvious that tendering for these services would have taken longer than not tendering, we can not evaluate the Departments' assessments of the amount of time a tender would have taken.

**5.19** Finally, while it is clear that the addition of 216 nursing home beds by Shannex will have an impact on a number of individuals awaiting a nursing home bed while currently in hospital, it is also possible that the Shannex beds will go to people awaiting a bed elsewhere than in a hospital. There are no clauses in the contracts between the Department of Social Development and Shannex that ensure the beds go to individuals currently in hospital, even though this was a factor justifying the urgency of the situation.

### **Conclusion**

**5.20** We were told by both the Department of Supply and Services and the Department of Social Development that the need for nursing home beds did justified a purchasing exemption. We were also told by the Department of Supply and Services that purchasing exemptions are routinely given for the acquisition of traditional nursing home beds. The Departments did not adequately document their assessment of the length of time a tender would take.

**5.21** We believe the Department of Social Development should have built into the contracts with Shannex a clause requiring a minimum number of admissions to come from medically discharged patients in hospitals that are on the waitlist.

### **Response from the Department of Supply and Services**

**5.22** *We agree that the documentation in the file could have been more extensive. However, DSS has several expert procurement specialists with many years of experience that are able to estimate*



*the length of time to properly prepare a request for proposals. We maintain that by granting this exemption, at least 15 to 24 months were removed from the date the nursing home beds would have become available using a conventional tendering process.*

**Did the Departments of Social Development and Supply and Services comply with the *Public Purchasing Act*?**

**5.23** The *Public Purchasing Act* requires that, unless otherwise provided in the Act, the Minister of Supply and Services shall tender the purchase of services or supplies on behalf of a department.

**5.24** Each department must purchase its services and supplies through the Minister, unless the services and supplies are specifically excluded by regulation. Departments are exempt from purchasing services through the Minister that have a cost of \$10,000 or less. If the cost of services is greater than \$10,000 but less than \$50,000, tenders must be requested publicly or from vendors on the vendors list. If the cost of the services exceeds \$50,000 then a public tender must be requested.

**5.25** There are certain services that are specifically excluded from tendering; these are services that are provided by certain professionals such as engineers, chartered accountants, and medical practitioners.

**5.26** A department can request an exemption from tendering from the Minister of Supply and Services in the case of very specific circumstances, including where the services are required in the event of an emergency or urgent situation.

**5.27** Section 45 of Regulation 94-157 of the Act requires that when the Minister purchases services under an exemption, the Minister shall ensure that the justification for the exemption is documented and kept on file.

**5.28** When we spoke to representatives of the Department of Supply and Services, we found that they assign responsibility to defend an exemption back to the department that requested the exemption. The Department of Supply and Services told us that section 1.1 of the *Public Purchasing Act*, which states “The Minister is responsible for the administration of the Act and may designate persons to act on his behalf”, gives them the authority to assign this responsibility to the departments. Since there are no criteria established to assess whether a situation is an emergency or urgent, and since many departments would not have the experience making this judgment for the purpose of the *Public Purchasing Act*, we

believe the Department of Supply and Services should take responsibility to ensure that departments have properly documented their reason for an exemption.

**5.29** In their request for an exemption, the Department of Social Development did not specify the type of exemption they needed; they simply requested an exemption from tendering. It was the Department of Supply and Services that identified the specific type of exemption that should be granted under Regulation 94-157 to the Act. When the exemption was requested, the Department of Supply and Services met with the Department of Social Development, reviewed the information provided and made their assessment.

**5.30** In the case of the Shannex contract, the exemption granted by the Minister of Supply and Services referred to the situation as an urgent or emergency situation.

**5.31** When we asked what qualified as an urgent or emergency situation, the Department of Supply and Services said that the *Public Purchasing Act* does not define what constitutes an emergency or urgent situation; instead, staff must use their judgement. There are no guidelines or policies in place to assist staff in assessing whether a situation is an emergency or urgent. We were told that there is a clear distinction between emergency and urgent, though the distinction is not documented. The Department of Supply and Services told us that an “emergency situation is a situation where by you must act immediately for protection of the public good: i.e. flood, fire, oil spill, pending pandemic or other unforeseen event”. They added that “an urgent situation is when the need is time sensitive and requires action to be taken to resolve the problem”.

**5.32** Based on the information we reviewed as well as our analysis in this report, we found the Department of Social Development’s request for exemption was not specific. We were told that the exemption was approved based on two reasons; purchase of service on behalf of a third party and an urgent situation (discussed below).

**5.33** Any exemption exceeding \$500,000 requires the Minister of Supply and Services’ approval. When staff of the Department of Supply and Services recommended to the Minister that an exemption be provided for the Shannex contract, they recommended the exemption be granted under section 27.1 (1) (d) of the regulations to the *Public Purchasing Act* which refers to an emergency or urgent situation. However, the purchase order approval, signed by the

Minister, Deputy Minister, Assistant Deputy Minister, the Director of Central Purchasing and the Manager of Strategic Procurement, states that approval is granted under section 27.1(1)(z). This section refers to the purchase of services on behalf of a third party not covered by the Act or Regulation. When the actual purchase order was prepared in April 2008, it indicated that approval for exemption was granted pursuant to section 27.1(d) of the regulation (this is an incorrect reference to the legislation, and should be 27.1(1)(d)). The Director of Purchasing told us that both exemptions were presented and discussed as options in the Shannex case and both are valid and acceptable in this context. The Deputy Minister of Supply and Services told us that the reason for the inconsistency was that the computerized purchasing system only accepts one exemption reason, even if multiple reasons are valid. We believe that the Department of Supply and Services should ensure that the reason for exemption entered into the purchasing system is consistent with the signed purchase order approval.

### **Conclusion**

**5.34** The Department of Social Development complied with the Act in terms of the process for requesting an exemption. We believe the Department of Supply and Services complied with the Act, however we noted an inconsistency in their documentation of the approval. We also believe that the Department of Supply and Services did not ensure that there was proper documentation of the reason for the exemption for the purchase of these services as required by section 45 of Regulation 94-157.

### **Recommendations**

**5.35** We recommended the Department of Supply and Services formally document the definition of “urgent situation.”

**5.36** We recommended the Department of Supply and Services put in place a process to ensure that the reason for exemption entered into the purchasing system is consistent with the signed purchase order approval.

**5.37** We recommended the Department of Supply and Services implement a process to ensure that departments are adequately documenting and maintaining on file the justification for exemptions for emergency or urgent situations.

### **Response from the Department of Supply and Services**

**5.38** *DSS procurement staff has a good grasp of what constitutes an emergency or an urgent situation. While in theory, a documented definition would be ideal, we believe that it would be impractical to write a definition that would cover every possible scenario. Central*

*Purchasing consults with departments and assists them in evaluating each request on its own merit.*

**5.39** *DSS agrees that the reason for exemption entered into the purchasing system should be consistent with the signed purchase order approval and that adequate documentation should be maintained on file to justify the reasons for an exemption.*

**Response from the  
Department of Social  
Development**

**5.40** *The Department of Social Development believes that it faithfully executed all necessary steps in the process to request an exemption to the Public Purchasing Act. The Department agrees with your office's conclusion that the need for nursing home beds in these three areas was urgent. Indeed, nursing home waiting list statistics have continued to rise in 2009 which would provide further confirmation of the urgent nature of this situation. However, the final memo could have articulated these reasons demonstrating the urgency and the proposed response thereto more specifically, and while these issues were discussed with Department of Supply and Services staff in person, we recognize that it would have been very helpful to fully articulate these reasons in the memo.*

**5.41** *The Department believes that the agreement with Shannex Inc. is a fair agreement and that tendering would have both lengthened the timeframe within which the beds could be constructed, would have likely resulted in a higher daily per diem, since our experience is that companies build the cost of preparing proposals into their per diems and would have had no impact on the outcome, since Shannex Inc. is the only company with the proven track record to deliver quality care of this kind in the timeframes and at such competitive costs.*

**5.42** *While not a recommendation per se for this section, one of the conclusions states that there was "no clause in the contracts to ensure that beds go to individuals on the wait list in hospitals." The Department has taken the advice of the Auditor General and since negotiated an amendment to the contract that clearly states that Shannex Inc. will take 75% of its residents from hospital at opening. The Department would not support taking a larger percentage from the hospital, as the message to the public would then become that the only way to get into a nursing home would be by going into the hospital, which would further exacerbate overcrowding in our hospitals.*

**Was the process fair to all possible service providers?**

**5.43** The stated goal of the Central Purchasing Branch of the Department of Supply and Services implies that the public tendering process as described in the Act maximizes competition in order to achieve the best value for money while ensuring that all suppliers who wish to compete for government contracts have a fair and open opportunity to do so. Because the purchase of nursing home beds from Shannex was not tendered due to the urgency of the situation, it would not have been fair to other possible service providers.

***Response from the Department of Supply and Services***

**5.44** *As stated previously, the large number of medically discharged patients occupying acute care hospital beds did warrant an exemption as an urgent situation. DSS had the authority and the justification to grant an exemption under the Public Purchasing Act. Whenever an exemption is granted, that removes the requirement to tender and hence removes the opportunity for other potential suppliers to bid on a contract. At that point, the issue of fairness to other suppliers is over ruled in favour of achieving the greater public good.*

**How will the pilot project be evaluated?**

**5.45** According to the document requesting an exemption to the tendering process, the Department of Social Development wanted to enter into a pilot project with Shannex to create three aging-in-place campuses for senior citizens. The campuses would include seniors' apartments, supportive living housing and nursing home care.

**5.46** Since this is a pilot project, we expected to find an explanation of how and when the success of the pilot project would be assessed. We were told that the evaluation method would be developed during the life of the contracts. At the time of our review, the evaluation method had not yet been established. We believe that the better practice would have been to have established how and when the pilot project will be assessed before signing the contract.

***Conclusion***

**5.47** The Department of Social Development told us that they intend to put in place a process to assess and evaluate the success of this pilot project. We believe that better practice for a large contract with a new delivery model would have been to have the evaluation method determined before entering into a contract.

***Recommendation***

**5.48** **We recommended the Department of Social Development put in place a formal mechanism to assess the success of the pilot project they have entered into with Shannex.**

**Response from the  
Department of Social  
Development**

**5.49** *The Auditor General is correct that evaluation should be part of any pilot project, and at Social Development, evaluation is indeed part of any pilot project. The Department of Social Development has an Audit and Evaluation Committee with well-established practices in determining and approving evaluation work, including the practice of requiring evaluation for any pilot project undertaken by the department. When the Shannex pilot was approved, the Director of Planning, Research and Evaluation was informed that an evaluation would be required. Once other evaluation work that was already underway was completed and resources were available, the Shannex evaluation commenced. An evaluation framework is in place well before the opening of the new nursing home complexes.*

**5.50** One measure of success of the Shannex initiative could be the degree to which it has relieved some of the pressure on hospital beds. The Department of Social Development could measure the number of people awaiting a nursing home bed while in a hospital in a given region immediately before and after the opening of a Shannex facility. This type of data could be published in the Department's annual report as an account of whether each of the three facilities did indeed vacate hospital beds occupied by people on the nursing home waitlist.

**Did the Department of  
Social Development  
perform due diligence in  
assessing Shannex?**

**5.51** Since the public-private partnership with Shannex is a new approach for the Province, we expected the Department of Social Development to apply due diligence when assessing Shannex prior to entering into a contract. This would ensure the effective use of taxpayers' money. We were told that the following due diligence work was carried out by departmental staff:

- Visited Shannex's properties, visiting both older and newer facilities. They met with the CEO of Shannex and two of the company's vice-presidents. They asked questions of clarification and received a presentation from Shannex staff. During several tours, they also spoke to some front-line employees and many residents.
- Reviewed copies of inspection reports, financial information, client satisfaction information and site plans.
- Spoke to senior staff at the Department of Community Services in Nova Scotia, who have contracts with Shannex, to determine their comfort level with the corporation and the quality of its services.

**5.52** The actions performed, however, were not documented nor was supporting evidence conserved. We were told that documents provided by Shannex were not copied due to the proprietary nature of the information. Nonetheless, we feel the outcome of due diligence should be the subject of a formal written report to be used in conjunction with other reports and evaluations to improve the robustness of the decision making process.<sup>1</sup>

### **Conclusion**

**5.53** Given the size of this project, the Department of Social Development should have prepared a due diligence report outlining the steps they took in assessing Shannex.

### **Recommendation**

**5.54 We recommended the Department of Social Development document its due diligence activities when assessing significant contracts.**

### **Response from the Department of Social Development**

**5.55** *While a formal due diligence document was not prepared and placed on file by the Department of Social Development, the Department believes that due diligence was demonstrated by governmental staff during the decision-making process. This included review of several years worth of inspection reports of all Shannex Inc. facilities in Nova Scotia, site visits by numerous departmental staff on several different occasions of a number of Shannex Inc. Facilities which were similar in scope and size to what was being proposed to be built in New Brunswick, review of resident satisfaction surveys and in-depth discussions with government staff in Nova Scotia who had had long term dealings with the Shannex Corporation. As well, the actual contract was vetted by numerous staff in the Departments of Social Development and Justice. However, on a go-forward basis, the Department of Social Development will commence to formally documenting its due diligence activities when assessing significant contracts.*

### **What if this new approach doesn't work out?**

**5.56** This new approach in providing nursing home care also carries new risks. Specifically, we questioned what would happen if the Province was unsatisfied with the services or what would happen if there was an unforeseen external event that meant the Department of Social Development would have to step in and take over operations, as permitted in the *Nursing Homes Act*. Also, the Shannex campuses include facilities other than the nursing home

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1. Due Diligence and Probity Assessment Guidelines, Queensland Government

units; does that present new risks to the Province that it does not face with traditional nursing homes?

**5.57** We did not find a documented contingency plan in place to address these situations.

**5.58** We also found that the Department of Social Development had not obtained a legal opinion on the authority of the Minister of Social Development and the Lieutenant-Governor in Council to take over the nursing home operations in the event of an emergency, as described in section 10(1) of the *Nursing Homes Act*. This section states that the Lieutenant-Governor in Council may appoint a trustee who will assume all property, powers, duties and liabilities of the operator of the nursing home if the Minister believes:

- the nursing home is not functioning properly;
- the operator or the nursing home has failed to meet the requirements of the Act and the regulations;
- the operator of the nursing home has violated any provision of the Act and the regulations;
- the operator has failed to comply with the terms and conditions to which the license is subject; or
- the license of a nursing home has been revoked, a renewal is refused or a license expires and is not renewed.

**5.59** The Department of Social Development also needs a plan to accommodate the nursing home residents in the event of any occurrence, including the expiration of the contract, which would mean the residents would need to move out and find another facility.

## **Conclusion**

**5.60** The Department of Social Development did not carry out an adequate assessment of the risks associated with the new service delivery model or develop a plan for dealing with those additional risks.

**5.61** Even though the contracts have been signed, the Department of Social Development should do a risk assessment to ensure their contingency plans address all significant risks.



**Recommendation**

**5.62** We recommended the Department of Social Development prepare and document a risk assessment of the Shannex contract and identify any mitigating actions that should be put in place.

**Response from the Department of Social Development**

**5.63** *The Department has put its mind to risk assessment through its due diligence and other activities. However, the Department accepts the recommendation and will put such a plan in place well before the Request for Proposal process commences.*

**Did the Departments of Social Development and Supply and Services comply with Notice of Motion #69?**

**5.64** In April 2008, the Official Opposition was asking questions about the Shannex contracts. In Notice of Motion # 69, Mr. Carr made the following resolution:

*That an address be presented to His Honour the Lieutenant-Governor, praying that he cause to be laid upon the table of the House all documents, agreements, correspondence or any other information stored or recorded in any format in the possession of government related to any transactions between the Government of New Brunswick and Shannex prior to April 16<sup>th</sup> 2008.*

**Conclusion**

**5.65** We reviewed the information provided in response to the Notice of Motion and compared it to the information that we obtained during our review. The material that we were provided included two documents in addition to the material provided under the Notice of Motion. In both cases, the Departments of Social Development and Supply and Services informed us, and it is our understanding, that the documents did not have to be supplied under the Notice of Motion. One was the signed Purchase Order Approval with authorized signatures dated March 31, 2008 which the Department of Supply and Services told us was “Advice to Minister”, and the other was a legal opinion from the Department of Justice stating that legal concerns have been addressed in the service agreements for the 3 Shannex facilities (dated March 21, 2008). We therefore have concluded that both departments complied with the Notice of Motion.

**Is the price of the nursing home beds reasonable?**

**5.66** Based on the information provided to us by the Department of Social Development, we found that Shannex’s budget for 72 beds was higher than the budget for an existing nursing home in New Brunswick with 70 beds. On the other hand, we also found that the per diem that will be paid to Shannex is less than the per diem that will be paid to some newly constructed nursing homes.

**5.67** The difference between the rates for newly constructed nursing home beds and the rates contracted with Shannex implies that there may be opportunities for the Department of Social Development to identify cost savings in the acquisition of future nursing home beds.

### **Conclusion**

**5.68** Overall, the contracted rate with Shannex appears reasonable when compared to other newly constructed homes, but we cannot say whether it is the best rate that could have been obtained because the purchase of beds was not tendered and we do not know what rate other service providers could have offered.

### **Other observations**

**5.69** The purchase order approval states that the value of the 5-year contract is \$50,584,373 (including taxes), to be paid over 4 years. We believe the value of the 5-year contract to be \$95,774,076, according to the contracts signed by the Department of Social Development. Therefore, the total amount of the purchase order approval is less than the minimum amount that will be paid under the contracts.

**5.70** The contracts contain a renewal clause that could allow the agreement to extend an additional 3 years, with additional costs to be negotiated at that time. At a minimum (if we use the current rate as part of our calculation), a 3-year contract renewal would be worth an additional \$57.1 million.

**5.71** The value of the purchase order was \$50,584,373.16 US dollars. When we inquired as to why the purchase order was in US dollars, we were told that this was a system error. After we brought this to the attention of the Department of Supply and Services, a zero-dollar purchase order amendment was prepared in March 2009 to indicate the value was in Canadian currency.

### **Recommendation**

**5.72** **We recommended the Department of Social Development start planning a replacement tender in year three of the current contract.**

### **Response from the Department of Social Development**

**5.73** *The Department of Social Development and the Department of Supply and Services have already commenced discussions regarding a replacement tender which will indeed be issued in year three of the current contract.*

**5.74** *While not a recommendation per se for this section, this section notes a discrepancy in the purchase order amount and the*

*expected cost to Government for the period of the contract. The purchase order amount varies from what the Office of the Auditor General calculates for two reasons 1) the purchase order was required as proof of intent to pay when the contract was signed and is automatically set for a five-year period from the date it is generated, even though the department would not be paying anything to Shannex Inc. in the first year. The department was always aware that it would require a purchase order extension for the additional two years of operations of the contract. At the same time, Social Development's costing was calculated at total costs less the anticipated client contribution, which at the time of the contract was an average of \$41.28 per day, which should account for the differential in funding.*

**Recommendation**

**5.75 We recommended the Department of Social Development put in place a plan for how residents would be accommodated through any future move that could be required at the expiration of the contract term.**

**Response from the Department of Social Development**

**5.76** *Based on its decades of experience in working with nursing homes to implement, for a variety of reasons, both large and small scale patient transfers, the Department will put such a contingency plan in place as it develops its risk assessment plan referenced above.*

**Recommendation**

**5.77 We recommended the Department of Supply and Services ensure that all purchase orders issued properly reflect the value of the services purchased, and in the correct currency.**

**Response from the Department of Supply and Services**

**5.78** *DSS issues over 5,800 purchase orders per year. While it would be ideal to eliminate all possibilities of errors, sometimes mistakes are made. Section 23(5) of the Regulation to the Public Purchasing Act provides that the Minister can make amendments to correct errors or oversights. The Department will review its processes to ensure such errors are minimized.*

**5.79** *The value that appears on the Purchase Order is based on information provided by the client department to DSS. If it is later determined that the actual expenditure will be higher, then an amendment to the Purchase Order amount can be made.*

**Overall conclusion**

**5.80** We agree that there was an urgent need for nursing home beds. We believe the Department of Social Development did not fully assess the risks of entering into a new service delivery model for acquiring nursing home beds, they also did not adequately document their assessment of the new delivery model. We would also have

preferred the Department to have established a method for evaluating the pilot project prior to signing the contract.

**5.81** We believe the Department of Supply and Services needs to have a formal and documented role in ensuring that departments have properly justified their reason for requesting an exemption for an emergency or urgent situation. We also believe the Department of Supply and Services needs to take steps to ensure purchase orders are issued in the right currency and that reasons for exemptions entered into the purchasing system are supported by appropriate approvals.

**5.82** It appears to us that the rates to be paid under these contracts is reasonable, however, the Department of Social Development needs to start its planning for the expiration and possible renewal of these contracts well before their end dates.