

# Chapter 9

## Departments of Justice and the Solicitor General - Integrated Justice Initiative

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# Departments of Justice and the Solicitor General - Integrated Justice Initiative

## Background

**9.1** The New Brunswick Integrated Justice initiative (NBIJ) first came to the attention of our Office during our follow-up of 1993 observations for our 1995 Report. In that Report, our Office noted that the Departments of Justice and the Solicitor General and Andersen Consulting were negotiating a contract which would “create a uniform, integrated operational framework for administering and delivering justice in the province.”

**9.2** In the 1995 Report, our Office also noted that the proposal by Andersen Consulting represented a new type of procurement process: “our understanding is that the NBIJ proposal is based on the premise that the costs of the project, including the technology solutions, will be financed by Andersen Consulting. Andersen Consulting will in turn be paid from the savings generated by the re-engineered business processes. No savings, no pay.”

**9.3** At that time, costs of the project were projected at between \$8 million and \$45 million. The project was approved by Board of Management in December of 1995 when authority to sign the negotiated contract with Andersen Consulting was conferred on the Departments of Justice and the Solicitor General. The NBIJ Solution Development and Systems Integration (SDSI) Agreement was finalized on 13 June 1996.

**9.4** In August 1996, Board of Management gave approval to proceed with the NBIJ component projects on condition that Andersen Consulting was able to provide or arrange financing. The Departments of Justice and the Solicitor General were to encourage Andersen Consulting to have financing in place by 31 December 1996.

**9.5** Our 1996 Report revisited various recommendations made in our 1995 Report dealing with the Court Services Division of the Department of Justice. At that time, the department responded that virtually all of the recommendations made by our Office were to be addressed by various projects in the NBIJ initiative.

**9.6** In April 1997, a press release by the Departments of Justice and the Solicitor General disclosed that the financing for the NBIJ initiative could not be put in place on time. The departments and Andersen Consulting “jointly agreed to sever their business relationship on the project.”

**9.7** On 12 June 1997, the Board of Management authorized the Departments of Justice and the Solicitor General to enter into a severance agreement with Andersen Consulting of no more than \$2.9 million.

**9.8** On 26 June 1997, the Deputy Minister of Justice and the Deputy Solicitor General signed a *Termination Agreement and Release* with Andersen Consulting. This agreement required the Province of New Brunswick pay Andersen Consulting a sum of \$2.9 million as a result of which “all right, title and interest {including intellectual property rights} in all NBIJ Materials shall be, and become vested in the Province.” The \$2.9 million was included in the 1996-97 expenditures of the Departments of Justice and the Solicitor General and was paid early in the 1997-98 year.

## Scope

**9.9** The work performed by our Office is intended to determine whether there is value for the \$2.9 million payment to Andersen Consulting based on the information provided by the Departments of Justice and the Solicitor General. We also sought to determine if the amount of the payment was reasonable in the circumstances.

**9.10** Information was obtained through a review of the existing documentation maintained by the departments as well as both verbal and written inquiry.

## Results in brief

**9.11** **The Province of New Brunswick has disbursed approximately \$4.3 million in regard to NBIJ over the life of the initiative. This includes \$2.9 million paid to Andersen Consulting and \$1.4 million paid by the Province for other goods and services.**

**9.12** **Value received for the \$2.9 million payment made to Andersen Consulting is intangible. There is the possibility that this value to the Province of New Brunswick may not be achieved.**

**9.13** **Based on figures obtained from the departments, and given the circumstances at the date of the Termination Agreement and Release, we conclude that the payment of \$2.9 million to Andersen Consulting resulted in a settlement that was significantly less than amounts billed for work completed. There is also evidence that other possible costs were avoided as a result of this settlement.**

## Value

**9.14** The Province has disbursed an estimated total of \$4.3 million related to the NBIJ initiative since 1994. In addition to the \$2.9 million settlement with Andersen Consulting, the Province (through the

Departments of Justice and the Solicitor General) disbursed \$1.4 million on its own.

**9.15** Of the \$1.4 million, departmental information shows that \$0.6 million was disbursed as payroll costs of employees working on the project over the life of the initiative. Another \$0.5 million is attributable to miscellaneous expenses. About \$0.3 million of computer hardware and software has been acquired over the life of the initiative and this represents the most “tangible” part of the value obtained for these payments.

**9.16** In consideration for the \$2.9 million settlement, Andersen Consulting surrendered its rights to the hardcopy documentation and intellectual property created during the SDSI contract. These rights now remain with the Province.

**9.17** The departments explained that the value of these expenditures lies not so much in the physical ink on paper, but in the training and experience obtained by employees of the departments involved. The methodologies of Andersen Consulting were not only taught to these employees, but were applied during the NBIJ work achieved to date.

**9.18** Further, the departments told our Office that value was also obtained as the environment in which NBIJ was to operate was documented. Though some of this documentation can be considered unique or subject to obsolescence, much of it will have future use. As an example, our Office understands that many “architectures” were compiled to describe not only the technical foundation, but the cultural and procedural backgrounds of the departments, their business processes and their employees. The experience obtained from compiling such documentation will provide the foundation for future NBIJ work regardless of the timing. Examples of such documentation have already been put to use in continuing or implementing projects originally envisioned by NBIJ.

**9.19** Will the full value of “intangible” assets like knowledge and experience obtained through the NBIJ initiative’s contract with Andersen Consulting be fully realized? This can only happen if the departments continue with these projects and if the departments find some way to transfer the knowledge and experience to others - both within their departments as well as throughout the government.

**9.20** Other departments continue to undergo re-engineering and change, both in their procedures and their information technology. It would be neither efficient nor reasonable for each to “re-invent the wheel” should they initiate or implement a project as complex as NBIJ in the future.

**9.21** Mechanisms presently exist which help departments “advertise” the fact that special knowledge and experience is available (e.g. Information Systems Advisory Committee) to other government departments. The Departments of Justice and the Solicitor General do participate in these mechanisms, however, this may not be enough to ensure the government obtains value from its participation in this project.

**9.22** **The value obtained for the \$2.9 million payment made to Andersen Consulting is intangible. Full value may not be realized unless the NBIJ projects are actively pursued or the knowledge and experience with this type of complex project is transferred throughout government.**

**Response from the  
Department of Justice**

**9.23** *The Department of Justice is currently in the process of replacing the Criminal Justice Information System which is a foundation system for the administration of Criminal Justice. The system design is not as ambitious as originally envisaged under the NBIJ Program, but it is a start and it demonstrates that the Department is committed to the original concept of the NBIJ Program. Throughout this process we have involved key stakeholders including the departments of Transportation, Human Resources Development, Finance, Solicitor General and Health and Community Services to develop the design. We are also committed to following government technology standards.*

**Reasonableness**

**9.24** Prior to the signing of the Termination Agreement and Release on 26 June 1997, the Province of New Brunswick’s relationship with Andersen Consulting was governed by the NBIJ Solution Development and Systems Integration (SDSI) Agreement.

**9.25** Based on our review of this agreement, we conclude that both the Province and Andersen Consulting held the ability to terminate the agreement on thirty days notice if a breach of material obligation or substantial non-performance occurred on the part of the other party. However, if the Province was found to have given Andersen Consulting cause for terminating the agreement, the Province would have been required to pay Andersen Consulting for all services rendered and expenses incurred at their full standard rate.

**9.26** Based on information provided by the Departments of Justice and the Solicitor General, the amount payable to Andersen Consulting, if the market value for their goods and services were paid, would have been approximately \$4.1 million during the period of the SDSI agreement.

**9.27** In addition to the foregoing clause for termination, the Province also held the ability to terminate the agreement “for convenience” on thirty days notice. Should the Province choose to terminate in this manner, the Province was required to pay Andersen Consulting 125% of the total of services rendered, expenses and “demobilization costs.” The additional 25% was compensation for lost revenues or business opportunities to

Andersen Consulting during the term of the agreement. Based on information provided by the departments, these additional amounts could have been as high as \$1.0 million.

**9.28** The Department of Justice indicated that, had the Province chosen to litigate its severance from Andersen Consulting, the cost to the Province might have ranged from \$1.5 to \$2.0 million over three years or more. This cost excludes any estimate for liability to Andersen Consulting as a result of the litigation. There is considerable uncertainty as to the outcome of litigation.

**9.29** It is important to note that under the original (SDSI) agreement termination clauses, the Province's final payments to Andersen Consulting would still result in the surrender of intellectual property rights to Andersen Consulting for work carried out to date. These rights would likely have remained with Andersen Consulting since no contracted projects had yet been completed, delivered and accepted by the Province as anticipated by the agreement.

**9.30** The \$2.9 million paid to Andersen Consulting under the Termination Agreement and Release, resulted in the transfer of intellectual property rights to the Province of New Brunswick for work carried out to date.

**9.31** **Based on figures obtained from the departments, and given the circumstances at the date of the *Termination Agreement and Release*, we conclude that the payment of \$2.9 million to Andersen Consulting resulted in a settlement that was significantly less than amounts billed for work completed. There is also evidence that other possible costs were avoided as a result of this settlement.**

**Response from the  
Department of Justice**

**9.32** *... the last sentence of the conclusion may understate the situation..... the conclusion could be revised to state that, "substantial additional costs, including litigation costs, were avoided as a result of this settlement."*

**9.33** *I think it worthy to note that every effort was made by this Department to minimize additional costs associated with prolonged litigation to terminate our association with Andersen when it was recognized that the Program could not be completed as planned.*