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# Chapter 1

## Introductory Comments

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# Introductory Comments

**1.1** I like to use the opening chapter of my annual Report to reflect on the results of our work during the past year and to identify themes or common areas for improvement. In the past this has resulted in a number of general recommendations being made to the government as a whole rather than to individual departments. I believe this type of commentary is valuable to the Members of the Legislative Assembly.

**1.2** For instance, last year I made some suggestions in my opening chapter that, if implemented, should improve the decision-making process in government. I also recommended that the government bring Crown agencies into the performance measurement initiative and establish government-wide goals that reflect the highest priority items for government and New Brunswickers.

**1.3** I have similar observations this year, but I will comment first on the government's financial results for the year ended 31 March 2000.

## **Province had a deficit of \$895.7 million**

**1.4** As reported on the Statement of Revenue and Expenditure, the Province incurred a deficit of \$895.7 million for the year. This large deficit resulted from recording the Fredericton to Moncton highway as a capital lease. This was the proper accounting treatment for the highway once the tolls were removed, and it resulted in the Province recording an expenditure of \$903.8 million in the fiscal year. We agreed with the government's presentation of this transaction as an unusual item because it clearly shows the cause of the deficit. However, it is clearly inappropriate to disregard this expenditure when discussing the results for the year.

**1.5** I believe this clarification is necessary because there have been reports that the government ended the year in the black. I had hoped that the Major Variance Analysis that appears with the financial statements in Volume 1 of the Public Accounts would have clearly explained the financial result for the year, but my understanding at the time of writing this chapter is that this will not happen.

## **Legislation should be complied with**

**1.6** Every year the Legislative Assembly makes major decisions that affect the lives of New Brunswickers by approving new legislation or making amendments to old legislation. These decisions put into action the policy direction of the government of the day. Legislation gives the administration the authority to act.

**1.7** It would be expected that once legislation is approved it is implemented and enforced as intended. This would be a reasonable assumption by the Members and the public at large. However, as I noted in my 1998 and 1999 Reports, we found instances where legislation was not being followed. I was surprised at this, because I would have expected that the government, through which all legislation passes, would have ensured there was compliance with all provisions. Or else the legislation would have been amended.

**1.8** As a result of finding examples of non-compliance, and the strong belief that government has a fundamental responsibility to ensure its own legislation is being implemented and administered as intended, we undertook a special project in the former Department of Agriculture and Rural Development (Chapter 3). This project examined six pieces of legislation. Our conclusion was that three of them were not achieving their intended purposes. In two cases the Department of Justice did not feel it was able to enforce the legislation and as a result there has been defiance of the legislation without any consequences.

**1.9** We experienced other problems with legislation as a result of work in other areas. Following our work on Domestic Well Water Quality (Chapter 4) we are of the opinion that the government does not have an adequate enforcement system to ensure that all affected parties comply with the Water Well Regulation and the Potable Water Regulation. In our chapter on Private Forest Lands we noted that some of the definitions and provisions in the *Crown Lands and Forests Act* are vague and confusing. We were surprised to learn during the hearings with the regional hospital corporations (Chapter 13) that the Minister of Health and Wellness had not been formally approving all corporation budgets in a manner consistent with the *Hospital Services Act* and Regulations.

**1.10** As government continues to downsize through the implementation of the early retirement program, the risk increases that more and more legislation will not be given the attention that legislators, and the public, expect. There is also the risk that resources assigned to ensuring compliance with legislation could be diverted to more pressing issues due to limited resources.

**1.11** As a result of our work in the Department of Agriculture and Rural Development we made a number of observations which may apply across government. I raise them here for the benefit of the Members of the Legislative Assembly.

**1.12** We noted that there is no reporting to the Legislative Assembly on the effectiveness of the six pieces of legislation we reviewed. Nor does the Legislative Assembly receive any feedback on how well the Department is administering the legislation it has been assigned. We recommended that the Legislative Assembly be given written reports on

a regular basis on the effectiveness of legislation in meeting its intended purpose. And that the Department uses its Annual Report to inform the Legislative Assembly how well it is doing in administering the legislation it has been assigned.

**1.13** I believe that this type of reporting on a government-wide basis would result in legislation receiving the on-going attention it deserves and should result in improved compliance and effectiveness.

## **Now is the time to take action on governance issues**

**1.14** Three of our chapters this year examined various governance issues: Pension Plan Governance (Chapter 5), NB Agriexport (Chapter 12) and Regional Hospital Corporations (Chapter 13). One common theme that arose from our work this year is that the government could be doing a better job of holding these organizations accountable. For instance in the case of the pension plans, the governing body, being either the Minister of Finance or Board of Management, does not approve objectives or performance measures that could be used to hold the pension administrators and managers accountable. NB Agriexport does not prepare an annual report and until last year never appeared before the Crown Corporations Committee. And in the case of the regional hospital corporations there is confusion between the Minister of Health and Wellness and the corporations as to what services are to be provided under the New Brunswick Hospital System Master Plan.

**1.15** We have been examining governance issues in Crown corporations and government agencies since 1996 and we have consistently found shortcomings. As a result, I strongly recommend that the government implement contemporary governance practices for all Crown corporations and agencies. This would involve the government approving strategic plans and objectives and receiving regular reports on results. It would also involve setting guidelines for the manner in which the various boards are to operate.

**1.16** I note that the government is reviewing the need for its various agencies, boards and commissions. Now would be an appropriate time for clearly establishing the framework under which remaining organizations will operate. I believe the results of the work we have done over the past five years would provide helpful reference material in creating this framework.

## **Protecting the safety of New Brunswickers**

**1.17** My Office has had an interest in the themes of public safety and the environment for the past couple of years. This year we decided to address the quality of water for individuals with domestic wells. As a result of this work we noted instances where aspects of the regulations were not being followed. For instance homeowners are notified of water test results well after the three-day limit set out in regulation and there is little consistency as to when boil orders are given. And for wells that are dug, as opposed to drilled, the regulations have not been enforced. We set out all our findings and recommendations in Chapter 4.



**1.18** A concern that I have is that after having examined the safety of our ambulances in 1998, the inspection of food service establishments in 1999, and the work on domestic wells this year, serious shortcomings exist in areas where I would not have expected them. While we have no evidence that these shortcomings have resulted in injury, sickness or death, we definitely feel there is room for improvement. We were pleased to see the government create the new Department of Public Safety that will consolidate a number of public safety programs in one area. It is imperative however that all services with safety implications be reviewed and appropriate action taken to ensure that procedures are being followed in a manner consistent with legislation, regulation or policy.

## **Our Province's forest lands**

**1.19** New Brunswick is Canada's most forested province with 85 % of its land covered with forests. These forests provide a habitat for fish and wildlife, recreational opportunities for citizens and are an important generator of industrial activity. The government plays an important role in ensuring that the forest is properly managed to provide a sustainable resource for all citizens.

**1.20** Our focus this year was on Private Forest Lands (Chapter 6) and the role they play in being the primary source of timber for wood processing facilities in the Province. As a result of this work we have concluded that a lot needs to be done to ensure that this important component of our provincial forest land is properly managed. If this component does not properly fulfil its intended purpose there will be increased pressure on Crown land and the government's ability to provide a sustainable forest resource.

## **Opportunities for savings**

**1.21** In Chapter 7 we report on the work we performed on the Land Management Fund. Our interest in performing this work was to see if surplus land was being properly managed. In our view there should be guidelines to assist in the disposal of long-held properties and in determining when to obtain external property appraisals. We also noted that the government does not have one central land inventory system that could be used to better manage this valuable asset. In Chapter 8 we examine the process the Department of Transportation follows when purchasing engineering consulting services. We recommended that all engineering consulting firms have the opportunity to express an interest in any available work and that the Department ask for proposals from those that are considered to be qualified. Cost should be a determining factor in making the final decision between firms.

## **Working with the Crown Corporations Committee**

**1.22** We were very pleased to have been asked by the Crown Corporations Committee to assist during its hearings with the regional hospital corporations. This year was the first time the hospital corporations appeared before the Committee, something we had been encouraging for some time. We saw this as a very important step in improving the accountability of the hospital corporations for the over

\$600 million of taxpayers money which they spent in 1998-99. So we were pleased to assist the Committee in developing its line of questioning and by preparing a report on our observations for their consideration. Our report to the Committee is found in Chapter 13.

## **Our Office performance**

**1.23** In most of our work we examine the extent to which a Department or Crown agency has commented on its performance, either in delivering a service or in meeting annual objectives or performance indicators. We will make recommendations when we believe they are warranted.

**1.24** We are constantly reminded of our own responsibility in this area, because we too must be efficient and accountable. Chapter 14 represents our annual accountability report, which we believe is in compliance with the government's annual report policy. There we report on our goals, performance indicators and results. Last year I expressed a concern over our failure to complete our financial audits on a timely basis. This was not a problem this year as 19 of our 25 audits were completed by 30 September, and those that weren't were beyond our control.

**1.25** As for doing our work within the time allotted, we had excellent results on our financial audits but we are still experiencing problems with our value-for-money work. We continue to examine the causes of this and we make changes in our approach as we move forward.

**1.26** We have a performance indicator that 60% of all professional paid time in our Office be spent directly on audit work. The actual figure for 1999 was 57.94%. Internally we have target percentages for each employee group. This information tells us that our senior management group needs to spend more time directly on audit work.

**1.27** In summary we did not meet three of our performance indicators but we had positive results on the other five.

## **The impact of government reorganization on our Report**

**1.28** Effective 1 April 2000, government restructured its operations. New departments were created, and departmental responsibilities shifted. The bulk of our audit work included in this Report was completed prior to the reorganization. As a result, in many cases we have used the old departmental names in our chapters, indicating where appropriate the new departmental title. In areas where our work was more recent, we have used the new departmental name. We hope the reader will not find this too confusing.

## **Acknowledgements**

**1.29** I was very pleased this year with the progress we made in completing our financial audits of Crown corporations and government agencies within our time budget and before our target date of 30 September. This would not have been possible without the

co-operation and extra effort by the staff in those corporations and agencies. I acknowledge their effort and say thank you.

**1.30** I also want to recognize the Crown Corporations Committee for their willingness to involve my Office in the hearings with the regional hospital corporations. As an Office we recognize the importance of holding departments and Crown corporations accountable and we also recognize that the techniques and processes to achieve this are not well understood. It was a positive experience for my staff to work with the Committee and to assist them in this matter.

**1.31** Although it is my honour to submit this Report, I am indebted, as I am every year, to the staff in my Office who worked so hard and diligently to make it possible.

Daryl C. Wilson, FCA  
Auditor General

# Chapter 2

## Indicators of the Province's Financial Condition

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# Indicators of the Province's Financial Condition

## Background

2.1 In 1997, a research report published by the Canadian Institute of Chartered Accountants (CICA) defined financial condition as a government's "financial health as measured by sustainability, vulnerability and flexibility, looked at in the context of the overall economic and financial environment."<sup>1</sup>

## Scope

2.2 The purpose of this chapter is to provide readers with useful information about the Province's financial condition using the CICA research report as a guideline.

2.3 Though many potential indicators of sustainability, vulnerability and flexibility were considered in preparing the research report, only ten indicators were found which were relevant, necessary, measurable and clear to users of government financial information. Of these, our Office has concluded that six can be considered meaningful in the context of the Province of New Brunswick. They are:

*Sustainability* • *Net debt as a percentage of gross domestic product (GDP)*

• *Change in net debt and GDP*

*Flexibility* • *Cost of servicing the public debt as a percentage of total revenue*

• *Own source revenue as a percentage of GDP*

*Vulnerability* • *Federal government transfers as a percentage of total revenue*

• *Foreign currency debt as a percentage of total debt for provincial purposes*

## Financial results used in analyses

2.4 In this chapter, our analysis is based on the current year financial statements as presented in the Public Accounts. Prior year numbers used in our analyses may include restated figures obtained from the Office of the Comptroller.

2.5 The 31 March 2000 financial statement expenditure figures include \$903.8 million relating to the capital cost of the Fredericton to

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1. *Indicators of Government Financial Condition*, 1997 published by the Canadian Institute of Chartered Accountants.

Moncton Highway. This adjustment results in a one-time increase in expenditure and a corresponding increase in net debt of \$903.8 million in 2000.

## Results in brief

**2.6 In general, the five-year trends in sustainability, flexibility and vulnerability show that the Province of New Brunswick's financial condition has improved except for the proportion of federal government transfers to total provincial revenue (vulnerability).**

**2.7 The two-year trends in sustainability, flexibility and vulnerability are not as favourable as the five-year trends.**

**2.8 Some of the unfavourable impact on flexibility and sustainability shown by the two-year trend can be attributed to the adjustment in 2000 to record the capital cost of the Fredericton to Moncton highway.**

## Sustainability

**2.9 Sustainability is the degree to which a government can maintain existing programs and meet existing creditor requirements without increasing the debt burden on the economy.<sup>1</sup>**

**2.10 It is now well understood by the general public that increases in the cost of servicing the public debt can directly impact the quantity and quality of programs and services to which the public has access. Accordingly many provinces, including New Brunswick, are striving to reduce their debt in order to ensure an optimum amount of funding is allocated to programs and services.**

**2.11 There are circumstances when governments may tolerate increases in their debt load. For example, when revenues are increasing, a higher cost of servicing the public debt might be tolerated without impacting existing programs and services. However, the ability to generate such revenues (e.g. through taxes, user fees, or licenses) is closely linked to the performance of the economy.**

**2.12 Therefore, any growth in New Brunswick's debt must remain in line with growth in the economy to ensure that our Province can sustain its programs and services. If debt is growing faster than the economy, New Brunswick will suffer reduced capacity for sustainability. Programs and services offered to the public may eventually suffer.**

**2.13 Gross Domestic Product (GDP) is the total value of all goods and services produced in the province during a specific period. GDP is often used to measure the growth of the economy.**

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1. *Indicators of Government Financial Condition*, 1997 published by the Canadian Institute of Chartered Accountants.

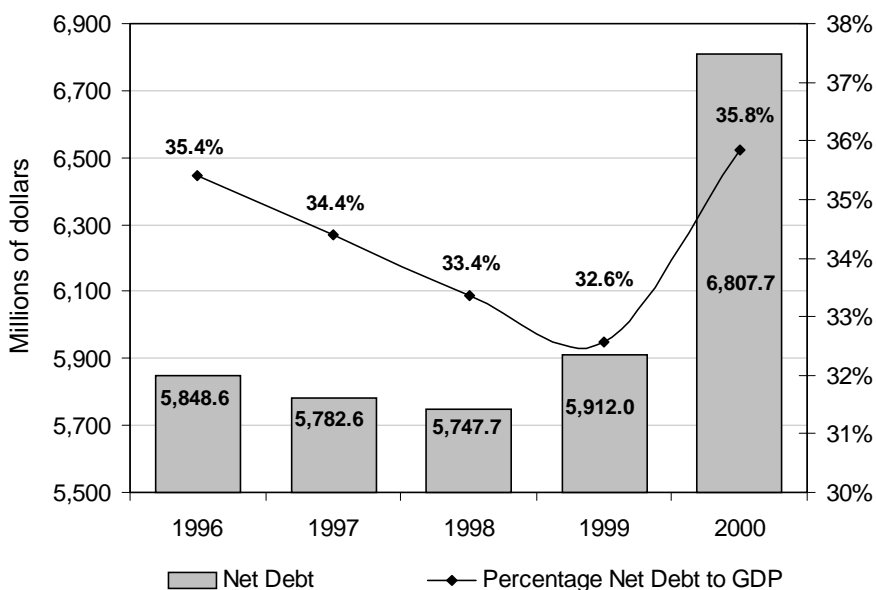
### Net debt as a percentage of GDP as a measure of sustainability

**2.14** Net debt is an accounting measure of the extent to which total liabilities of the Province exceed financial assets. The net debt of the Province increases with deficits and decreases when surpluses are experienced. The financial statements for 2000 indicate that net debt stands at \$6,807.7 million - \$959.1 million more than its level five years ago.

**2.15** However, the New Brunswick economy has also grown. Exhibit 2.1 shows that the Province's net debt to GDP ratio decreased (favourable) in the period 1996 to 1999 - showing the Province's increasing ability to sustain existing programs and services. In 2000, however, the growth in net debt exceeded growth in the economy (unfavourable) after the adjustment for the Fredericton to Moncton highway is considered. Excluding the effects of the Fredericton to Moncton highway, the five-year trend for this indicator is favourable.

*Exhibit 2.1*

*Net debt as a percentage of GDP<sup>1</sup> for the last five years*



**2.16** The 1999-00 provincial budget forecast called for nominal GDP growth to be 4.6% in 2000. Currently, the average of private sector forecasts of nominal 2000 GDP growth is 3.5%. Should these private sector forecasts be accurate the effect on our chart would be less favourable.

### Change in net debt and GDP as a measure of sustainability

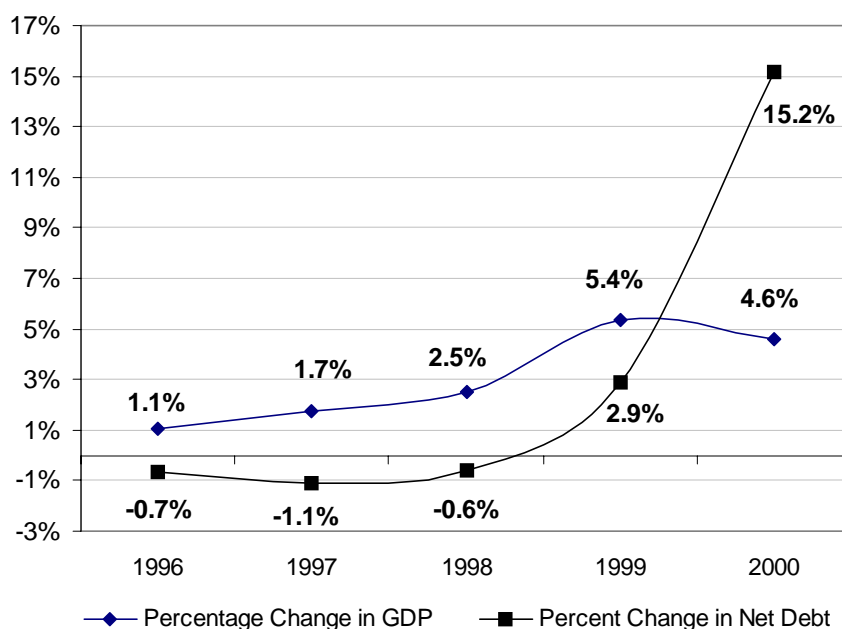
**2.17** The Province can influence sustainability in two ways: by increasing surpluses (decreasing deficits) and by increasing growth in the economy. Though governments use various political, legislative and regulatory powers to stimulate the economy, the effect is neither guaranteed nor timely.

1. GDP information provided by N. B. Department of Finance.

**2.18** The rate of growth in the surplus or deficit and their impact on net debt is much more controllable. Exhibit 2.2 shows that the Province experienced economic growth in excess of growth in the net debt (favourable) from 1996 to 1999. In 2000 there is a reversal in this trend because of the effects of the Fredericton to Moncton highway.

*Exhibit 2.2*

*Change in net debt and GDP<sup>1</sup> for the last five years*



## Flexibility

**2.19** Flexibility is the degree to which a government can increase its financial resources to respond to rising commitments, by either expanding its revenues or increasing its debt burden.<sup>2</sup>

**2.20** Funding for programs and services is provided by either revenue or borrowing during the year. It is a useful measure of flexibility to know to what extent the Province is able to raise revenue from existing and potential sources should new commitments arise.

### Own source revenue as a percentage of GDP as a measure of flexibility

**2.21** One could assume that any additional funding for new programs or services might not be possible from existing revenue sources. A reasonable alternative would be to raise revenue from new provincial sources. However, the Province is only able to extract a finite amount of dollars from the economy of New Brunswick before the economy begins to falter. Though the exact capacity of the economy to bear such a burden is not known, one can determine the relative increase or decrease over time.

1. GDP information provided by N.B. Department of Finance.

2. *Indicators of Government Financial Condition*, 1997 published by the Canadian Institute of Chartered Accountants



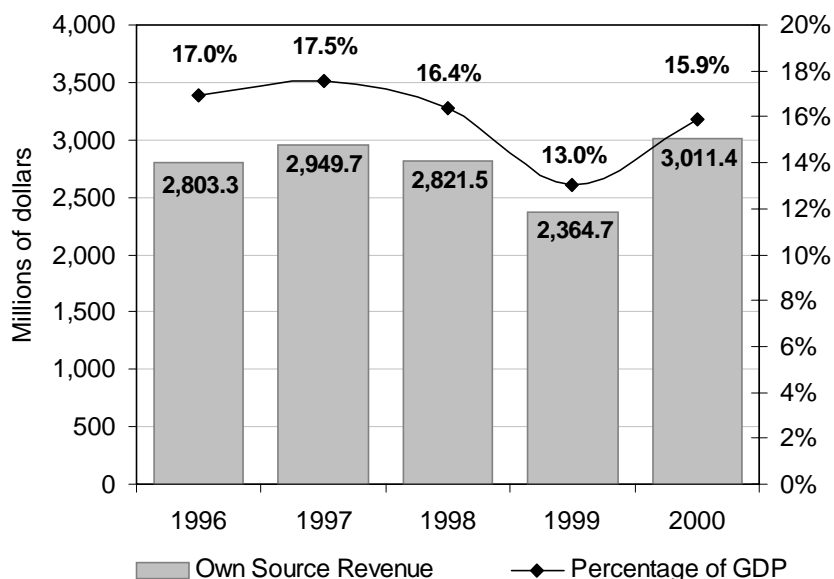
**2.22** Exhibit 2.3 shows the extent to which the Province has removed dollars from the provincial economy through taxes and user fees/licenses during the last five years.

**2.23** This exhibit shows that the dollars extracted by the Province from the New Brunswick economy as a percent of GDP gradually decreased (favourable) from 1997 to 1999. This indicates an increase in flexibility. In 2000 this trend in provincial own-source revenue reversed (unfavourable) and in 2000 it stands at 15.9% of New Brunswick GDP. However, the percentage in 2000 remains lower than in 1996 through 1998 (favourable).

**2.24** The large reduction in own-source revenue in 1999 was due to a \$450 million one-time write-down in the Province's investment in the New Brunswick Power Corporation.

*Exhibit 2.3*

*Own source revenue as a percentage of GDP<sup>1</sup> for the last five years*



**Cost of servicing the public debt as a percentage of total revenue (or “interest-bite”) as a measure of flexibility**

**2.25** One of the most publicized factors which affects the flexibility of governments is the cost of servicing the public debt.

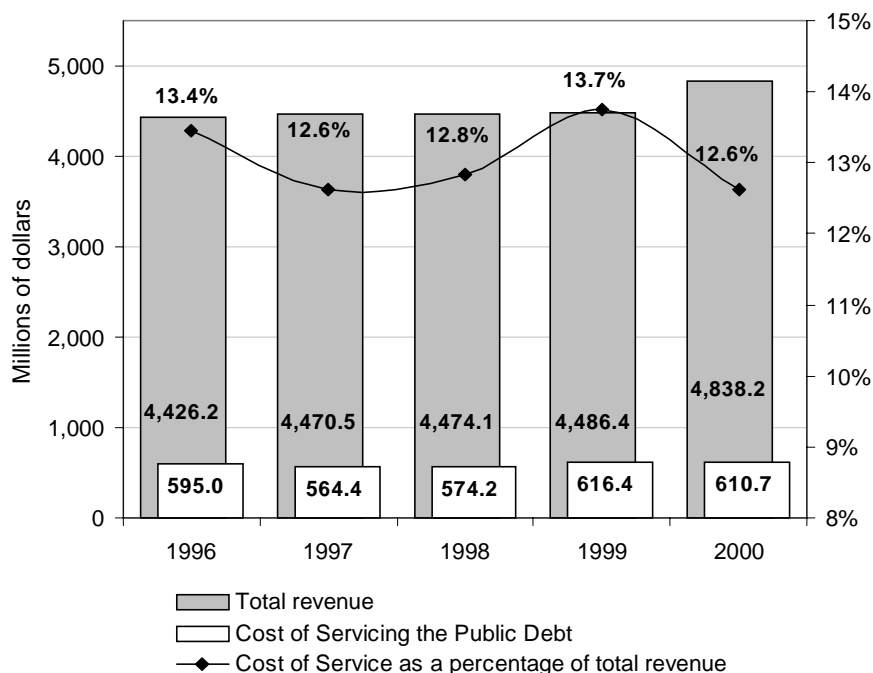
**2.26** The cost of servicing the public debt is comprised mainly of interest on the funded debt of the Province. It also includes foreign exchange paid on interest and maturities during the year, the amortization of foreign exchange gains and losses, and the amortization of discounts and premiums which were incurred on the issuance of provincial debt. It does not include principal repayments on the funded debt of the Province.

1. GDP information provided by N. B. Department of Finance.

**2.27** Exhibit 2.4 shows debt servicing costs as compared to total provincial revenue for the last five years.

*Exhibit 2.4*

*Cost of servicing the public debt as a percentage of total revenue for the last five years*



**2.28** This exhibit shows the cost of servicing the public debt decreased in 2000 over 1999 but is only \$6 million lower than its 1999 peak of \$616.4 million. It also shows that the Province has decreased its overall “interest-bite” percentage from its 1996 level of 13.4% to its current level of 12.6%. This indicates that the Province has more of its total revenues available for current needs today than it did five years ago. Since 1998 there has been a decrease (favourable) in the cost of servicing the public debt as a percentage of total revenue.

## Vulnerability

**2.29** Vulnerability is the degree to which a government becomes dependent on, and therefore vulnerable to, sources of funding outside its control or influence, both domestic and international.<sup>1</sup>

**2.30** Funding for programs and services can only come from two sources: revenue or borrowing.

### Federal government transfers as a percentage of total revenue as a measure of vulnerability

**2.31** In 2000, 38% of the Province's total revenue came from federal transfers. This is significant because revenue from federal sources is not considered to be as controllable as revenue generated in the Province.

**2.32** Own-source revenue is more controllable because the government can directly impact the amount generated using tax

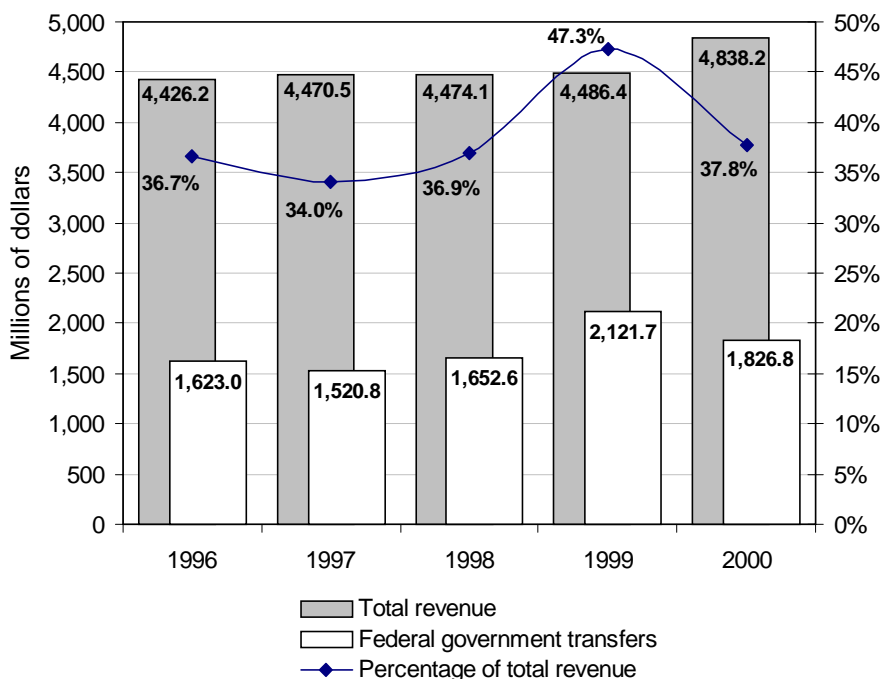
1. *Indicators of Government Financial Condition*, 1997 published by the Canadian Institute of Chartered Accountants.

legislation as well as implementation or adjustment of user-fees/licensing rates. Federal transfers are subject to very different variables - few of which are under the jurisdiction of the provincial government. Federal fiscal policy decisions can severely impact provincial governments by determining the amount and timing of future transfers.

**2.33** Increasing New Brunswick's reliance on federal transfers will leave the Province more vulnerable to variables outside of its own control. Exhibit 2.5 details the Province's reliance on federal transfers over the last five years.

*Exhibit 2.5*

*Federal government transfers as a percentage of total revenue for the last five years*



**2.34** This exhibit demonstrates that approximately 38 cents of each dollar of revenue received by the Province comes from the federal government. Though fluctuations have occurred over the last five years the trend has been generally unfavourable. In 2000 there has been a decline (favourable), although the percentage remains higher than in 1996 through 1998.

### Foreign currency debt as a percentage of total debt for provincial purposes as a measure of vulnerability

**2.35** When borrowing is required, there are choices to be made by the Province. For instance, if the Province chooses to issue its debt in a foreign currency instead of Canadian dollars, the Province will assume the risk of foreign exchange fluctuations. Such fluctuations can increase or decrease the amount ultimately payable in Canadian dollars for interest, and later, redemption of foreign currency debt.

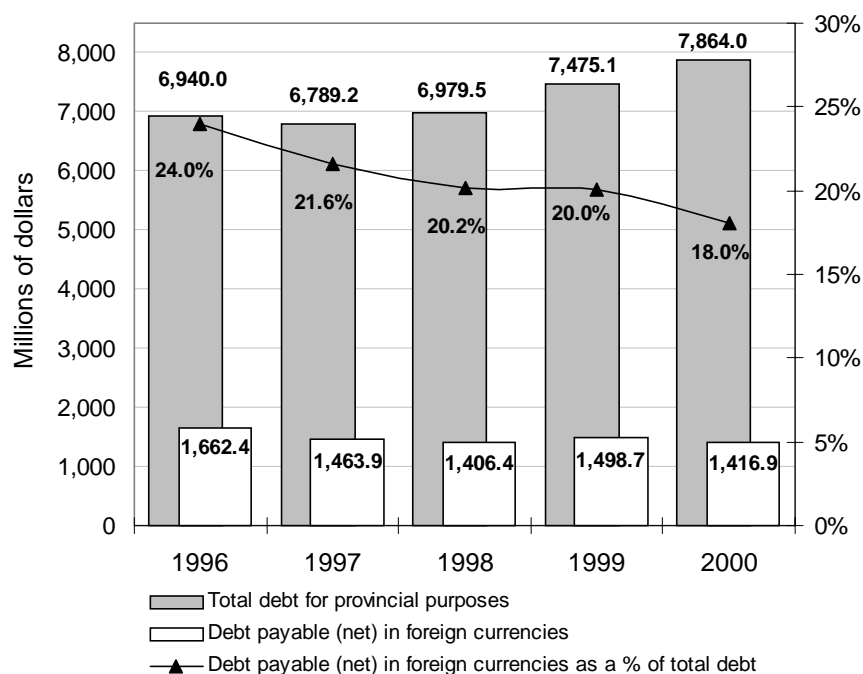
**2.36** Exhibit 2.6 shows the relationship of foreign currency debt to total debt for provincial purposes over the last five years. The Province

has several alternatives to reduce (hedge) the risk associated with debt repayable in foreign currencies:

- purchasing assets denominated in foreign currencies for the Province's sinking fund;
- entering into debt swap agreements which allows repayment of the debt in Canadian dollars; and
- entering into forward contracts (which allow the Province to purchase foreign currency at a stipulated price on a specified future date).

*Exhibit 2.6*

*Exposure to foreign currency risk for the last five years*



**2.37** The exhibit reflects the Province's exposure to foreign currency risk after eliminating the effect of hedges against foreign currency fluctuations.

**2.38** The above exhibit demonstrates that the Province's vulnerability to foreign currency risk has declined (favourable) over the last five years. The overall exposure has decreased (favourable) from its 1996 level of 24% to 18% in 2000.

## Summary

**2.39** Exhibit 2.7 summarizes the financial indicators used in this chapter and outlines the impact of the two and five-year trends on the financial condition of the Province.

**2.40** In general, the five-year trends in sustainability, flexibility and vulnerability show that the Province of New Brunswick's financial

condition has improved. The only exception is federal government transfers as a percentage of total revenue.

**2.41** The two-year trends for all of the indicators are not as favourable as the five-year trends. Some, although not all, of this impact is attributable to the required adjustments to net debt for the Fredericton to Moncton highway.

*Exhibit 2.7*

*Summary of financial indicators*

Financial Indicator	2000	Impact on Financial Condition of the Province	
		2 year trend	5 year trend
Sustainability			
Net debt as a percentage of GDP	35.8%	Unfavourable	Favourable
Change in net debt and GDP	15.2%/4.6%	Unfavourable	Favourable
Flexibility			
Own source revenue as a percentage of GDP	15.9%	Unfavourable	Favourable
Cost of servicing the public debt as a percentage of total revenue	12.6%	Favourable	No significant change
Vulnerability			
Federal government transfers as a percentage of total revenue	37.8%	Favourable	Unfavourable
Foreign currency debt as a percentage of total debt	18.0%	Favourable	Favourable

# Chapter 3

## Department of Agriculture and Rural Development Review of Legislation

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# Department of Agriculture and Rural Development Review of Legislation

## Background

3.1 Legislators spend a significant portion of their time in the Legislative Assembly debating proposed new legislation and amendments to existing legislation. After they have determined that there is a need for legislation in a particular area, it becomes their responsibility to ensure that the legislation they ultimately approve can be effective in meeting its intended purposes. Therefore, legislators should be held accountable for providing a legislative framework within which an identified need can be effectively met.

3.2 As administrators of that legislation, departments have a key role in ensuring legislation actually achieves its intended purposes. Departments to which the legislation has been assigned should therefore be held accountable for administering it efficiently and effectively within the framework established by legislation.

3.3 During the past couple of years, we have expressed concern that legislation is not always complied with within government. Several instances where legislation has not been complied with have been reported in recent Reports of the Auditor General. For example, the Board of the New Brunswick Liquor Corporation did not select their corporate CEO despite the fact that the *New Brunswick Liquor Corporation Act* gives the Board the power to do so. In another case, the *Financial Administration Act* required that all government contracts be submitted to the Comptroller, but this was not happening. The work reported on in this chapter is, in part, in response to concerns such as these.

3.4 A review of legislation could have been undertaken in any department of government. However, during a preliminary review of the Department of Agriculture and Rural Development we noted that the Department had been assigned responsibility for between thirty and forty pieces of legislation, by far the most of any department of government. Departmental representatives expressed some concern with the effectiveness of certain pieces of legislation and the resources available to administer them. Given an environment of limited

resources, we felt the risk of effectiveness and administrative problems with individual pieces of legislation would be much greater considering the large number of Acts and Regulations under departmental administration. Therefore, we decided to build a project around the review of a sample of legislation administered by the Department of Agriculture and Rural Development.

**3.5** Despite the fact that the legislation reviewed in this project was all under the administration of the Department of Agriculture and Rural Development, we feel that the findings of the project have wider applicability. In our opinion the legislation we reviewed represents a good cross section of provincial legislation in general. Therefore, we believe that the general recommendations we make in this chapter may be applied to all government departments, and not just to the Department of Agriculture and Rural Development.

**3.6** Subsequent to the completion of the conducting phase of this review, a major reorganization of government departments was announced. The bulk of legislation formerly handled by the Department of Agriculture and Rural Development will likely become the responsibility of the new Department of Agriculture, Fisheries, and Aquaculture. However, due to the uncertainty surrounding the eventual assignment of the legislation we reviewed, we refer to the old department in this chapter.

## Scope

**3.7** The objectives of our review of the Department of Agriculture and Rural Development legislation were the following:

*To determine if appropriate systems and practices are in place:*

- *to ensure compliance with legislation;*
- *to measure and report on the effectiveness of the legislation; and*
- *to ensure that resources committed to the administration of legislation are managed with due regard for economy and efficiency.*

**3.8** When we speak of effectiveness in this chapter, we are referring to how well the concerns that led to the establishment of legislation are being met under the established legislative framework.

**3.9** The audit project included making an assessment of how well the Department was meeting its administrative responsibilities pertaining to legislation it had been assigned. Also, we attempted to determine if these results were being adequately measured and reported to the Legislative Assembly.

**3.10** In order to allow for sufficient depth in our review, we chose to review a total of six pieces of legislation. We selected a mix of new and



older legislation, and ensured that it covered various areas of the Department and the agriculture industry in general. In addition to reviewing the selected Acts and Regulations, we conducted interviews with departmental staff, reviewed related documentation, and performed walkthroughs and some additional testing on administrative systems.

## Results in brief

### General

**3.11** None of the six pieces of legislation we reviewed included a purpose section that would help readers to understand why the legislation was put in place or give them a benchmark for measuring the degree to which the legislation has been successful. We recommend that a clear statement of purpose be included in all new or amended legislation.

**3.12** There was no reporting to the Legislative Assembly that provided information on the effectiveness of any of the six pieces of legislation we reviewed. We recommend that the Legislative Assembly be provided with regular written reports on the effectiveness of legislation in meeting its intended purpose. These reports should include comments on all legislation under the administration of a Department.

**3.13** There are no regularly scheduled reviews of any of the six pieces of legislation we looked at. Such reviews would identify problem areas in the administration of, compliance with, and enforcement of that legislation and suggest appropriate actions to take to improve the situation. However we did note that five of the six have been subject to varying degrees of review in the past few years, some very extensive. Only the *Apiary Inspection Act* has not been looked at recently, although the Regulation under that Act was drafted in 1997.

**3.14** The Department is providing no feedback to the Legislative Assembly through its annual report as to how well it is doing in administering the legislation it has been assigned. Since the effective and efficient administration of assigned legislation is an integral part of the duties of the Department, we feel that the Department should be reporting on its performance in this area.

**3.15** We are concerned that the recently-announced downsizing of the Department may mean that less resources are allocated to the administration of these and other pieces of legislation addressing agricultural issues. This may mean that the effectiveness of legislation will be reduced.

**3.16** Departmental representatives noted two recent cases, one under the *Topsoil Preservation Act* and the other under the *Potato Disease Eradication Act*, where the Department of Justice did not feel it was able to enforce the legislation in obvious cases of non-compliance. This led to continued defiance of the legislation. In general, we feel that a lack of successful enforcement activity will lead

to a higher level of non-compliance than would otherwise be the case, thereby reducing the effectiveness of legislation.

### Specific to legislation

3.17 We found that the *Apiary Inspection Act*, the *Topsoil Preservation Act*, and the *Agricultural Land Protection and Development Act* were not achieving their purposes as interpreted by the Department. Based upon our review, we believe that these pieces of legislation cannot achieve their purposes unless additional resources are assigned within the Department or legislative changes are made or both.

3.18 We recommended that the Department consider the continued need for legislation to support the apiary industry in the Province and make appropriate recommendations with regard to the *Apiary Inspection Act* and Regulation to government.

3.19 We recommended that the Department develop a workable alternative to the current *Topsoil Preservation Act* and Regulation that will better achieve the purpose of the original legislation.

3.20 We recommended that appropriate steps be taken to improve the effectiveness of the *Agricultural Land Protection and Development Act* in achieving its purpose of allowing farmers to farm without undue restrictions and to protect farmland from urban sprawl. This will require improvements in rural land use planning in general, not just amendments to this Act and Regulations.

3.21 We recommended that the Department consider extending the coverage of the *Livestock Operations Act*.

### Legislation reviewed

3.22 We reviewed six pieces of legislation administered by the Department of Agriculture and Rural Development pursuant to this project. They were:

- *Agricultural Development Act* – New Entrant Farmer Loan Regulation;
- *Agricultural Land Protection and Development Act* and Regulation;
- *Apiary Inspection Act* and Regulation;
- *Livestock Operations Act* and Regulation;
- *Potato Disease Eradication Act* and Regulation; and
- *Topsoil Preservation Act* and Regulation.

3.23 There are many reasons why legislation might not be effective in meeting its purposes.

- It might be poorly drafted or poorly conceived.
- Circumstances might have changed since the legislation was drafted or last amended.
- There may not be enough resources provided to the responsible Department for necessary administrative activities to take place.

- The Department assigned responsibility may not be administering the legislation appropriately.

**3.24** In our opinion, legislators can greatly enhance the potential success of a piece of legislation by ensuring that three key requirements are in place before an Act is approved.

**3.25** First, the legislation must have a clearly stated purpose that is documented within the Act itself. This will allow stakeholders to understand what is intended. It also provides a benchmark they can use in evaluating the “success” of the legislation. As well, having a clearly stated purpose within the Act will allow future legislators to consider whether the purposes of the legislation are still valid in light of changing societal needs.

**3.26** Second, the Legislative Assembly must be committed to providing sufficient resources on an ongoing basis through the budget approval process to allow the responsible Department to effectively administer the Act and related Regulations. Every piece of legislation that is enacted has a cost, both to those who must comply with it and those who must administer it. Inherent in the decision to legislate is a consideration of whether the benefit of having a piece of legislation in place outweighs the costs of administering and complying with it.

**3.27** Third, success in achieving the purposes of the legislation must be reported back to the Legislative Assembly. There should be two distinct components to this feedback. A report indicating the effectiveness of the legislation in meeting its stated purposes will allow legislators to determine if changes to the legislation are warranted in order to ensure that legislative purposes are achieved. Additionally, reporting will be necessary that provides assurance that the Department is administering the legislation appropriately. Feedback to the Legislative Assembly of the type discussed in this paragraph will allow legislators to satisfy themselves that the work that went into drafting and approving legislation has led to the desired results. If it has not, it will allow them to take corrective action.

**3.28** In this chapter, we will be addressing the above areas, as well as areas more specific to the administration of the six individual pieces of legislation we reviewed. The sample of legislation taken from the Department of Agriculture and Rural Development indicates that some provincial legislation is ineffective. Because our review was limited to one department, we cannot say how common this problem is. However, it is an area that is so intrinsic to the role of the Legislative Assembly that even a limited indication of problems should be a cause for concern.

**3.29** For illustrative purposes we have also included our detailed observations and recommendations on one of the pieces of legislation we examined, the *Topsoil Preservation Act* and Regulation, in an appendix

to this chapter. That particular piece of legislation has not been effective in achieving the purposes for which it was intended.

## Purpose of legislation

**3.30** None of the six pieces of legislation we reviewed included a purpose section that would help readers to understand why the legislation was put in place or give them a benchmark for measuring the degree to which the legislation has been successful. Staff within the Department have made their own interpretations as to the purpose of each piece of legislation and are acting based upon those interpretations. However, we feel that if legislators want to be sure that their legislative intentions are complied with, a good start is providing a written purpose section within legislation. That will give every stakeholder access to the same information up front. It will also allow future legislators to consider whether the purpose of the legislation is still valid in light of changing circumstances. We feel that legislation must be understandable and stand on its own in order to be effective.

**3.31** An example of the problems that the lack of a purpose can cause is illustrated by the *Topsoil Preservation Act*. That Act contains no clear statement of its purpose. This has led the public and other stakeholders to make interpretations of the scope of the legislation that are not appropriate. (e.g. The public interpretation is that the government can stop topsoil removal in any circumstance.) This has created a lot of confusion and negative feelings towards the Department as it cannot meet these public expectations. It is in no one's best interest for such a situation to exist.

**3.32** The following is an example of legislation in the Province that does contain a purpose section. Section 2 of the *Clean Air Act* states:

*"The purpose of this Act and the regulations is to support and promote the protection, restoration, enhancement and wise use of the environment in keeping with the following principles...."*

**3.33** It goes on to identify a number of principles that should be adhered to. We find the description of the purpose of the *Clean Air Act* very clear.

## Recommendation

**3.34** We recommended that a clear statement of purpose be included in all proposed new legislation. We further recommended that a statement of purpose be included for existing legislation whenever such legislation is being amended.

## Departmental response

**3.35** The Department of Justice provided the following comments on this recommendation:

*In interpreting legislation, Courts tend to examine the substantive provisions of the Act and not merely look to the descriptive components to determine the true purpose and*

*intent of the Act. Given that background, and from a legal perspective, it may be difficult to comply with your recommendation.*

## Reporting effectiveness of legislation

**3.36** One of the most important duties of legislators is to consider and approve pieces of legislation. However, in our opinion, that is not an end in itself. It is rather a means towards the goal of achieving the purpose intended by the legislation on an ongoing basis. In order for legislators to satisfy themselves that the intended purpose is being achieved, they need feedback. That feedback should allow legislators to satisfy themselves that the work that went into drafting and approving legislation has led to the desired results. Or, if it has not, they can take corrective action to improve results.

**3.37** We feel there should be two distinct components to this feedback. The first component would be a report indicating the effectiveness of the legislation in meeting its stated purposes. Such a report would allow legislators to determine if changes to the legislation are warranted in order to ensure that the purpose of a piece of legislation will be achieved. The second component of this feedback would be reporting on administrative activity being undertaken by the Department in support of the legislation; this is discussed later in this chapter.

**3.38** There was no reporting on the effectiveness for any of the six pieces of legislation we reviewed. However, this is required for at least one other piece of provincial legislation. Section 9 of the *Clean Air Act* states:

*The Minister shall, in each year, table a written report in the Legislative Assembly respecting the success in achieving the objectives and respecting such other matters as the Minister considers appropriate.*

**3.39** While providing effectiveness reporting annually, as required by the *Clean Air Act*, may not be necessary for all legislation, we do feel that the Legislative Assembly should receive regular feedback on each piece of provincial legislation. We would suggest that such feedback be provided every three to four years.

## Recommendation

**3.40** We recommended that the Department provide the Legislative Assembly with regular (e.g. every three or four years) written reports on the effectiveness of the legislation it administers in meeting intended purposes.

## Periodic review of legislation

**3.41** There are no regularly scheduled reviews of any of the six pieces of legislation we looked at. However, five of the six have been subject to varying degrees of review in the past few years, some very extensive. Only the *Apiary Inspection Act* has not been updated recently, although the related Regulation was drafted in 1997. There are some clauses that are obviously out of date in that Act, one being a reference to arsenic

spraying. Branch representatives indicated that the *Apiary Inspection Act* is considered low priority legislation within the Department, and that was why it has not been reviewed or updated. However, we feel that every piece of legislation should be periodically reviewed and updated to ensure that it continues to achieve the purposes of the Legislative Assembly. This process would also be of use in generating effectiveness reporting information for the Legislative Assembly, as discussed in the previous section. We understand that the federal government requires such reviews be conducted every five years. The cost of performing these necessary reviews should be factored into the decision whether or not to proceed with drafting a new piece of legislation.

### **Recommendation**

**3.42 We recommended that reviews of legislation under departmental administration be conducted periodically (e.g. every four years) to ensure it is up-to-date, that its stated purposes are still valid, and that it provides an effective framework within which those purposes can be achieved. Results of such reviews could be communicated to the Legislative Assembly.**

### **Departmental accountability for achieving legislative purposes**

**3.43** Each piece of legislation is assigned to a particular Department to administer in an effective and efficient manner. The Department is accountable to the Legislative Assembly for its own performance in administering that legislation.

**3.44** In conjunction with the assignment of responsibility, the Legislative Assembly has a duty to provide sufficient funding through the annual appropriations process to allow the Department to administer the legislation effectively. The *Procedures Manual for Executive Council Documents* recognizes that requirement, and establishes the cost-related information that must accompany the background section of the *Memorandum to Executive Council* and the *Legislative Approval Process for Enacting New or Amending Acts*. It states:

*Financial Considerations – The importance of this section cannot be overstated, and every effort should be made to develop accurate cost and revenue estimates for the legislation being contemplated. If this cannot be done, then the reasons should be clearly stated. The financial impact on other departments and agencies as well as external groups and organizations should also be included. Assembling this information will help to determine the economic development implications that must be documented in the Background section.*

*The cost, if any, of the proposal for the current fiscal year and each of the succeeding two fiscal years should be shown. If expenditures are to be incurred in the current fiscal year, the Program to which expenditures will be charged should be cited. The estimate of cost should include all direct and*

*indirect expenditures and should take into account all cost recovery potential or increased revenues.*

*Savings that will result from the proposed action for the current fiscal year and each of the succeeding two fiscal years should also be shown.*

**3.45** The Legislative Assembly cannot hold a department accountable for poor performance if they do not provide them with adequate resources to administer a piece of legislation. We have a concern that the recently announced cuts to the Department of Agriculture and Rural Development will make it more difficult or even impossible for the Department to successfully achieve the purposes of legislation for which it is responsible.

**3.46** We noted during our review that in two cases, Branches did not feel sufficient resources were being allocated to appropriately administer pieces of legislation. In one case, the *Topsoil Preservation Act*, the Land Resources Branch felt that sufficient resources were not available within the Department, but felt that adding additional resources would not improve effectiveness unless significant legislative change occurred first. In another case, the *Apiary Inspection Act*, the Potato and Horticulture Branch had made a conscious decision that administration of the legislation was of lower priority to the Department than other pieces of legislation it had been assigned. Therefore, limited resources were provided and the level of activity connected with that legislation was lower than would be required to ensure its success in meeting its purpose. This decision appears to have resulted from a need to prioritize the allocation of scarce resources within the Department.

**3.47** We feel that cases where resource limitations are having a negative impact on the Department's ability to administer legislation should be reported to the Legislative Assembly. The appropriate vehicle for this reporting would appear to be the Department's annual report.

**3.48** The annual report policy of the Province of New Brunswick states that the primary accountability vehicle for departments is to be the annual report. Since the effective and efficient administration of assigned legislation is an integral part of the duties of the Department, we feel that the Department should be reporting on this area through its annual report. This would require the development of a departmental strategic objective covering administration of legislation. One or more performance indicators could then be set to measure success in achieving this strategic objective, and annual targets could be set for each performance indicator. Actual performance in administering legislation could be compared with the targets and explanations could be provided where targets are not achieved. Such information would be provided through the departmental annual report.

**3.49** During our review, we noted that individual performance indicators had not been established that specifically addressed the administration of the six pieces of legislation we looked at. In most cases operating statistics for these pieces of legislation were provided through the 1998-99 departmental annual report, although there was nothing included for the *Topsoil Preservation Act*. We agree that some pieces of legislation have relatively low levels of activity associated with them at the present time. However, it would be appropriate to formalize standards for those with higher activity levels. For example, the percentage of census agricultural land that is registered as agricultural under the *Agricultural Land Protection and Development Act* could be used as an indicator of performance for that piece of legislation. A target percentage could then be set each year to encourage staff to promote the registry. Establishing such indicators and reporting them in summary form through the departmental annual report would allow readers to evaluate administrative activities undertaken by the Department in support of assigned legislation. At the operating level, it would also help staff prioritize their own work activities.

#### **Recommendations**

**3.50** We recommended that the Department develop performance indicators that it can use to evaluate administrative activities undertaken by the Department in support of legislation.

**3.51** We further recommended that the Department report on its administrative activities related to legislation through the departmental annual report. Where annual targets have not been met, explanations (e.g. negative impacts of resource limitations) should be provided.

#### **Departmental enforcement system**

**3.52** A majority of affected parties will comply with a piece of legislation if they are aware of it, regardless of associated penalties. However, some will only comply if they see negative consequences associated with non-compliance. Therefore, in order to minimize non-compliance with a piece of legislation, it is necessary to have an effective enforcement system in place. There are two components required in an enforcement system that provides an effective deterrent. First, the penalties must be of sufficient magnitude. Second, the Department must be willing and able to enforce the legislation.

**3.53** In general, the Department indicated that penalties under the various pieces of legislation would be an adequate deterrent if they were applied. They also indicated that most cases of non-compliance with legislation are dealt with on an escalating basis, and are resolved before reaching the level where prosecution would be the only remaining option. However, in the two cases of which we are aware where prosecution became the only option remaining to support compliance with a piece of legislation, it was not pursued successfully.

**3.54** In a recent case, a farmer would not produce the required certificates showing he had planted seed potatoes, as required under the



*Potato Disease Eradication Act* and Regulation. This has occurred over a period of a few years. Other remedies were attempted, but proved unsuccessful. However, the Department of Justice felt it was unable to prosecute unless a great deal of evidence was gathered, more than was feasible in the circumstances. It is unclear whether this is a problem with the way the legislation is drafted or something else. In any event, the inability or unwillingness to enforce the legislation sends a message to growers that they may not have to comply because the threat of penalties is an empty one.

**3.55** The *Topsoil Preservation Act* appears to have even more problems in this area. First, the Department considers the level of fines to be insufficient. The minimum fine is only \$120, about the equivalent of one truckload of topsoil. In relation to enforcement, the Branch has gone to the extent of hiring costly private investigators to gather evidence in cases of non-compliance. However, for a number of reasons, as discussed in the Appendix to this chapter, they have not been able to develop a strong enough case to convince the Crown prosecutor to attempt a prosecution under this legislation. Not surprisingly, the Branch has noted repeated cases of non-compliance among certain topsoil removers. Branch representatives have also noted some slippage in terms of the number of permits being issued, and attribute this to the lack of successful enforcement activity.

#### **Recommendation**

**3.56** We recommended that the Department, in co-operation with the Department of Justice, make any changes necessary to facilitate successful enforcement in the future for all legislation under departmental administration. Changes may involve enhancing or increasing administrative penalties such as fines, employing different techniques for evidence gathering, or proposing amendments to legislation.

#### **Evaluation of legislation examined**

**3.57** The main purposes of the *Apiary Inspection Act*, per Potato and Horticulture branch staff, are to register all beekeepers in the Province of New Brunswick and to prevent the spread of bee diseases and parasites into, and throughout, the Province. During our review we were told that only between thirty-three and sixty percent of active beekeepers in the Province have been registered in the provincial system. Additionally, we noted that there are few general inspections of bees in the Province, and that bees being imported into the Province are not being checked for certification. Therefore, we feel that the purposes of this legislation are not currently being achieved. Branch staff indicated that this legislation has a low priority in relation to other legislation administered by the Department. Consequently, few resources have been allocated to its administration.

**3.58** The main purpose of the *Topsoil Preservation Act*, per Land Resources Branch staff, is to protect agricultural land from degradation caused by topsoil removal. For a number of reasons, as discussed in the

Appendix to this chapter, the purpose of this legislation is not being achieved. Major among those reasons is that the framework established by the legislation is not working in practice.

**3.59** The main purpose of the *Agricultural Land Protection and Development Act*, per Land Resources Branch staff, is to allow farmers to farm without unwarranted restrictions imposed by local bylaws, and to protect farmland against urban sprawl. Additional legislation and amendments to existing legislation that were expected to be developed in conjunction with this Act have not yet been enacted. As a result, there is no current legislative protection for farmland, and the purpose of this legislation is not being achieved.

**3.60** The other three pieces of legislation we reviewed, the *Agricultural Development Act* – New Entrant Farmer Loan Regulation, the *Livestock Operations Act*, and the *Potato Disease Eradication Act*, are achieving their purposes at present.

**3.61** However, the scope of the *Livestock Operations Act* is extremely limited. As of March 2000, five new livestock operations had been licensed under the legislation. An estimated 1,500 livestock operations were in existence when the legislation came into effect and are currently exempt from the terms of the Act and Regulation. Over time, in order for the Department to be truly successful in achieving the purpose of the legislation, we would expect to see a larger percentage of livestock operations subject to the licensing requirements. We feel that the Department should consider recommending to government that the coverage of this piece of legislation be extended.

## **Recommendations**

**3.62** We recommended that appropriate steps be taken to improve the effectiveness of the *Agricultural Land Protection and Development Act* in achieving its purpose of allowing farmers to farm without undue restrictions and to protect farmland from urban sprawl. This will require improvements in rural land use planning in general, not just amendments to this Act and Regulations.

**3.63** We recommended that the Department consider the continued need for legislation to support the apiary industry in the Province and make appropriate recommendations to government with regard to the *Apiary Inspection Act* and Regulation.

**3.64** We recommended that the Department develop a workable alternative to the current *Topsoil Preservation Act* and Regulation that will better achieve the purpose intended for the legislation. That alternative should be presented to government for consideration. If a workable alternative cannot be developed in the near term, the Department should strongly consider recommending to government that the Act and Regulation be suspended until such an alternative has been developed.

**3.65** We recommended that the Department consider extending the coverage of the *Livestock Operations Act* to more livestock operations and make recommendations to government as considered appropriate.

## Conclusion

**3.66** The objectives of our review of the Department of Agriculture and Rural Development legislation were the following.

*To determine if appropriate systems and practices are in place:*

- *to ensure compliance with legislation;*
- *to measure and report on the effectiveness of the legislation;*
- and*
- *to ensure that resources committed to the administration of legislation are managed with due regard for economy and efficiency.*

**3.67** In relation to these objectives, we would make the following conclusions:

- In our opinion, the Department is making reasonable efforts to comply with duties assigned to it under legislation. However, the current downsizing plan for the Department increases the risk that sufficient resources will not be available to allow necessary administrative activities under legislation to take place in the future.
- For a variety of reasons as discussed in this chapter, compliance with the legislation we reviewed varies greatly. For example, enforcement of legislation has been a problem, in some cases due to poorly drafted legislation that does not appear to be legally enforceable. (e.g. the *Topsoil Preservation Act*)
- We feel that measurement and reporting of success to the Legislative Assembly in achieving intended legislative purposes should be improved. One important step in facilitating this would be to ensure that the purpose of each piece of legislation is clearly documented. Another important step would be to periodically review and update each piece of legislation under departmental administration to ensure it continues to be current and relevant. Additional steps would include providing regular reporting to the Legislative Assembly on legislative effectiveness and enhancing performance reporting in the departmental annual report relating to administrative activities.
- In our opinion, only three of the six pieces of legislation we reviewed are currently effective in achieving their purposes. These include the New Entrant Farmer Loan Regulation under the *Agricultural Development Act*, the *Livestock Operations Act*, and the *Potato Disease Eradication Act*. The *Agricultural Land Protection and Development Act*, *Apiary Inspection Act*, and the *Topsoil Preservation Act* appear to be ineffective in achieving their purposes.

- We saw nothing during our review that would lead us to believe that resources committed to the administration of legislation are not managed with due regard for economy and efficiency.

***Departmental responses***

**3.68** Subsequent to the completion of our work, the Department of the Environment and Local Government took over responsibility for the administration of the *Topsoil Preservation Act*. The Department provided the following comments on our observations and recommendations:

*The Department agrees with your determination that the act is not currently achieving its purpose. We also agree with your recommendation that we develop, and present to [government], a workable alternative to the current Topsoil Preservation Act and regulation. In developing an alternative approach, the recommendations made in your report will be carefully considered.*

**3.69** The Department of Agriculture, Fisheries and Aquaculture responded positively to our recommendations.

### Appendix - Topsoil Preservation Act

The Topsoil Preservation Act was proclaimed in 1995. Associated Regulation 95-66 was also filed in 1995. At the time of our review, this Legislation was administered by the Land Resources Branch in the Department. It is our understanding that administration of the Topsoil Preservation Act and Regulation 95-66 has been transferred to the new Department of Environment and Local Government effective 1 April 2000. It is unclear how this will affect the legal status of topsoil removal permits issued by the Department after that date since they have been signed by a representative of the Minister of Agriculture and Rural Development.

Representatives of Land Resources Branch indicated that the purpose of the Legislation is to protect agricultural land from degradation caused by topsoil removal. They also indicated that the Department of Environment envisioned it as a way of protecting watercourses.

The Land Resources Branch has indicated that the purpose of the Legislation cannot be achieved given the way the Act and Regulation are currently drafted. The approach established by the Legislation is not working in practice. The Legislation has proven difficult to administer and apply equitably. Consequently, its overall effectiveness has been very limited. Additionally, the existing Legislation creates public expectations that cannot be met, which reflects negatively on the government's ability to regulate topsoil removal.

Several concerns have been raised in relation to this Legislation and its administration.

- The Legislation allows for the removal of a total of only 5% of topsoil from a parcel of land that has been used for agricultural production in the last twenty years. From a monitoring and enforcement perspective, it is difficult to acquire evidence proving agricultural use of land during the last twenty years. It is also difficult to establish the area that was farmed.
- The "5% rule" also raises an issue of equity. A significant number of topsoil contractors have purchased and used parcels of land for the single purpose of topsoil removal. When the Legislation came into effect, these topsoil removers suddenly found that they could no longer use the land for the purpose they had intended. In a couple of cases, this led to sustainable operations being abandoned.
- Allowing the removal of topsoil from even 5% of a parcel of agricultural land allows part of it to be ruined. This does not appear to be consistent with the purpose of the Legislation.
- The Department has had a great deal of difficulty in legally establishing that it was topsoil that was removed based upon the definition of "topsoil" in the Legislation. This is one of the main reasons why there have been no prosecutions for non-compliance under this Legislation. The others relate to the legal establishment of property boundaries.
- The Department has had difficulty in some cases in determining whether proposals for certain undertakings are legitimate. (e.g. Development of private roads, construction sites, cranberry land, etc.) Topsoil removal in those cases is exempt from the terms of the Legislation, a significant loophole that the branch feels has been exploited.
- Inspection staff designated under the Legislation are regional staff of the Department. For the most part, they are agriculture professionals who do not have experience as inspectors. Also, they are normally supporters of the agriculture industry and have indicated they find it hard to act as unbiased enforcers of the Legislation. A move to experienced, independent inspectors might be beneficial in the future.
- The existing Legislation demands a far greater commitment of resources than is currently feasible. In general, the Branch does not feel there is sufficient staff available to properly administer, monitor and enforce terms of the Legislation. However, until the effectiveness of the Legislation has been improved, they do not recommend adding more resources.

- Because of limited staff resources available for the administration of this Legislation, the Branch puts most of its efforts into ensuring that permit applications received are dealt with on a timely basis. However, they do not feel they have been particularly successful in encouraging topsoil removers to obtain permits. The number of permit holders has been gradually dropping. They feel that it is likely due to the Department's inability to successfully prosecute anyone under this Legislation.
- The Branch does little proactive monitoring to identify cases of non-compliance. They rely on complaints from the public, agricultural organizations, and other topsoil removers. This has contributed to the ineffectiveness of the Act and its inequitable application.
- The Branch considers the fines associated with non-compliance with this Legislation insufficient. Minimum fines start at \$120, about the value of one truckload of topsoil.
- In relation to enforcement, the Branch has gone to the extent of hiring private investigators to gather evidence in cases of non-compliance. However, they have not been able to develop a compelling-enough case to convince the Crown prosecutor to attempt a prosecution under this Legislation. Not surprisingly, the Branch has noted repeated cases of non-compliance among certain topsoil removers.
- The cost of collecting evidence is high. Branch staff has indicated that costs could rise to the \$5,000 level if an investigator was required to testify in court.

Feedback from stakeholders with regard to the Legislation has been consistently negative.

- The perception of the general public has been that this Legislation allows the Department to stop the removal of topsoil in any circumstances. The inability of the Department to meet these expectations has caused conflict, and staff sometimes spend hours explaining why they can't take action against a particular topsoil remover. Many complaints and calls have nothing to do with agricultural land. Aesthetics, neighbourhood feuds, noise, and dust are common reasons for complaints, none of which are specifically covered in the Legislation.
- Topsoil removers feel that government is interfering in their business, and that it is their land to use as they see fit. Some topsoil removers complain that they are following the rules while others are not. Members of the New Brunswick Horticultural Trades Association, some of whose members are topsoil removers, have been very proactive. Otherwise, there has been little interest shown by industry.
- Farmers and farm organizations feel that the Department is not effectively protecting farmland from topsoil removal.

The Branch has been proactive in attempting to improve success in achieving the purpose of the Legislation. They have developed two alternative proposals for improving the effectiveness of the Legislation. The first involves a proposed major shift in the approach taken to try to limit removal of topsoil from agricultural land. It involves placing a general prohibition on the removal of soil from all parcels of land in the Province. Exemptions would then be provided for all parcels of land except those registered under the Agricultural Land Protection and Development Act. Alternatively, the Branch would recommend suspending the current Act and undertaking a comprehensive consultation with stakeholders to determine the need for controlling topsoil removal, and to determine if legislation is the most appropriate instrument for accomplishing this purpose. We understand that these proposals have not progressed beyond the departmental level to date due to concerns within the Department of Justice with the approach being proposed.

# Chapter 4

## Departments of the Environment and Local Government and Health and Wellness Domestic Well Water Quality

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# Departments of the Environment and Local Government and Health and Wellness Domestic Well Water Quality

## Background

**4.1** A reliable supply of safe drinking water is important to everyone. The recent water quality disaster in Walkerton, Ontario dramatically reinforced the fact that bacterial contaminants such as *E. coli* and coliform can lead to significant health risks and even death. Though Walkerton was a municipal water system, similar risks exist for domestic wells. Approximately 40% of New Brunswickers living in small towns and rural areas rely on domestic wells as their primary source of water. Approximately 2,500 new wells are drilled each year. Most of these people expect their well water quality to be excellent.

**4.2** Because our Office has an ongoing interest in the themes of public safety and the environment, we felt it important to address some aspects of domestic water quality in the Province. We believe that in order to ensure the safety of the people of New Brunswick, the government must demonstrate that people and organizations are complying with safety standards and regulations set for the Province. In keeping with this, our Office was interested in auditing some aspects of safety regarding water quality for individuals with domestic wells. We began a value-for-money audit in September 1999. Our audit was substantially completed in July 2000.

**4.3** One area where the Province of New Brunswick has set regulations and safety standards is under the *Clean Water Act*. Two regulations that contribute to the prevention of drinking water problems for individuals on newly drilled domestic wells are the *Water Well Regulation* and the *Potable Water Regulation*.



**4.4** The *Water Well Regulation*, administered solely by the Department of the Environment and Local Government, includes a licensing requirement for well contractors, drillers and diggers. It contains a detailed set of standards which must be met during the well drilling and construction process and specifies well location set back distances from structures and potential contaminant sources such as septic systems and landfill sites. It mandates contractors, drillers and diggers to complete a detailed log report that serves as useful information for the Department.

**4.5** The *Potable Water Regulation*, administered jointly by the Department of the Environment and Local Government and the Department of Health and Wellness, requires well contractors, drillers, and diggers to attach pre-numbered metal well identification tags to all new wells. It also mandates that well contractors, drillers, and diggers sell water testing “vouchers” to homeowners, entitling them to a complete water analysis. It is mandatory that all homeowners with newly drilled wells have their water tested within twelve months of well construction. The Department of Environment’s Analytical Services Laboratory (the Lab), carries out this test for homeowners by performing a complete bacterial and chemical water quality analysis. The Lab forwards these results to the Department of Health and Wellness. Results are then compared to Guidelines for Canadian Drinking Water Standards and New Brunswick Health Advisory Limits. The Department of Health and Wellness, in turn, notifies domestic well owners regarding their water test results.

## Scope

**4.6** The three audit objectives for this assignment were as follows:

- to determine if the government has systems and practices in place to ensure compliance with the *Water Well Regulation* and the *Potable Water Regulation* under the *Clean Water Act* as it relates to private wells;
- to determine if satisfactory procedures have been established to measure and report on the effectiveness of the *Water Well Regulation* and *Potable Water Regulation* as it relates to private wells; and
- to determine if the Department of the Environment and Local Government’s performance indicators appropriately address protection of water resources supplying individuals on private wells.

**4.7** We developed six criteria to assist us in determining whether or not the objectives were met. The comments in this chapter are organized by these criteria.

**4.8** The initial planning phase of our audit consisted chiefly of documentation reviews and interviews with staff from both the Department of the Environment and Local Government and the Department of Health and Wellness. Based on the information reviewed,

we identified the audit objectives presented above. We then developed criteria as the basis or standards for our review.

**4.9** In the conducting phase we obtained audit evidence by performing detailed audit testing at the Department of the Environment and Local Government's Analytical Services Lab and the Department of Health and Wellness's five regional health offices. We performed extensive audit testing at the Department of the Environment and Local Government head office. We continued our audit process by interviewing staff and reviewing further documentation. We have used all information gathered to support our findings, conclusions and recommendations that are presented in this chapter.

## Results in brief

**4.10** The requirements of the *Potable Water Regulation* are not well understood within the Department of Health and Wellness. Certain aspects of this regulation and the *Water Well Regulation* are not adhered to by either the Department of the Environment and Local Government or the Department of Health and Wellness. Furthermore, they are not clearly communicated to well contractors, drillers and homeowners. In particular, we found that homeowners were often unaware of the need to have their water tested when new wells are drilled, even though they are paying for that service. Government is not currently enforcing the regulations for dug wells, despite the increased risks from such water sources.

**4.11** We found many instances whereby homeowners were notified of water test results well after the three working day limit set out in regulation. The lab reports sent out to homeowners are technical and complex, and thus difficult to understand and interpret. Although the Department of Health and Wellness considers water to be not drinkable if coliforms are present, only two of the five regions we visited were clearly directing the homeowner to boil such water before consumption.

**4.12** The Department of the Environment and Local Government has only one trained inspector in the Province to monitor all aspects of its Domestic Well Water Program. The Department has no record of inspections of any drilling activities for the approximately 7,500 new wells drilled in the last three years.

**4.13** In our opinion, the government does not have an adequate enforcement system to ensure that all affected parties comply with the *Water Well Regulation* and the *Potable Water Regulation*. In the past three years, there have only been two prosecutions against well contractors and drillers, and none against well diggers or domestic new well owners. The Department of the Environment and Local Government's procedures for dealing with enforcement issues are informal, inconsistent and poorly documented.

4.14 The government does not have a process in place to ensure a regular review of the regulations under the *Clean Water Act*. Aspects of the regulations require attention. In particular, we are concerned that domestic wells supplying large numbers of individuals (for trailer parks, campgrounds, churches and tourist attractions) are not required to be tested on an ongoing basis.

4.15 The government is not reporting sufficient information to demonstrate whether the regulations are achieving their intended results. Some information that is reported is inaccurate.

4.16 The Department of the Environment and Local Government has not established performance indicators relating to the protection of water resources for individuals using domestic wells.

## Communication of regulatory requirements

4.17 Our first criterion was:

*The government should have adequate procedures in place to communicate legislative requirements of the Water Well Regulation and Potable Water Regulation to affected parties.*

4.18 We believe that part of successfully implementing a regulation is to ensure that all affected parties are well educated as to what their responsibilities are under such regulation. We carried out our audit work to determine if the government has procedures in place to sufficiently educate all parties; that is, departmental staff, well contractors, drillers, diggers and homeowners. We felt it important for staff to possess good working knowledge of the regulations relating to programs for which they are responsible. We were also looking to see if procedures were in place to effectively communicate important regulatory requirements to the public. In this regard, we conducted a phone survey in which we contacted 83 homeowners that had wells drilled or modified within the past three years. We interviewed these homeowners in part to determine their understanding of the “domestic well water program” and their general level of knowledge regarding regulatory requirements. We also interviewed some members of the New Brunswick Ground Water Association (NBGWA) executive. The NBGWA is a group of licensed well contractors and drillers in the Province.

## Department of the Environment and Local Government staff

4.19 We determined that the Environmental Planning Section and Analytical Services Section are responsible for carrying out the majority of departmental responsibilities under the *Water Well Regulation* and *Potable Water Regulation*. Regarding newly drilled domestic wells, the Environmental Planning Section addresses various water quality and quantity problems, issues water well driller and contractor permits, maintains a well log data base, and provides well identification tags to well drillers. The Analytical Services Section performs a complete bacterial and chemical water quality analysis and forwards such results to the Department of Health and Wellness. This analysis includes assessing water samples for a wide range of possible contaminants, some

of which are total coliform, E. coli, lead, arsenic, selenium, and chromium.

**4.20** Based on our interviews with departmental staff, we have determined that there are no formalized procedures in place to ensure staff has adequate regulatory knowledge. When staff are hired to new positions, there is no training manual that includes information on programs for which they are responsible. From our various interviews we determined that until recently, work plans and performance appraisals did not reflect the requirement to have proficiency in the applicable regulations. Management informed us that they have now taken this initiative with some employees.

**4.21** The majority of departmental staff work in a “hands on” manner, dealing with issues regarding the regulations on a daily basis. This provides some assurance that the majority of staff do possess adequate regulatory knowledge. We are concerned however, at the lack of formalized procedures for ensuring staff hired to new positions are well versed in their regulatory responsibilities.

#### ***Recommendations***

**4.22** We recommended that the Department of the Environment and Local Government ensure new staff are adequately trained regarding regulatory responsibilities.

**4.23** We recommended that the Department of the Environment and Local Government incorporate a requirement for knowledge of departmental regulatory requirements as part of all employee work plans and performance reviews.

#### ***Departmental response***

**4.24** *The Department will ensure that new staff hired, with water well and potable water regulatory responsibilities, will be adequately trained.*

**4.25** *For those employees who are engaged in enforcing regulatory requirements, the Department will ensure that knowledge of these requirements will be part of their work plans and performance reviews.*

**4.26** One area we were particularly interested in was the communication of test results to homeowners. While regulation clearly states that communication with the homeowner is the responsibility of the Department of Health and Wellness, we found the Lab is mailing a copy of test results to all homeowners. Our initial thought was that the Lab staff may have been unaware of the requirements of regulation. However, the Department of the Environment and Local Government informed us that the reason the lab also provides a copy of the test results to homeowners is due to an informal agreement with the Department of Health and Wellness. Due to the fact that the copy of the lab report the Department of Health and Wellness receives from the Lab (and subsequently mails to the homeowner) is a faxed copy, the two Departments felt it would be easier for the homeowner to read the

original copy. Since the copy originated at the Lab, the Lab agreed to forward this to the homeowner.

**4.27** Because the Department of Health and Wellness is also providing test results, homeowners are currently receiving their test results from both Departments. In our opinion, this situation may cause confusion for the homeowner. It is also a duplication of services resulting in excess administrative and mailing costs for the government.

#### **Department of Health and Wellness staff**

**4.28** In our audit we determined that the majority of departmental responsibilities of the *Potable Water Regulation* are carried out by central office and the regional health offices. The major responsibilities of the Department of Health and Wellness under the regulation are as follows:

*5(4) If a test of a sample of water from a well referred to in subsection (1) or (2) establishes that the water does not pose a significant health risk,<sup>1</sup> the Minister of Health and Community Services shall send by ordinary mail a letter informing the owner of the well of the results of the test.*

*5(5) If a test of a sample of water from a well referred to in subsection (1) or (2) establishes that water poses a significant health risk, the Minister of Health and Community Services shall within three working days after receiving the results of the test send by prepaid registered mail a letter informing the owner of the well of the results.*

**4.29** We interpret this aspect of the regulation to mean that the Department not only has a responsibility to notify domestic well homeowners of water tests results, but also to ensure adequate information is provided to ensure homeowners understand the results. This would enable homeowners to make informed decisions regarding their water quality.

**4.30** A significant portion of our auditing work involved visiting five regional health offices around the Province. One of the areas we were interested in was determining the level of proficiency amongst staff regarding the regulation, and whether staff were in compliance with the requirements of the regulation. Based on interviews conducted, we determined that the Department of Health and Wellness has no

formalized procedures for ensuring staff possess adequate regulatory knowledge regarding programs for which they are responsible.

1. For all parameters other than those that are primarily aesthetic in nature, the Department of Health and Wellness has determined “significant health risk” to be essentially any level over the NB Health Advisory Limit, based on the Guidelines for Canadian Drinking Water. It appears the Department does make some exceptions for some inorganics, such as manganese, that only affect the appearance issues associated with water.

**4.31** In general, we found there to be very poor working knowledge of the *Potable Water Regulation* amongst regional staff. In all but one of the regional health offices we visited, various regional directors, regional team leaders, and inspectors were not aware of some regulatory requirements. Notable was the requirement for the Department to notify the domestic well homeowner of water results within three working days by prepaid registered mail if such results pose a “significant health risk”.

**Requirement to notify homeowners**

**4.32** While most regional staff were aware it is the responsibility of the Department of Health and Wellness to notify homeowners of test results regarding bacterial contamination (*E. coli* and coliform), not all were aware it is also the Department’s responsibility to notify homeowners of inorganic test results (e.g. lead, arsenic). In two of the regions we visited, several inspectors were not contacting homeowners with test results over the Health Advisory Limits for such inorganic parameters. They were under the assumption that it is the Department of the Environment and Local Government’s responsibility. In one region, the owner of a rental unit apartment for which test results showed unacceptable levels of arsenic, chloride, selenium, and sodium in November 1998 did not receive the test results from the regional health office until our audit visit. The rental unit was currently being occupied by a woman and her young children. In another region, inspectors admitted to us they do “nothing” in regards to notifying homeowners regarding inorganic test results.

**Requirement to notify homeowners within three days**

**4.33** Very few regional staff members were aware of any time deadline for notification of test results that are of a “significant health risk”. None of the regional offices we visited have formalized procedures regarding turn around time for test results. Some regional directors stated they forward information to inspectors in staff meetings to “try to get bacterial results out as soon as possible, usually within two or three days”; others have left it up to the inspectors’ discretion. Our auditing determined that in numerous cases homeowners were notified of test results well beyond three working days.

**Requirement to notify homeowners by registered mail**

**4.34** All of the regional offices we audited are currently using regular mail, fax or phone to notify homeowner of results. Only in one regional office were staff aware of the requirement to notify homeowners by registered mail if test results pose a significant health risk. None of the regions have ever done this. Staff feel it would be expensive and impractical to do so.

**4.35** Some staff state that since registered mail can take longer to get to the homeowner than regular mail, it is better to use the regular mail system. However, it appears that the original purpose for registered mail may have been to ensure proper documentation of the communication process. That is, if a test shows the homeowner has a potential health risk from a domestic well, it would be important for the Department to

document that it had communicated the risk. In most of the regional health offices we could not find any standard compensating procedure which ensured documentation of proof of communication with the homeowner in the absence of registered mail. Further, there was no documentation in place to indicate the Department of Health and Wellness was intending to replace this registered mail aspect of the regulation with a more effective communication technique.

**Confidentiality of test results**

**4.36** One of the regional health offices is clearly in non-compliance with the regulation regarding test results. The *Potable Water Regulation* Section 6 states:

*The results of a test of a sample of water from a well are confidential and shall not be disclosed by the Minister, the Minister of Health and Community Services or any person employed by the Department of the Environment or the Department of Health and Community Services to a person other than the well owner unless*

*(a) the person requesting the results obtained the written consent of the owner or*

*(b) the disclosure is in an aggregate form and does not identify the individual well from which the sample was taken.*

**4.37** In this case, regional health office staff provides individual homeowner domestic well results to whoever requests them. Results are often given to bankers, realtors, or other government departments, without consent from the homeowner. Staff were not aware of this aspect of the regulation regarding confidentiality. In our opinion, this example of non-compliance with the regulation could have serious legal implications for the Department of Health and Wellness.

**Concern regarding management direction**

**4.38** As noted, we were concerned over the lack of regulatory knowledge regarding departmental responsibilities demonstrated by a number of staff members. Disturbing to us was the fact that some regional directors and team managers appeared to have little knowledge regarding what inspectors were doing regarding programs for which they are responsible. We have concerns this may in part stem from the current organizational structure of the Department. While we did not carry out an organizational study, in our discussions with Central Office we were informed that the Department of Health and Wellness currently does not require directors and managers to have detailed knowledge of regulations. According to central office officials, directors and managers are to have a general knowledge regarding programs in place and what such programs are supposed to be doing.

**Recommendations**

**4.39** We recommended that the Department of Health and Wellness review procedures in place to ensure staff are aware of departmental regulatory responsibilities.

**4.40** We recommended that the Department of Health and Wellness incorporate a requirement for knowledge of departmental regulatory requirements as part of all employee work plans and performance reviews.

**Well contractors and drillers**

**4.41** There are numerous regulatory requirements in the *Water Well Regulation* and *Potable Water Regulation* for well contractors and drillers. Some of these requirements include obtaining a yearly licence from the Province, using specified materials for well construction, adhering to specified distances for well location, and attaching metal identification tags to newly drilled wells. There is also a requirement to complete and remit to government a log report, detailing homeowner identification, yield information, geological information, property identification number, and well identification number. This log report is to be returned to the Department of the Environment and Local Government within thirty days of drilling. A detachable “voucher” is attached to the bottom of each log report. This voucher entitles each homeowner to a water analysis at the Analytical Services Lab. Well contractors and drillers are mandated to sell these vouchers to each homeowner and to submit the fee collected from the homeowner to the Department when they return the log reports.

**4.42** The Department is currently charging homeowners \$140.30 for each voucher sold, \$100 of which goes to government general revenue; \$22 is a rebate back to the well contractor or driller and the remaining \$18.30 is HST for the federal government.

**No licensing exam for established drillers**

**4.43** Despite the numerous regulatory requirements, the Province currently has no requirements regarding knowledge of regulations for those well drillers and well contractors licensed by the Province prior to 1 July 1990. For those licensed after this date, the Province does require a passing grade on a certification exam administered by the Department of Training and Employment Development. Part of this exam includes knowledge of regulatory requirements. However, only about 1% of total licensed well drillers and contractors have this certification, as most were licensed within the Province prior to 1990.

**4.44** From our interviews held with both the Department of the Environment and Local Government and some members of the New Brunswick Ground Water Association executive, we have determined that educating well drillers and well contractors in regards to their regulatory responsibilities has not been ongoing. When the *Potable Water Regulation* came into force in 1994, the then Department of the Environment met with the Association executive regarding their regulatory responsibilities. Since initiation of the regulation, meetings with the Association have been sporadic and more problem solving in nature than educational.



**4.45** During our audit we determined that the Department of the Environment and Local Government provides information to contractors and drillers on an “as needed” basis. In other words, as issues arise the Department will meet with the contractors and drillers involved. The Department also has a staff member attend the Atlantic Water Well Association Annual Meeting and hosts various technical shows for interested contractors and drillers.

**4.46** We are concerned, however, by what we found to be a lack of regular, consistent, documented regulatory information provided to well contractors and drillers. Five years ago the Department set out to develop a document that would serve as an educational tool for drillers and contractors regarding regulation. This document has never been finalized and distributed. We feel it would be beneficial to complete this document and ensure distribution to all contractors and drillers in the Province. Further, we feel in order to ensure adequate regulatory knowledge amongst contractors and drillers, the Department must disseminate information on a regular basis. This could take the form of informational packages or newsletters.

**Recommendation**

**4.47** We recommended that the Department of the Environment and Local Government provide educational material to well contractors and drillers on an ongoing basis regarding their responsibilities under regulation.

**Departmental response**

**4.48** *The Department is of the opinion that we have always provided the Association, and all its members, with information regarding the Regulations and accompanying administrative procedures. The Department has circulated a draft guide to the well drillers for their comment, and has provided to the well drillers, as needed, information regarding new drilling requirements. The Department will continue to dialogue with the well drillers.*

**4.49** *In 2001, the Department will identify training needs for drillers and contractors on regulatory requirements and will explore training options.*

**Well diggers**

**4.50** The majority of wells in the Province are drilled by licensed well drillers. There are, however, areas of the Province that due to certain geological conditions are better suited for dug wells. Similar to well contractors and drillers, there are numerous regulatory requirements for well diggers in the Province. For instance they must be licensed by the Province, complete and submit detailed log reports for each newly dug well to the Department of the Environment and Local Government, and sell water testing vouchers to homeowners with newly dug wells.

**4.51** Since the initiation of regulation, the Department of the Environment and Local Government has not attempted to implement the requirements for well diggers. Though staff informed us they believe

one digger did obtain a license a number of years ago, the Department does not currently require well diggers to obtain a yearly license. Of utmost concern to us, however, is that the Department is not implementing the mandatory selling of vouchers and water testing for dug wells. We feel that owners of dug wells are not being provided with the same opportunity for water testing as owners of drilled wells. This is despite the fact that one Department of Health and Wellness official stated to us that “water from a dug well is generally considered to be non potable until proven otherwise.”

**Recommendation**

**4.52** We recommended that the Department of the Environment and Local Government begin to license well diggers and educate them as to their requirements under regulation.

**Departmental response**

**4.53** *The Department agrees to enforce the Water Well Regulation, specifically in relation to the well digger provisions, and will enforce permit requirements under the Regulations through Regional Enforcement.*

**4.54** *In 2001, the Department will identify training needs for well diggers on regulatory responsibilities, and will explore training options.*

**Domestic well owners**

**4.55** The only mandatory requirements for homeowners with a newly drilled domestic well are to pay for a water testing voucher and subsequently submit a water sample for analysis at the Province’s Analytical Services Lab. Given the potentially significant health risks of contaminated water, and the direction provided by the regulation, we felt it important to determine what practices are in place to educate homeowners as to these requirements.

**4.56** When the *Potable Water Regulation* was initiated in 1994, the Department of the Environment and Local Government conducted a Province-wide media campaign to educate domestic well owners on the importance of water testing and the mandatory requirement to do so. Another media campaign was implemented in 1996. These campaigns consisted of one-time radio and newspaper ads across the Province. The Department feels that this was not good coverage for the money spent and that perhaps it was not reaching the target audience.

**4.57** Since 1996, the Department of the Environment and Local Government, in consultation with the New Brunswick Ground Water Association, has developed numerous “fact sheets” on water testing. These fact sheets were intended to be the vehicle for communication between the Department and domestic well owners. Given the importance of this information to the domestic well owner, we expected it would be a priority for the Department to ensure that such information did indeed reach the homeowner. The Department informed us that they have distributed fact sheets to interested homeowners at local homeshows and provided them to realtors and banks. The fact sheets are

also available at the Department's head office and regional offices. As will be elaborated upon later in this chapter, the Department also includes a copy of the current fact sheet when mailing reminder letters to homeowners who have neglected to have their water tested. However, the Department has continued to rely on the New Brunswick Ground Water Association to distribute fact sheets to homeowners at the time of drilling.

**4.58** In surveying various members of the New Brunswick Ground Water Association, we determined that the Association feels it is not its responsibility to educate the public regarding water testing; thus contractors and drillers generally have not been consistently distributing fact sheets to homeowners.

**4.59** We mentioned that a significant part of our audit was to conduct phone surveys with 83 homeowners with newly drilled domestic wells. We wanted to determine how many of these homeowners understood the voucher system and had any knowledge of regulatory requirements. In general, we determined the majority of homeowners knew little about their water quality, the voucher system and regulatory requirements. We determined that 60% of them did not recall receiving a fact sheet of any kind from their well drilling company. Not surprisingly then, was our finding that 56% had no knowledge of the mandatory testing requirement.

**4.60** Many homeowners were very confused over whether they had even paid for a water test. Under the current system, the homeowner pays the well driller at the time of drilling \$140.30 for a voucher. As is stated on the log report, there is supposed to be a separate cheque (besides what the driller charges for drilling a well) made out to the Minister of Finance. However, often the well drillers simply add the cost of the water test to their own bill for services provided, not differentiating between the cost of having the well drilled and the cost of the water test.

**4.61** The current voucher that is issued to domestic well homeowners adds to the confusion. The voucher states "The fee for this Well Water Testing voucher is \$122 plus \$18.30 HST." Because this voucher is given to the homeowner **after** they may have paid the driller their fee, some homeowners we surveyed felt this was an additional charge they would have to pay. This was a contributing factor to why they did not get their water tested. On the contrary, some homeowners that did have their water tested insisted that they had not paid a fee, despite the fact our audit determined that they had.

**4.62** While meeting with many staff members at the Department of the Environment and Local Government, a consistent theme seemed to be "the well drillers are not educating the homeowners regarding water testing". The Department has gone so far as to produce reports detailing

voucher redemption rates (number of homeowners that had their water tested) per contractor or driller. The purpose of these reports was to determine which contractors or drillers were doing a good job at giving out fact sheets or explaining the importance of water testing. We feel that educating homeowners regarding regulations would clearly be a departmental responsibility.

**4.63** Since the implementation of the mandatory testing requirement for domestic well owners in 1994, the voucher redemption rate has maintained a level of approximately 45%. For the years 1994 to 1999 the Province has collected voucher money from 7,122 newly drilled domestic well homeowners for which we could find no record of water testing. While our primary concern is for public safety, we also note that this equates to approximately \$970,000 in revenue collected on behalf of the Province for which no services have been provided. We felt part of this low redemption of vouchers may be due to the fact homeowners have not taken the initiative to have their water tested despite the information they have been provided with. However, given the findings of our homeowner phone survey, it is our feeling that a great part of this was due to homeowners' lack of understanding regarding the importance of water testing and the voucher system. In our survey we determined that 56% of homeowners did not know of the mandatory requirement for testing and 46% did not know they had paid for the water test at the time of drilling. Several homeowners we interviewed appeared to know little of the importance of having their water tested. For instance, a number of homeowners were of the view that if the water smelled good and looked good, there was no problem. Given the results of our survey and the low voucher redemption rate, we feel it would be beneficial for the Department to look at various options for educating homeowners. One option would be for the Department to mail the fact sheets on water directly to the homeowner. In this case, we suggest altering the current fact sheet to further draw attention to the fact that testing is mandatory and that it has already been paid for by the homeowner. Alternatively, the Department is currently looking at moving to a "permit" system. In this case, the homeowner would contact the Department prior to having a well drilled to obtain a permit. The permit would, in effect, include paying for a water-testing voucher. This would be an ideal opportunity for the Department of the Environment and Local Government to effectively educate domestic new well homeowners. Homeowners would be purchasing the vouchers from the Department or perhaps Service New Brunswick. In either case, trained government employees could ensure the homeowner was adequately informed.

#### ***Recommendation***

**4.64** We recommended that the Department of the Environment and Local Government develop improved procedures for educating domestic new well homeowners on the applicable regulatory requirements. These procedures should be tested after an appropriate implementation period to ensure they are more successful than the current approach.

**Departmental response**

**4.65** *The Department believes that ‘fact sheets’ are an excellent means of reaching the desired target audience (the well owners) directly. The Auditor General has stated that the result of a homeowner phone survey indicated that the homeowners had a lack of understanding regarding the importance of water testing, and that it was mandatory. The survey failed to indicate the source for this lack of knowledge; i.e. homeowner did not receive fact sheet, homeowner did not read fact sheet, or fact sheet did not convey correct message. To resolve this issue the Department will dialogue with the well drillers to ensure a consistent distribution of the fact sheet, as well as it will review the fact sheet with the purpose of emphasizing that testing is mandatory.*

**4.66** *The Department is considering alternatives to the rebate system. Some of the alternatives considered may provide an opportunity to educate well owners regarding their regulatory requirements.*

**Conclusion**

**4.67** This criterion was not met. In our opinion, the government does not have adequate systems and practices in place to communicate the legislative requirements of the *Water Well Regulation* and *Potable Water Regulation* to affected parties.

**Monitoring and reporting on compliance**

**4.68** Our second criterion was:

*The government should have adequate systems in place to monitor and report on compliance with the Water Well Regulation and Potable Water Regulation.*

**Unclear allocation of responsibilities**

**4.69** Auditing and reporting under this criterion was made somewhat difficult because of one overlapping area of responsibility. While we understand that the Department of the Environment and Local Government is responsible for the *Water Well Regulation*, the division of responsibilities for the *Potable Water Regulation* were not so evident. Various staff members from both Departments had differing views on the subject of departmental responsibility.

**4.70** For instance, a senior staff official in the Department of Health and Wellness stated that the entire *Potable Water Regulation* was a shared responsibility between the two departments. Another official from this Department stated that sections 1-5 of the *Potable Water Regulation* were clearly the responsibility of Environment and Local Government and sections 6-9 were clearly the responsibility of Health and Wellness. Actually, this statement is not completely accurate as section 5(2) gives us perhaps the clearest example of overlap. It states that for homeowners who have not redeemed their vouchers within twelve months, “the Minister of the Environment or the Minister of Health and Community Services may take a sample of water from the well and have it tested at the Provincial Analytical Services at the expense of the owner”. There is no further direction as to which Minister shall take the lead.

**4.71** A senior policy official at the Department of the Environment and Local Government stated that because the *Potable Water Regulation* falls under the *Clean Water Act* (which is an Act of that Department) that they had “umbrella” responsibility for the entire regulation. A staff member from the Department of Health and Wellness countered this argument by referring to Section 3(2) of the *Clean Water Act*. This section states that:

*If a conflict exists between this Act or any regulation made under this Act and the Health Act or any regulation made under the Health Act in a matter relating principally to public health, the Health Act and any regulation made under it prevail.*

**4.72** In the opinion of this staff member, section 3(2) may negate this concept of “umbrella responsibility”. This is because in one sense the Minister of Health and Wellness has a “special status” under the *Clean Water Act* for health related matters.

**4.73** At one time, a Linkage Committee consisting of staff from both departments was useful in “linking” the departments regarding issues arising from the *Potable Water Regulation*. This committee has not been active in quite some time. In our opinion, it would be useful to re-enact such a committee. An administration protocol clearly detailing departmental responsibilities would be helpful. This should be made available to all staff currently involved in programs relating to the *Potable Water Regulation*.

#### ***Recommendation***

**4.74** We recommended that the Department of the Environment and Local Government, in conjunction with the Department of Health and Wellness, develop an administration protocol for the *Potable Water Regulation*, clearly delineating various departmental responsibilities regarding domestic wells.

#### ***Departmental response***

**4.75** *The Department agrees with the Auditor General that protocols should be developed. The Department will meet with representatives from the Department of Health and Wellness to establish a written protocol with regard to responsibilities under the Potable Water Regulation.*

#### **Monitoring and reporting compliance – Department of Health and Wellness**

**4.76** As previously discussed, the major responsibility of regional health office staff under the *Potable Water Regulation* as it relates to newly drilled domestic wells is to notify homeowners of **all** test results. We carried out audit procedures to determine the current protocol for handling private well water test results, to see if regions are currently complying with the regulation and to determine if procedures are in place to monitor and report such compliance. Given the seriousness of their responsibilities for communicating with homeowners, we were disappointed to find that in none of the regional offices we visited, were

team managers performing random or regular monitoring of this process.

**4.77** A few years ago the Department underwent a structural re-alignment. Based on this, the Department functions more as a team and relies on staff's own professionalism to know what their responsibilities are and how to fulfil them. Given this, there is currently little supervision of inspectors' work functions. In fact, in most of the regions we visited, there was confusion over who the supervisors actually were. In two of the regions visited, we encountered staff that requested **we** determine who their supervisors are!

**4.78** Our audit within the regions uncovered instances of what we would consider serious instances of non-compliance by departmental staff. We believe a cause of this non-compliance is due in part to a lack of ongoing monitoring by the Department. We feel that it would be beneficial for team managers to fulfil an "auditing" function relating to work done by inspectors.

**4.79** As discussed previously in this chapter, none of the regional offices we visited are notifying domestic well homeowners of their test results by registered mail, as is required if such results are over Health Advisory Limits. And none of the regional offices we visited have policies in place regarding "turn around time" for notifying the homeowner of test results. This is of particular concern for test results that are over the Health Advisory Limits. Regulation currently requires notice to be within three working days. The Department has never monitored this function of "when" water test results are sent to homeowners. As discussed earlier, we found there to be many instances whereby homeowners were notified of test results well after three working days. In some cases, they were not notified at all.

#### **Recommendations**

**4.80** We recommended that the Department of Health and Wellness **implement procedures for monitoring and reporting the extent to which the communication of test results complies with the *Potable Water Regulation*.**

**4.81** We recommended that the Department of Health and Wellness **review the potential issues posed by the apparent confusion in the field over chain of command and supervisory responsibilities. Corrective action should be taken as indicated by the results of such a review.**

#### **Responsibility for clear communication**

**4.82** Although neither the Act nor the *Potable Water Regulation* uses the wording "clear communication" in regards to the Department's responsibility to the homeowner, we believe that would certainly be implied. After all, if the goal is protection of the public, then surely the Department of Health and Wellness would want to ensure any message communicated was clearly understood. In this regard, we examined the

documentation provided to homeowners by the Department to communicate test results.

***Requirement to notify homeowners by letter***

**4.83** As required by the *Potable Water Regulation*, the Department has a responsibility to notify all homeowners of their water test results in a letter. Though the Department has no policy regarding this issue, its current practice is to mail homeowners a copy of the Lab report that was faxed to them by the Analytical Services Lab. While some regional offices we visited were including a brief cover letter, indicating to the homeowner that water test results are enclosed, most were not. In our opinion, simply mailing a copy of a lab report does not constitute a “letter” and thus the Department’s current practice is not in compliance with the regulation. It would increase the homeowners’ understanding of the enclosed water test results if an informative letter addressed to the homeowner was included.

***Lab test results report lacks understandability***

**4.84** While this detailed, rather scientific lab report may be adequate for trained health inspectors to use for their analysis, in our opinion it is not understandable by the average homeowner. Some examples of terminology in the current microbiology lab report range from wording like “Alpha 9223B”, and “limit of quantification” to “colony forming units”. If, for instance, you have E. coli in your water, on your first analysis, you receive a “P” as an explanation. If you look further down the page you see “P” stands for “positive.” With E. coli present on a second analysis you may receive the explanation that your level is “> 200”.

**4.85** More confusing still are the lab reports for inorganic substances like lead, arsenic, chromium, and selenium. The homeowner receives a rather long list of parameters that were tested, comparing homeowner results with Health Advisory Limits. If test results are higher than Health Advisory Limits, the result has a tiny asterisk next to it. If you are curious to know what this means, scanning the page carefully you would find at the bottom of the page in tiny print, the following explanation “indicates greater than acceptable limit”. Next to some results were the letters “L”. The report states “L means less than /”. When questioned in regards to this, the Analytical Services Lab explained to us that it means “less than detectable limit”.

**4.86** One lab report we read stated “the water is supersaturated with CaCO<sub>3</sub>, possibility of CaCO<sub>3</sub> deposition.” No further explanation was provided, more than likely leaving an average homeowner bewildered.

**4.87** Given the general complexity of the report, and the specific cases we have noted, we weren’t surprised to find in the homeowner phone survey we conducted that a good number of homeowners stated that they were confused regarding their water test results. We would like to emphasize that although the report comes from the Lab, the



responsibility to communicate the results falls to the Department of Health and Wellness.

***Recommendation***

**4.88 We recommended that the Department of Health and Wellness develop a method for notifying homeowners of their water test results that is understandable and clear. This method should be consistent with the regulation.**

***Lack of descriptions provided to homeowner***

**4.89** When a homeowner receives water test results with substances that are over the Health Advisory Limits, it is up to the individual homeowner to perform necessary remediation and/or have their water re-tested until the problem has been clarified. In meeting with various officials in the Department, we heard time and time again, that “it is up to the individual to get their water re-tested, we can’t force them to do so”. We are concerned, however, that homeowners have not been provided with adequate information to make an informed decision as to what to do regarding their water test results.

**4.90** We are not confident that homeowners understand the water test report. And we are not satisfied that the Department of Health and Wellness has provided information to homeowners regarding the implications of given substances that are over the Health Advisory Limits and what the potential health risks could be.

**4.91** The Department of Health and Wellness has established that if coliform is present in initial testing, the water is not suitable for human consumption. Given the potentially serious health implications of coliform, we were surprised to find that the Department of Health and Wellness does not provide any information regarding the health implications of bacterial substances to the homeowner. Though three of the regions are mailing parameter descriptions for inorganic substances, **none** of the regions are mailing parameter descriptions for bacterial (E. coli/total coliform) results. We noted in our survey that many homeowners did not know the meaning or implications of bacterial contamination.

***Recommendation***

**4.92 We recommended that the Department of Health and Wellness include clear and meaningful descriptions of all parameters and their associated health risks, when mailing test results to homeowners.**

***Inconsistency between regions***

**4.93** It became obvious to us during our audit of regional health offices, that homeowners receive varying degrees of service regarding communication of water-testing results throughout the Province. A homeowner from Saint John for instance, would receive a different level of service than in Campbellton. Some discrepancies amongst regions were as follows:

***Boil Orders:*** Given that the Department of Health and Wellness considers water to be not potable if presence of coliforms are noted on initial test

results, we were surprised to see that only two of the five regions we visited are clearly specifying to the homeowner to boil such water before consumption. One of these regions included a “boil order letter” while the other uses a stamp clearly indicating to not drink the water before boiling. We feel this to be an important aspect of educating the homeowner in regards to the seriousness of their water test results. We feel the Department should take a position on when to initiate a “boil order” for private well owners and apply it consistently among the regions.

*Method of contact with homeowner:* In one health region we visited, inspectors phone each and every homeowner with bacteria contaminated water supplies prior to sending their results to them by mail. In this region, we were pleased to note that of all the lab reports we audited, all but one homeowner had their water problem solved and subsequent water tests proved clear. We applaud this region for their effort, and judging by test results, it seems to have paid off. In other regions, some inspectors try to phone homeowners, but often they do not.

**4.94** The Department of Health and Wellness staff informed us that they are currently in the process of standardizing procedures for various programs for which they are responsible. In our opinion, this is a step in the right direction for the Department. Once developed, we would expect the Department to distribute the information to all regional health offices and provide staff training regarding such procedures.

#### *Recommendation*

**4.95** We recommended that the Department of Health and Wellness develop standardized procedures for communicating with domestic well homeowners.

#### **Monitoring and reporting on compliance - Department of the Environment and Local Government**

**4.96** The Department of the Environment and Local Government has many responsibilities regarding both the *Water Well Regulation* and the *Potable Water Regulation*. We understand it to be its responsibility to monitor compliance with the regulations by departmental staff, homeowners and well contractors and drillers.

#### *Analytical services lab*

**4.97** The Analytical Services Lab is accredited by the Standards Council of Canada in association with the Canadian Association of Environmental Analytical Laboratories Inc. In the past, staff have received the Department’s Employee Recognition Award for their “commitment to quality in environmental testing”.

**4.98** We were pleased to find what we would consider to be excellent compliance with regulations at the Lab. For our sample chosen, 100% of the lab reports had been faxed to the Department of Health and Wellness in what we would consider to be an acceptable and timely manner. While we were pleased to note that staff members do keep and review a logbook to ensure successful transmission took place, we have some concerns that there is no regular monitoring and reporting of this communication process. Under the current system, if a staff member did

not attempt to fax the report in the first place, it would not be noticed. Since providing water test results to the Department of Health and Wellness is an important link in ultimately providing information to the homeowner, we feel that there should be some type of regular monitoring and reporting to ensure that all lab reports are sent to the Department of Health and Wellness.

**Recommendation**

**4.99 We recommended that the Department of the Environment and Local Government establish a process to monitor the Lab's compliance in communicating test results to the Department of Health and Wellness in accordance with the regulation.**

**Departmental response**

**4.100** *The Department, by January 1, 2001, will have a fully operational Laboratory Information Management System (LIMS) at the Environmental Laboratory. This system will have the capability to compile and automatically e-mail water test results, in directory form, to all Health and Wellness Regional Offices. Furthermore, LIMS will have the capability to routinely check for water samples that have not been finalized in an appropriate length of time. LIMS will generate a 'sent mail' log that will document all transmissions. This log will be monitored regularly.*

**Environmental Planning Section**

**4.101** One of the responsibilities of this section includes handling and tracking the issuance of metal well identification tags. Approximately 18,000 metal well ID tags have been issued by the Department of the Environment and Local Government to well contractors and drillers since the inception of the *Potable Water Regulation*. The metal well identification tags are permanently attached to every newly drilled or modified well. The number on the tag corresponds to the number submitted on the log report and attached voucher. The well ID tag serves as a useful tool for the Department in tracking log information to a particular well.

**4.102** We determined there was poor monitoring of the issuance of tags. In recent years, record keeping generally consisted of a hand written list of tags issued. However the list is not always in numerical order and there are some unaccounted for tags. When we requested a computer-generated report detailing tags issued with corresponding well log data, we determined there to be numerous tags issued with no corresponding well log data. This means no log report was returned for these issued tags.

**4.103** Another aspect of the Environmental Planning Section's responsibilities under this regulation is to ensure fees are collected in accordance with regulation. Section 3(2) of the *Potable Water Regulation* states the Department is to collect a water-testing fee from homeowners of \$132. Prior to April 1997, this fee was subject to GST of 7%. In April 1997, the Department decided to change the fee to \$122 + HST. Both the NBGWA and the Department felt it to be in the

best interest of the homeowner to not charge the additional tax and so the fee was lowered by \$10. This administrative change has not been reflected in the regulation. From April 1997 to the fiscal year ended 31 March 1999, this difference between the amount actually charged and the amount still specified in the regulation amounts to approximately \$50,000 lost revenue for the Province.

**4.104** Government policy requires departments to get approval from the Board of Management prior to introducing changes to fees. This approval was not obtained. Of equal concern was that when questioned about this change, no current staff seemed to know for certain if authority had been obtained or not. In our opinion, this issue indicates that management may not be actively monitoring and reporting on compliance with the regulations.

**Recommendation**

**4.105** We recommended that the Department of the Environment and Local Government develop procedures for monitoring and reporting on compliance with key aspects of the *Water Well Regulation* and *Potable Water Regulation* which have been assigned to the Environmental Planning Section.

**Departmental response**

**4.106** *The Department agrees with the Auditor General that there is value in developing procedures for monitoring and reporting on compliance issues. A Well Development Officer, together with the Enforcement Branch will work to develop and deliver monitoring and reporting procedures on compliance, province-wide, and develop and deliver a training program to Regional staff.*

**Monitoring and reporting on compliance by homeowners**

**4.107** The only mandatory requirements for domestic well owners are to pay for and obtain testing for all new wells. The Department of the Environment and Local Government has monitored the number of domestic new well owners that have their water tested (referred to as the redemption rate). As previously stated the average redemption rate from 1994 to 1999 has been approximately 45% each year. For any homeowners that don't comply, the Department has been mailing one-time reminder letters. The Well Development Officer monitors the number of homeowners that subsequently comply with the regulation after receiving a reminder letter. Part of our audit exercise included looking at this function. For our sample chosen, 85% of newly drilled domestic well homeowners that had not had their water tested were sent reminder letters. The remainder were not contacted due to missing identification information. We feel these reminder letters are valuable documentation for the Department, showing it has provided some information to homeowners.

**Monitoring and reporting on compliance by well drillers and contractors**

**4.108** Under the *Water Well Regulation* and *Potable Water Regulation*, there are numerous requirements for well drillers and contractors. These include:

- obtaining a license prior to drilling;

- locating a well only outside of a specified distance from potential sources of contamination;
- properly completing the well log reports;
- selling a water testing voucher to homeowners; and
- remitting the funds back to government.

**4.109** In our opinion, monitoring these numerous activities would require the Department to maintain an acceptable management information system to track information and to perform inspections of well contractor and well drilling activities.

### **Monitoring and management information systems**

**4.110** We determined that the Environment Planning Section does **not** possess an adequate management information system to enable it to monitor the various aspects of well contractor and driller requirements under regulation.

**4.111** The current system does not have the capabilities to perform information management tasks that one might expect in a program such as this. Further, management informed us that the Department does not have the necessary number of staff needed to otherwise perform such monitoring tasks manually. We would particularly expect that if a regulation requires an outside party to collect money on behalf of government, adequate systems should be in place to monitor such activity.

**4.112** We feel that in these circumstances, a good management information system should be capable of at least the following:

- producing reports detailing batches of well ID tags issued and numbered log reports issued to contractors and drillers, which would enable the department to require contractors and drillers to account for previously issued tags and log reports before being issued new ones;
- reconciling, for any given contractor or driller, well ID tags issued to log reports issued, to log reports returned with accompanying voucher money;
- disallowing entry of log reports that are missing property identification numbers; and
- “flagging” of any wells drilled by a contractor or driller prior to the yearly contractor or driller licenses being paid for.

**4.113** The current management information system does not associate the number of tags issued to contractors and drillers to the number of log reports returned by them. Nor it is capable of displaying a summary of past tags issued to a particular contractor or driller. To do so manually would require significant time and effort on behalf of staff. Staff are thus not currently monitoring the number of well ID tags issued to

contractors and drillers and ensuring they are accounted for before issuing new ones.

**4.114** Our audit involved testing to determine if, for all domestic well water tested at the Analytical Services Lab, the Department received the log report and the accompanying voucher money. In our opinion this was a reasonable monitoring procedure that we would expect the Department to be doing on an ongoing basis. Our findings were that since 1994 there were approximately 800 water tests (where homeowners had redeemed vouchers) for which there was no record of log reports or voucher money to accompany them. If all of these were indeed unaccounted for, it would be a loss of \$112,240 in revenue for the Province.

**4.115** We determined that many of these wells were drilled in the 1999 calendar year. Though regulation requires drillers to submit log reports within a month of drilling, the Department feels these are still in the system and just haven't been returned by the contractors or drillers. Twenty-nine of these log reports are on hold by the Department until the drillers properly complete the reports. The remainder were simply explained by the Department as errors in the system or otherwise unaccounted for.

**4.116** The Environmental Planning Section downloads water sample results from the Analytical Services Lab into its own Potable Water Database. However, due to many difficulties, there are currently over 600 water sample test results that are in "error" and not captured by the potable water database system. These errors can include missing well ID information, missing well owner information, juxtaposition of owner's names, etc. Given the fact that a water test result in "error" means inaccessible information for the Department, we feel it would be in their best interest to correct these errors as soon as possible.

**4.117** The current management information system is not linked to the Potable Water Database. This means that well information is not coupled with water sample information. For any given well ID number the capability does not exist to see the well information (for example depth of casing, or location) along with various water sample results. It would be beneficial in our opinion to link well information to water sample information. This information would prove to be valuable in mapping areas in the Province with specific water attributes for water quality and quantity.

**4.118** We were pleased to see that during our audit, the Department initiated a ground water system investigation that established the scope and requirements of a new ground water management application. This investigation detailed numerous inefficiencies with the current system and outlined suggestions for improvement. Subsequent to our audit, the Department informed us that approval has been granted for the

implementation of this application. We feel this is a step in the right direction to help the Department fulfil its mandate of monitoring activities for these two regulations.

**Recommendation**

**4.119 We recommended that the Department of the Environment and Local Government develop a timeline for completion and implementation of the proposed ground water management information system.**

**Departmental response**

**4.120** *By January 1, 2001, the Ground Water Management Information System will be fully implemented.*

**Lack of field inspections**

**4.121** In the Province of New Brunswick, there are 43 licensed contractors and 82 licensed drillers. For the approximately 2,500 new wells drilled yearly, the Department of the Environment and Local Government provides one trained inspector. This inspector functions as a Well Development Officer responsible for operating all aspects of the Domestic Well Water Program. Of the approximately 7,500 newly drilled wells in the past three years, the Department of the Environment and Local Government has **no** record of regular or random inspections on any of these wells. The Department claims the inspector will “drop in on a well drilling site, if in the area doing something else”, but it has no record of such. It concerns us that one well contractor interviewed stated “everyone knows the Department has no inspectors in the Province.” The Department has intended for quite some time to train inspectors at their various regional offices to perform this function, but has never brought it to fruition. We feel it would be beneficial for the Department to provide regular random inspections of well drilling activities. The Department informs us that the implementation of the above discussed management information system would greatly assist departmental staff with their current responsibilities, thus enabling them to train regional inspectors to perform field inspections.

**Recommendation**

**4.122 We recommended that the Department of the Environment and Local Government implement procedures to ensure it has regular monitoring and reporting on compliance by well contractors and drillers.**

**Departmental response**

**4.123** *The Department agrees with this recommendation, and will look at procedures to increase training of regional staff and, as such, will utilize their abilities on monitoring and reporting on compliance by well contractors and drillers.*

**Conclusion**

**4.124** This criterion was partially met. While the Department of the Environment and Local Government has limited monitoring regarding redemption rates and missing property identification numbers, we are very concerned over a general lack of monitoring of compliance with regulations by departmental staff, well contractors and drillers and homeowners. We feel the Department of the Environment and Local Government has provided inadequate field inspection activity for these

regulations. We are equally concerned about the lack of monitoring of staff compliance with regulations within the Department of Health and Wellness. In our opinion, this could have serious ramifications for the program and the Province.

## Enforcing regulations

4.125 Our third criterion was:

*There should be an adequate enforcement system to ensure that affected parties comply with the Water Well Regulation and Potable Water Regulation.*

## Responsibility for enforcement

4.126 We have determined it to be primarily the responsibility of the Department of the Environment and Local Government to ensure that adequate enforcement systems are in place for *Potable Water Regulation*. We have also determined it to be the sole responsibility for the Department of the Environment and Local Government to enforce the *Water Well Regulation*. In our work, we noted a number of areas of non-compliance. For example, contractors and drillers are not remitting log reports within thirty days of drilling, homeowners are not submitting water samples for analysis, and diggers are not being licensed, are not selling vouchers, or submitting log reports. We wanted to determine what systems and practices were in place to bring these situations into compliance.

4.127 The Department of the Environment and Local Government has a Compliance and Enforcement policy that is “designed to maximize compliance with sound environmental practices, rather than simply relying solely on prosecution of offences.” The processes for enforcement can be warnings, schedules of compliance, ministerial orders, and initiation of a full investigation, which may lead to prosecution. A part of our audit included determining what the Department’s Regional Services and Enforcement Branch is currently doing in regards to enforcing these regulations. We would expect that if the government has regulations in place, it will have systems and practices in place to adequately enforce them. Not only would we expect appropriate action to be taken on behalf of the Department, but also adequate and accurate reporting of such.

## Lack of formalized procedure

4.128 We determined in our audit, that acts of non-compliance generally first come to the attention of the Environmental Planning Section staff who are operating programs to implement regulations. Some of the more common occurrences would be a homeowner calling to say they can’t get potable water. After investigation, the Environmental Planning Section may determine the well driller did not use sufficient casing, or drilled the well too close to a septic system. Another example would be a licensed well driller calling to say they saw a non-licensed well driller drilling a well.

4.129 In our interviews with both the Environmental Planning Section and Enforcement Section, we determined that there is the following



“understanding” between the two sections. Environmental Planning Section staff try to deal with enforcement issues firstly by contacting the persons involved. In the case of well contractors and drillers, this contact is usually by phone. Environmental Planning Section staff will attempt to solve the problem and only contact Enforcement if and when they are unsuccessful. In this case, Enforcement would open a file on the issue, investigate, and determine whether to proceed with prosecution. In the past three years, we determined that the Enforcement section has only opened five files in regards to the *Water Well Regulation* and *Potable Water Regulation*. Enforcement staff admitted to us that they have not been very involved with well drilling activities.

**4.130** In our audit, we determined there to be inconsistencies in protocol. Environmental Planning Section staff will contact Enforcement immediately if it is the case of an unlicensed driller, but generally not for anything else. In our interviews with Environmental Planning Section staff, we determined there to be some uncertainty as to what was supposed to be done. We are concerned over lack of formalized procedure for dealing with enforcement issues regarding these regulations.

***Recommendation***

**4.131** We recommended that the Department of the Environment and Local Government formalize procedures for staff to follow regarding enforcement issues arising from the *Water Well Regulation* and *Potable Water Regulation*.

***Departmental response***

**4.132** *The Department agrees with the recommendation by the Auditor General. The Department will initiate discussions to examine compliance and enforcement procedures, with the purpose of developing a Protocol Document for distribution to all enforcement personnel involved with inspections and enforcement.*

***Poor documentation***

**4.133** We found that there is little, if any, documentation relating to many enforcement issues that have come to the attention of Environmental Planning Section staff. As previously discussed, because most issues are dealt with by phone, there is no formal record. While some files exist regarding more detailed investigations, the majority of work done in this regard goes unrecorded. Our concerns are two-fold. Firstly, we feel lack of documentation regarding compliance issues could have serious legal implications for the Department. For example, if a homeowner was experiencing water problems due to a well drilled too close to a septic system, we feel the expectation could exist for the Department to have clear documentation regarding actions taken. Secondly, we feel it is difficult to assess the appropriateness of actions taken in response to occurrences, if no documentation exists. A lack of documentation of actions taken, or in some cases not taken, may lead to a lack of accountability by staff responsible for handling such occurrences.

<b>Recommendation</b>	<b>4.134 We recommended that the Department of the Environment and Local Government review its documentation procedures in order to develop an effective means of recording key compliance and enforcement information.</b>
<b>Departmental response</b>	<b>4.135 The Department agrees with the recommendation and will track compliance and enforcement information on each individual driller and contractor.</b>
<b>Inaccurate reporting</b>	<p><b>4.136</b> Part of our audit involved looking at the Department of the Environment and the Local Government's policies and procedures for reporting enforcement issues regarding the <i>Water Well Regulation</i> and <i>Potable Water Regulation</i>. The Regional Services and Enforcement Branch currently provides both a summary of occurrences and a summary of charges in the Department's Annual Report. (The Branch defines an "occurrence" as any incident relating to regulation that causes a departmental employee to be out of the office for more than one hour.)</p> <p><b>4.137</b> We performed audit work around the summary of occurrences as reported in the 1998 and 1999 Annual Reports. As reported by the Department for this time frame, the Branch dealt with 47 <i>Water Well Regulation</i> and 8 <i>Potable Water Regulation</i> occurrences in the Province. We examined occurrence files in both the central office (Fredericton region) and the Grand Falls regional office. Our findings indicate that although there is an occurrence reporting system in place, often these occurrences do not meet the Department's definition. We determined that 38% of reported occurrences were simply records of homeowners dropping their water samples off at the Department to be sent to the Lab for analysis. Another 38% were requests for water tests by homeowners (not new well owners) for a number of reasons ranging from simple curiosity to petroleum odour.</p> <p><b>4.138</b> In our opinion, the current occurrence reporting system lacks integrity and consistency. We would expect occurrences to directly relate to the regulations which they are reported under. For example, under the <i>Water Well Regulation</i> an occurrence could be well drillers drilling without a license, a well being too close to a septic system, or a well without the proper casing. Under the <i>Potable Water Regulation</i> an occurrence could be a driller not selling vouchers.</p>
<b>Recommendation</b>	<b>4.139 We recommended that the Department of the Environment and Local Government review procedures that are currently in place for reporting occurrences to ensure they relate to the applicable regulation. Lack of consistency amongst branches should be addressed.</b>
<b>Departmental response</b>	<b>4.140 The Department agrees to review occurrence-reporting procedures for accurate correlation with applicable Regulation. The Department will revise its occurrence response system to ensure consistency among all Branches of the Department.</b>

**4.141** Despite the shortcomings of the occurrence reporting system that exists within the Regional Services and Enforcement branch, we feel that its existence has potential benefits to the Department. We feel it serves as important documentation from a legal standpoint and provides accountability for actions taken or, in some cases, not taken. We were concerned that detailed occurrence reporting has not been implemented in the Environmental Planning Section in any consistent manner. Staff do keep some occurrence files along with a general file which contains numerous enquiries from the public. In this file, we determined there to be letters from well owners to the Department with no documentation regarding follow up. The Environmental Planning Section staff does not adhere to the Regional Services and Enforcement Branch's definition of an occurrence. In fact, none of the Environmental Planning Section staff were able to define what they would consistently classify as an "occurrence".

#### **Recommendations**

**4.142** We recommended that the Department of the Environment and Local Government develop a definition for an "occurrence" to be adopted by all branches within the Department.

**4.143** We recommended that the Department of the Environment and Local Government adopt consistent protocol for documenting "occurrences" to be adopted by all branches of the Department.

#### **Departmental response**

**4.144** *One of the proposed actions of the Department's structural realignment will be the formation of a 'Compliance and Enforcement Committee'. This Committee will develop a revised and consistent definition for the term 'occurrence'.*

**4.145** *The Department agrees to adopt consistent protocols for documenting 'occurrences' by all Branches of the Department. The Enforcement Branch will review the present system, to assess if the system meets departmental needs.*

#### **Possible advantages of "ticketing system"**

**4.146** Coupled with lack of inspections, as previously discussed, were a low number of charges. We determined that for the past three years, there have only been two prosecutions against well contractors and drillers, one of which was successful regarding an unlicensed driller. No action has ever been taken against diggers or domestic new well

owners<sup>1</sup> for failing to comply with regulations. The Regional Services and Enforcement Branch feels that under the current system it is often too costly and time consuming to prosecute.

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1. As explained later in this chapter, this could include developers, camp ground operators, trailer parks or churches.

**4.147** The Branch is currently investigating the option of “ticketing”. Ticketing would involve giving tickets for violations instead of the current court procedures. Tickets would generally be a smaller fine than the current minimum \$500 fine for individuals. The Department feels this system could potentially be a more feasible method of enforcing regulations. In our opinion, if obtaining a yearly contractor or driller license was contingent on paying all fines owing, then this could prove to be a useful enforcement measure.

**Recommendation**

**4.148** We recommended that the Department of the Environment and Local Government give serious consideration to the concept of “ticketing” for various acts of non compliance under the *Water Well Regulation and Potable Water Regulation*. We recommended that obtaining yearly contractor or driller licenses be contingent on payment of all monies owing.

**Departmental response**

**4.149** *The Department agrees to give serious consideration to the concept of ‘ticketing’ for various acts of non-compliance under the Water Well Regulation and Potable Water Regulation. The ‘ticketing’ option has been under consideration by the Department, and is strongly supported by its inspectors. The Department recognizes the intent of the Auditor General in its recommendation for ‘withholding’ licenses, but it should be recognized that this issue will have to be considered within the context of all acquired fees.*

**Conclusion**

**4.150** This criterion was not met. We feel the government does not have an adequate enforcement system to ensure that all affected parties comply with the *Water Well Regulation and Potable Water Regulation*. In our opinion, the Department of the Environment and Local Government should implement formalized procedures for the investigation, documentation and reporting of occurrences under these regulations.

**Review of regulation**

**4.151** Our fourth criterion was:

*The government should periodically review the Water Well Regulation and Potable Water Regulation and make necessary changes in a timely manner.*

**4.152** We believe it is important to evaluate regulations on a regular basis to determine if they are accomplishing intended goals and meeting the needs of users. In this regard, our audit work involved determining procedures in place at the Department of the Environment and Local Government and the Department of Health and Wellness for regularly reviewing legislation. From our various interviews we determined that neither department has what we would consider formalized procedures in place for regularly reviewing legislation. Both departments seem to look at various aspects of legislation in a more ad hoc fashion, troubleshooting when necessary. We found there to be aspects of

legislation and regulations that were in need of review and change. But the departments, in our opinion, have been slow in doing so.

**4.153** The current *Water Well Regulation* and *Potable Water Regulation* came into force on 1 July 1990 and 1 January 1994 respectively. Since that time, there have been no regulatory revisions.

**Various requirements for well diggers - Department of the Environment and Local Government**

**4.154** There are numerous regulatory requirements for well diggers, ranging from obtaining a yearly permit to selling vouchers to homeowners. It was clear to us in our audit that the Department of the Environment and Local Government has known of these requirements since drafting the regulations. However, the Department has made a conscious decision not to enforce this aspect of regulation. One might argue that as soon as the Department adopted this philosophy, it should have amended the regulation accordingly in a timely fashion.

**4.155** On the other hand, given the importance of clean water to the lives of New Brunswick residents, one might have expected some sort of re-evaluation of the regulation. The diggers were obviously included in the regulation with some degree of thought and planning. The goal of this re-evaluation would be to determine how to bring the diggers into compliance with the purpose or intent for which they were originally included.

**Fee for well water test - Department of the Environment and Local Government**

**4.156** The Department of the Environment and Local Government has been charging \$140.30 for a water test since April 1997. The current regulation actually requires a charge of \$151.80 (\$132.00 + HST). To date, the Department has not made any change to the regulation to lower the fee to \$140.30.

**Inadequacies of certain aspects of current regulation – Department of the Environment and Local Government**

**4.157** Based on interviews with various Department of the Environment and Local Government and Department of Health and Wellness staff, it was brought to our attention, that there were some areas of the current regulations that were in need of amendment. One example of this is the current requirement under the *Water Well Regulation* to use a minimum of twenty feet of casing for newly drilled wells. Departmental staff felt that, due to certain geological conditions, in various parts of the Province this minimum requirement is insufficient to prevent water problems. In our opinion, the Department of the Environment and Local Government should react to this deficiency in the current regulation in a timely fashion.

**Well Drilling Advisory Board - Department of the Environment and Local Government**

**4.158** In our audit we determined that this Board has been dormant for quite some time. Department of the Environment and Local Government staff believe that the Board was functioning at the early implementation stages of the *Water Well Regulation*. No minutes of meetings were made available to us by the Department. In our opinion, if this Board no longer exists then keeping these sections in the regulations is misleading to the Legislative Assembly and the public. On the other hand, the Board

may have ongoing value that should be supported. It would seem that the Board may have a purpose in partly fulfilling the aims of this criterion; that is, the type of issues on which it can advise the Minister could serve to ensure the regulations were regularly reviewed.

**Concerns regarding contamination or integrity of samples - Department of the Environment and Local Government**

**4.159** Because the objective of water testing is to provide the homeowner with safe water and also to provide the Department with accurate groundwater data, integrity of data is of utmost importance. The current practice at the Department is for homeowners to draw their own water sample to submit for testing. We feel this has the potential to jeopardize meeting both objectives described above. Two scenarios could yield incorrect water results. Either a homeowner could incorrectly draw the sample, or provide water samples from a source other than their own for analysis. Staff in both departments informed us that it is likely that approximately 50% of the initial “unacceptable” test results for presence of total coliform are a direct result of the homeowner incorrectly drawing the water sample. Improper flushing of the system or drawing the sample too soon after the well is drilled are common causes of contamination. This results in extra costs to the government in that potentially the Lab must analyze re-tests and the Department of Health and Wellness must send re-test results to homeowners. There are no additional charges to the homeowner.

**4.160** Sometimes the homeowner is actually a developer. The developer has built a house and is the “homeowner” while the home is on the market. In the case of a developer submitting water for testing, there is actually a disincentive to submit a sample that is suspected to be unacceptable. Our audit determined there to be several cases in which developers are the ones who submitted water for testing. Developers are in a potential conflict of interest in that poor test results could directly impact on their operations.

**4.161** We felt that given the Department’s objectives, and the importance of accurate results, the Department would be better served to either draw the samples themselves, or hire an external company to do so. This is especially so when a developer is the “homeowner.” The accidental contamination of samples by homeowners could also be reduced through improved education.

**Recommendation**

**4.162** We recommended that the Department of the Environment and Local Government review its current procedures for sample collection to ensure integrity of testing results.

**Departmental response**

**4.163** *The Department agrees to review its current procedures for sample collection as part of its review of alternatives to the current rebate system.*

**Wells providing water to more than single family dwellings - Department of Health and Wellness**

**4.164** As outlined in the *Potable Water Regulation*, owners of domestic wells are only required to have their water tested once, that being upon initial drilling. On the other hand, “public water supplies” are required to submit a sampling plan to the Province and have their water tested on a monthly basis. Public water supplies are currently municipal water supplies, and water systems owned and operated by the Crown (schools, government departments). Our audit involved examining lists of all water tests that fall under the umbrella of newly drilled “domestic” wells. We were surprised to find that many large facilities that are not single family dwellings are still considered domestic wells, and thus have no requirement for ongoing testing. These facilities often have one well, serving a number of individuals. Examples of such establishments are gymnasium facilities, camping grounds, tourist attractions, churches and trailer parks. In our audit, we noted instances of such establishments with newly drilled or modified wells, whereby initial testing showed levels of contaminants in the water that were over the Health Advisory Limits established by the Province. We determined that the Department of Health and Wellness has the same protocol for a water supply affecting a two-person home, as for churches typically known for socials and church suppers that could be supplying five hundred people. Staff generally do not prioritize these establishments in any way.

**4.165** We feel that the Department has a responsibility to develop distinct protocol for notifying establishments that are not single family dwellings. In our audit, we found instances whereby tests results for churches and tourist attractions showed unacceptable limits for coliform. In some instances there was no record of contact by the Department, and no subsequent water test that would prove the water to be potable. We are equally concerned about the absence of ongoing testing requirements for trailer parks. The Department of Health and Wellness estimated that there are approximately 10,000 individuals in the Province relying on well water supplied to trailer parks. The Department is currently drafting amendments to the regulation that would mandate owners of trailer parks to test the well water on a monthly basis. We feel this is an important step in ensuring safe water for this large number of individuals and commend the Department on this initiative.

**Recommendation**

**4.166** We recommended that the Department of Health and Wellness review procedures in place for dealing with water test results for wells that supply more than family dwellings. Based on the results of this review, amendments to the regulation could be made as appropriate.

**Conclusion**

**4.167** This criterion was not met.

**4.168** We feel the Government has not systematically reviewed the *Water Well Regulation* and the *Potable Water Regulation* and, subsequently, has not made changes in a timely manner.

**Recommendation**

**4.169** We recommended that both the Department of the Environment and Local Government, and Department of Health and Wellness, review current procedures in place to ensure regular review of the two regulations.

**Departmental response**

**4.170** *The Department agrees to work with the Department of Health and Wellness to review current procedures in place to ensure regular review of Water Well Regulation and the Potable Water Regulation. It should be noted that Regulations are reviewed by administering government agencies on an as required basis.*

**Measurement and reporting of program effectiveness**

**4.171** Our fifth criterion was:

*The government should have adequate systems and practices in place to ensure relevant and accurate measurement and reporting on the effectiveness of the Water Well Regulation and Potable Water Regulation as it relates to private wells.*

**4.172** Although we are examining two regulations which only impact the 2,500 new wells that are drilled each year, we would expect to see some public reporting on this area. Therefore we examined several recent annual reports of the two departments to gain an appreciation for the reporting that was taking place.

**Effectiveness reporting by the Department of the Environment and Local Government**

**4.173** We found that the Department of the Environment and Local Government provides some explanatory detail regarding work done in programs designed to implement these regulations. We noted though, a number of areas in current reporting methods that we felt needed improvement. In examining the Department's recent annual reports, we found the descriptions of work done to be at times misleading, vague and inconclusive. For instance, on page 61 of the 1997-98 annual report it states that the program has "ensured that all wells were appropriately tagged". Given the fact that there has at no time ever been any monitoring or inspection of such, we feel this is inaccurate reporting and misleading to the public. Similarly, in one annual report, the Department describes performing "random log audits". From various interviews with Departmental staff we determined this to mean that staff randomly look at log reports for completeness. (i.e. do they include the mailing address, well ID number, etc.) This, in our opinion, does not warrant the usage of such terminology as "audit". Audit procedures generally involve some form of verification of data.

**4.174** One important aspect of effectiveness is the achievement of intended results. We believe it would be important for the Department of the Environment and Local Government to measure and report on this aspect of effectiveness.

**4.175** We determined that the initial intent of the *Water Well Regulation* and *Potable Water Regulation* was two-fold; firstly, to ensure safe drinking water for new well owners, and secondly to provide



the government with good information relating to ground water in the Province. Given this, we expected to find clearly defined goals regarding these objectives and adequate reporting of progress made in attaining these goals.

**4.176** These goals would serve as measurement for how effectively the programs in place to implement the regulation were operating. In our opinion there are really two yard sticks the Department of the Environment and Local Government might use for measuring program effectiveness as it relates to its responsibilities under current regulation. Firstly, the voucher redemption rate (or number of homeowners having their water tested) gives the Department some assurance it has met its regulated responsibilities in contributing to the objective of ensuring safe water for new domestic well homeowners.

**4.177** Given that the Department does track and monitor redemption rates, it would be reasonable, in our opinion, to have established goals relating to the percentage of homeowners targeted to redeem vouchers in a given year. The Department has a “fuzzy” goal to see “as many as possible be redeemed”. But it has not quantified this goal. Although the annual reports do, at times, refer to the redemption rate, neither a target rate nor an actual rate is stated.

**4.178** Secondly, the number of log reports returned to the Department with adequate ground water information, in our opinion, contributes to fulfilling the objective of acquiring accurate ground water data. Given that the Department does manually review all log reports and monitors the number of reports missing property identification numbers, it would be reasonable in our opinion, to have established goals relating to the percentage of complete log reports received in a given year that would be acceptable to the Department. Again, a “fuzzy” goal exists, in that they would like to see “as many as possible” be returned complete, but the Department has not quantified this goal. We feel this lack of quantifying goals has the potential to lead to a lack of direction and a lack of accountability. To summarize, in general we found there to be little measurement and reporting of the operation of programs to determine if they are accomplishing their initial intentions.

#### **Recommendation**

**4.179** We recommended that the Department of the Environment and Local Government review procedures in place for reporting program results for the *Potable Water Regulation* and *Water Well Regulation* to ensure they are accurate and useful to readers. As part of this effort the Department should establish goals or targets that clearly relate to the objectives of the regulations.

#### **Departmental response**

**4.180** *Beginning with fiscal year 1996/97, New Brunswick government annual reports began including specific performance measurement data in response to criteria established by the Auditor General. The Department will ensure that program results for the Potable Water*

*Regulation and Water Well Regulation will be included in the 2000/2001 Annual Report. Goals or targets will be established for subsequent Annual Reports.*

**Effectiveness reporting by the Department of Health and Wellness**

**4.181** To contribute to fulfilling the objective of ensuring a safe water supply for individuals with private wells, the Department of Health and Wellness has the responsibility not only to notify the domestic well homeowner by letter of test results according to procedures outlined in the regulation, but also, in our opinion, to ensure understandability of such results.

**4.182** Given these objectives, we felt the Department's annual report would have some discussion in this regard. We determined, however, that the Department of Health and Wellness does not currently have clearly established goals relating to its work on the *Potable Water Regulation* as it applies to new domestic well owners.

**4.183** The Department of Health and Wellness reported on work done in the area of domestic wells in the 1998-99 annual report. This report included a very brief description of work done. No description of objectives, goals, or results were provided.

**4.184** The report stated that 21 % of the **bacteriological** tests conducted on private water supplies required follow up by Public Health inspectors. (We were unable to determine why the Department only included bacteriological and excluded inorganic test results). When questioned how the Department came up with the 21 % figure, we were informed it was from the Analytical Services Lab computer coding. Any test that was coded as a "re-test" (i.e. not a first time test), was counted as having been followed up by the Department. However, our audit determined that such is not always the case. Some re-tests are not follow up tests by the Department and some re-tests that are "follow ups" by the Department are coded otherwise. In our opinion this is inaccurate reporting. We feel that it would be beneficial for the Department to provide more detailed descriptions of programs in place regarding domestic wells and the number of newly drilled domestic well water test results that were analysed by inspectors in a given year.

**4.185** In our opinion, a reasonable goal might be "to provide **informative** water test results in accordance with regulation to the homeowner for **every** water sample submitted for testing." We have already discussed several issues concerning the lack of clarity in communicating test results and related information to homeowners. This concerns us. Had the Department of Health and Wellness implemented some regular measurement and reporting of program results, it is possible some of these communication problems may have already been corrected. If the Department was measuring to ensure it provided "**informative** water test results in accordance with regulation to the

homeowner for **every** water sample submitted for testing”, presumably staff would have been made aware of the communication issues.

**Recommendation**

**4.186 We recommended the Department of Health and Wellness improve the discussion of its work related to the *Potable Water Regulation* with respect to domestic wells in its annual report. Information should be focused on the degree to which program activities have achieved intended results.**

**Conclusion**

**4.187** This criterion was not met. In our opinion, the government does not have adequate systems and practices in place to ensure relevant and accurate measurement and reporting on the effectiveness of the *Water Well Regulation* and *Potable Water Regulation*. We did not find evidence of clearly defined goals relating to program objectives.

**Domestic well water performance indicators**

**4.188** Our sixth criterion was:

*The Department of the Environment and Local Government should have performance indicators that appropriately address protection of water resources supplying individuals on private wells.*

**4.189** The Department of the Environment clearly defined its goal relating to water quality in its 1999 annual report. The goal is as follows: “To ensure that the quality of the Province’s water resources meets established provincial standards for identified use of the resource (drinking, recreational, aquatic life, etc.).” Part of our audit involved determining if the Department has adequately provided performance indicators as they relate to individuals on domestic wells. In doing this, we determined that the Department addressed only “municipal” water (both surface and ground water) in developing performance indicators and targets. Given that 40% of individuals in the Province rely on private well ground water we find this to be somewhat of an oversight. In our opinion, in keeping with the government’s recommendation to “establish public benchmarks and other measurement devices for programs that they administer”, the Department should consider providing such measurement devices for all programs in place for the protection of groundwater for individuals on domestic wells.

**4.190** Departmental officials have informed us of a broad range of departmental activities that serve to prevent or detect potential threats to domestic well water supply. These would include such things as pesticide and fuel tank storage regulations, control over location of various industrial facilities through operating permits, and rural land-use planning through various means. Notwithstanding this, the Department has informed us that it must be clearly recognized that there is a fundamental responsibility that lies with the homeowner to manage their water delivery systems. Any measurement of the success of the Department of Environment and Local Government’s involvement would have to include examining the responsibilities of citizens and the

government in meeting the overall goal. This would put the issue in context.

**Conclusion**

**4.191** This criterion was not met. We determined that the Department does not have established performance measures regarding domestic well water.

**Recommendation**

**4.192** We recommended that the Department of the Environment and Local Government establish performance measures for the broad suite of programs established to prevent drinking water problems for individuals on domestic well water.

**Departmental response**

**4.193** *In 2001, during its Strategic Planning process, the new department of Environment and Local Government agrees to examine the identification of performance measurement indicators in relation to domestic well water.*

**Comments of the Department of Health and Wellness**

**4.194** The Department of Health and Wellness provided the following comments on its responsibilities for the *Potable Water Regulation*:

*The Department has reviewed the Auditor General's comments on the Domestic Well Water Quality – Potable Water Regulation 93-203.*

*The Standard Operating Procedures (SOPs) for Potable Water, by their nature, address most of the issues within the jurisdiction of the Department of Health and Wellness.*

*The timeframe for development of the SOPs are: the first draft by November 2000, the second draft by January 2001, and the final version completed by March 2001.*

*The joint Department of Health and Wellness – Environment and Local Government issues are anticipated to be addressed by the Policy and Priorities process.*

# Chapter 5

## Department of Finance

### Pension Plan Governance

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# Department of Finance

## Pension Plan Governance

### Background

**5.1** There are eleven provincially sponsored pension plans with approximately 40,700 employees contributing to these plans and approximately 16,800 pensioners receiving benefits. Total pension benefits paid in the plans' most recent fiscal year totalled \$252.2 million. During that year employees contributed \$94.4 million to the plans and taxpayers contributed \$241.8 million. At year end, total net assets of the pension plans were in excess of \$7 billion.

**5.2** Our Office is currently the financial auditor for six of these plans, and in this capacity we have become quite familiar with their operations. In addition we review accounting and financial disclosure issues for all plans in connection with our financial audit of the Province of New Brunswick.

**5.3** Due to the size of the annual contribution of taxpayers' money, the large number of government employees and pensioners depending on the plans for their retirement security and the overall size of the pension operation, we decided that we should undertake a review that is much broader in scope than we have been doing as financial auditors.

**5.4** A review of this nature could encompass many aspects of the pension operation. We believed the most appropriate starting point should encompass governance and accountability. Governance can be defined as the process and structure used to direct and manage the pension operation with the objective of achieving the stated mission or objective. Accountability on the other hand is defined as the obligation to answer for authority and responsibility that has been conferred.

**5.5** We have had experience over the past three years in conducting work on governance and accountability. In 1997 we commented on governance and accountability issues at the Atlantic Lottery Corporation Inc. In 1998 we examined similar issues at the Regional Hospital Corporations and last year we looked at the New Brunswick Liquor Corporation.

**5.6** Our interest in the governance and accountability of the Province's pension plans was also increased by what has been happening on the national scene.

**5.7** In November 1997 the Senate Standing Committee on Banking, Trade and Commerce (Committee) began hearings on the role and governance practices of institutional investors in Canada. Institutional investors included public and private sector pension plans.

**5.8** What the Committee heard during these hearings were comments such as the following:

*“...the governance practices ...of large public-sector pensions should be examined with purpose of building guidelines for improvements....In general there are few well-governed boards.”*

*“....there is a great deal of confusion about what [pension] decisions get made in what capacity, about who is affected by these decisions, about what constitutes prudence, and about what the mission of a pension fund is in the first place.”*

*“There is a long way to go before one can say that all pension plans are well governed.”*

**5.9** One of the submissions presented at the hearings cited a major study involving seventy-nine major U.S. and Canadian pension funds and a Dutch pension fund. The study stated: “We were able to find a statistically significant link between organizational performance and organizational design. Interestingly, and more specifically, we found the most important driver of organization performance .... to be the quality of the board of governing fiduciaries.”

**5.10** The hearings culminated in November 1998 with the issuance of a report called *The Governance Practices of Institutional Investors*. This report made two recommendations relevant to pension plans:

- that the trustees of each pension plan in Canada adopt one of Pension Investment Association of Canada (PIAC), Association of Canadian Pension Management (ACPM), or Office of the Superintendent of Financial Institutions of Canada (OSFI) governance guidelines; and
- that the trustees of each pension plan in Canada report annually to pension plan members setting out how they comply with, or exceed, the adopted set of governance guidelines, and explaining why they do not comply if they choose not to do so.

**5.11** As a result of the Senate Committee report, PIAC, ACPM and OSFI formed a joint task force on Pension Plan Governance. The result of this task force was the development of a common set of pension plan governance principles and a guide (questionnaire) for assessing governance practices.

## Scope

**5.12** Our objective for this project was as follows:

*To conduct a review of the governance and accountability structures in place for pension plans for most employees of the Province and certain other entities as well as members of the Legislative Assembly and to offer recommendations for improvement where appropriate.*

**5.13** While there are eleven provincially-sponsored pension plans our audit project addressed the following eight:

- Public Service Superannuation Plan (PSSA)
- Teachers' Pension Plan (Teachers)
- Members' Superannuation Plan and Members' Pension Plan (Members)
- Pension Plan for Canadian Union of Public Employees of New Brunswick Hospitals (Hospital-CUPE)
- Pension Plan for General Labour, Trades and Services Employees of New Brunswick School Districts (GLT&S)
- Pension Plan for Full Time CUPE 2745 Employees of New Brunswick School Districts (CUPE 2745)
- Pension Plan for Certain Bargaining Employees of New Brunswick Hospitals (Hospital-Certain)
- Pension Plan for Part-time and Seasonal Employees (Part-time)

**5.14** We did not review the Ombudsman Plan and the Pension Plan for Management Employees of NB School Districts because there are no contributors to these plans. And we did not review the Judges' Superannuation Plan because we understand that the plan is being revised.

**5.15** Our review included sending governance questionnaires to each of the pension plan governors as well as to each member of any pension committee. The questionnaire which we used was the one developed by the Joint Task Force on Pension Plan Governance. In addition, we held discussions with various members of the Department of Finance as well as with the Comptroller. We also reviewed the pension plan documents and literature on pension plan governance.

## Results in brief

**5.16** There should be no doubt as to who is the governor of each pension plan. The Province has two pension plans where the governor is not clearly indicated.

**5.17** All four pension plans on which we are reporting have statements of purpose which have been communicated to the plan members.

**5.18** There is a need for a code of conduct to clearly define the fiduciary duty of plan governors and administrators.



**5.19** To some degree, all plans have defined and communicated to members the roles and responsibilities of governors and administrators. However, we have identified areas for improvement.

**5.20** There are shortcomings in the area of performance measurement and reporting in all four plans.

**5.21** Plan governors and administrators need ongoing training in order to fulfil their governance responsibilities.

**5.22** None of the four plans reported any process of self-assessment.

**5.23** Because of its significance, and in view of some of the deficiencies noted in this chapter, we will continue to examine pension governance over the next few years. In particular, we are interested in pursuing the principle related to performance measurement and reporting.

## Governance structure

**5.24** In conducting our work on this project, one of our first challenges was understanding the governance structure, and in particular identifying the governor for each of the plans. The pension governor has been defined by the joint task force as “persons and bodies with the highest level of plan governance authority according to the terms of the plan or applicable legislation”. It is very important that the governor be clearly identified, because this is where responsibility for pension plan performance ultimately rests. Furthermore it is the governor who is expected to take the lead and be proactive in approving appropriate policies, setting pension benefits, and establishing administrative practices.

**5.25** We reviewed the pension plan documents to identify the pension plan governor. As a result of this review we concluded that it was quite clear who the governor was for six of the eight plans. For two of the plans, the plan documents were not explicit as to who was ultimately responsible. Both of the plans in question have Pension Committees and the uncertainty was whether or not the Committees were the governors. We raised this issue with senior staff of the Department of Finance and we subsequently learned that the Department is of the opinion that the Pension Committees for both plans are the governors.

**5.26** The following table summarizes the results of our review.

Plan	Governor
Public Service Superannuation Plan	Chair of Board of Management – Minister of Finance
Teachers' Pension Plan	Chair of Board of Management – Minister of Finance
Pension Plan for General Labour, Trades and Services Employees of New Brunswick School Districts	Board of Management
Pension Plan for Full Time CUPE 2745 Employees of New Brunswick School Districts	Board of Management
Members' Superannuation Plan and Members' Pension Plan (Members')	Chair of Board of Management – Minister of Finance
Pension Plan for Canadian Union of Public Employees of New Brunswick Hospitals	Board of Trustees
Pension Plan for Certain Bargaining Employees of New Brunswick Hospitals	Not explicit
Pension Plan for Part-time and Seasonal Employees	Not explicit

**Observation**

**5.27** There should be no doubt as to who is the governor of each pension plan. This responsibility should be clearly stated in the plan documents. Explicit reference should be made for the Pension Plan for Certain Bargaining Employees of New Brunswick Hospitals and the Pension Plan for Part-time and Seasonal Employees.

**Questionnaire results and reporting**

**5.28** We have summarized our observations around each of the six governance principles developed by the Joint Task Force. The six principles are as follows:

- pension plans should have a clear mission;
- pension plans have a primary fiduciary duty to the plan and its beneficiaries;
- responsibility/accountabilities should be allocated in order to clearly identify stakeholders and define roles;
- performance should be measured and reported;
- individuals involved in pension plan governance should be qualified and knowledgeable; and
- there should be a process of governance self-assessment.

**5.29** These principles are ones which, in the opinion of the Task Force, “are essential to achieving effective governance of a pension plan. There are many methods for implementing these principles. The value of good governance comes from reflecting on each and taking a considered stance.”

**5.30** Our observations are based solely on the results of the questionnaires returned from pension plan governors and pension committee members. In each case where either the Board of Management or Minister of Finance was the governor, the questionnaire was completed by the Deputy Minister of Finance, acting on behalf of the governor. We did not attempt to verify the accuracy of any of the responses received.

**5.31** We decided that our public reporting should only be directed towards those plans where government, through either Board of Management or the Minister of Finance, is the governor.

**5.32** The four plans on which we are reporting are:

- Public Service Superannuation Plan (PSSA)
- Teachers' Pension Plan (Teachers)
- Pension Plan for General, Trades and Services Employees of New Brunswick School Districts (GLT&S)
- Pension Plan for Full Time CUPE 2745 Employees of New Brunswick School Districts (CUPE 2745)

**5.33** The following schedule provides recent data on these four plans.

#### *Pension plan data*

<b>Plans</b>	<b>Pensioners</b>	<b>Contributors</b>	<b>Net Assets \$(millions)</b>
PSSA	8,054	18,403	3,178
Teachers	5,357	9,095	3,020
GLT&S	912	1,913	152
CUPE 2745	101	532	29

**5.34** The Minister of Finance is also the governor of the Members' plans. However, these plans have no assets, and all contributions and pension payments are made through the Consolidated Fund of the Province. Accordingly, the governance responsibilities for these plans are minimal.

**5.35** While we are not reporting specifically on the other plans, we make reference to them in particular instances.

## **Principle 1**

### ***Importance***

#### **Pension plans should have a clear mission**

**5.36** A documented mission is extremely important because it should clearly define why the plan exists. It reflects the reasons for establishing and maintaining the plan and it should be clearly distinct from mission statements of the plan sponsor and any participating unions. A mission statement facilitates the adoption of measurable goals against which the plan, its governor's and administrator's performance is measured. If there is no stated mission for the pension plan, there would be no

common focus and any stated goals or objectives, if they did exist, would have limited meaning.

***Does the pension plan have a mission statement?***

***Responses***

**5.37** The governor for two of the plans indicated that they have a statement of purpose within their plan document. The governor's responses from GLT&S and CUPE 2745 indicated that their statement of purpose was "...to provide benefits to eligible employees within the specific terms and provisions of the plan upon termination and/or retirement." The response from CUPE 2745 acknowledged that this was not a formal mission statement. In the two largest plans, PSSA and Teachers, the governors' responses indicated a statement of purpose is not reflected in the plan document but is contained in employee booklets and brochures provided to members. In both cases the purpose states "to provide financial security to plan members."

***Observation***

**5.38** The first step towards establishing a good governance structure is to have a clear statement as to why the plan exists, one that facilitates the adoption of measurable goals against which the plan, its governor's and administrator's performance is measured.

**5.39** We applaud the fact that a statement of purpose is reflected in the plan document for the GLT&S and CUPE 2745 plans. However, the governor for these two plans may want to consider a statement that would encompass a broader perspective than what is provided in the plan document as a purpose. A broader perspective could include concepts such as "delivering above average benefits", or "delivering benefits at lowest cost possible".

**5.40** We also observed that the statement of purpose for the PSSA and Teachers plans "to provide financial security to plan members" could be interpreted to mean that the plan is taking on more responsibility than intended. In developing a mission statement for these plans the governor may want to consider the extent of responsibility the plans are prepared to assume. We encourage the governor of these two plans to include the purpose or mission statement in the plan documents.

***Has it (mission statement) been communicated to plan members?***

***Responses***

**5.41** Although there are no formal mission statements, the plan governor for three of the plans stated that contributing members receive employee booklets and annual benefit statements outlining the purpose of the pension plan.

***Observation***

**5.42** The responses to this question were very encouraging. We like the fact that the purpose in the majority of the plans was communicated to the plan members.

**Principle 2****Pension plans have a primary fiduciary duty to the plan and its beneficiaries****Importance**

**5.43** Pension plan governors and administrators owe a duty of loyalty to the plan and its beneficiaries over and above any constituency interests. To clarify what that entails, an internal code of conduct should be documented for each pension plan covering fiduciary duty to plan members, benefits administration and funding, restrictions on types of investments, conflict of interest, and other key areas. Compliance with this code of conduct should be monitored on a regular basis. Having a code of conduct, and monitoring compliance with it regularly, helps to ensure that plan assets are protected, and that investment rates of return are maximized within acceptable levels of risk.

***Does the plan have articulated roles and responsibilities for the governor(s) and administrator(s)?*****Responses**

**5.44** Based on the governors' responses, all four plans outline the roles of the governor and plan administrator in the plan document. In addition, two of the plans, GLT&S and CUPE 2745, have Pension Committees and their duties are set out in the plan document. We were informed, however, in the governor's response for the Teachers and PSSA plans that, while there is provision in the plan documents for the appointment of a Board to assist the Minister in the administration of Act, "the Board has not been constituted."

**Observation**

**5.45** We noted that all four of the governors' responses indicated that the plans have attempted to articulate the roles and responsibilities for the governor and the plan administrator(s). We suggest that consideration be given to establishing the Boards referred to in the plan documents for the Teachers and PSSA, provided of course the role and responsibilities for the Boards are meaningful and can be clearly articulated.

***Are there control mechanisms in place to protect the plan, the governors and administrators from conflicts of interest, lack of understanding and dishonesty?*****Responses**

**5.46** All of the responses identified a number of control mechanisms. For instance the PSSA and Teachers response referred to "mechanisms set in legislation, mechanisms set in computer systems, the annual audit by provincial Auditor General, the annual report tabled in legislature (within Dept. of Finance annual report), and the NBIMC annual report."

**5.47** The response from CUPE 2745 and GLT&S stated: "There are control mechanisms which are utilized and common practice to ensure that the plan will be able to meet its promise to provide benefits to its members upon termination and/or retirement." The response then went on to refer to control mechanisms such as collective agreements, the

pension plan text, the tri-annual actuarial valuation, policy investment guidelines and the Administrators' Report.

**5.48** Two pension committee respondents for CUPE 2745 indicated that control mechanisms might not be specifically documented.

### **Observation**

**5.49** The responses from the governors indicated there were a variety of control mechanisms in place. We noted however that there was no reference to a code of conduct.

**5.50** We feel there should be a code of conduct for the plan governors and administrators. The code of conduct should clearly define the fiduciary duty of the governor and administrators to the plan and its beneficiaries and set a framework within which the plan governor and plan administrators can operate to meet the objectives of the plan. Such documentation should define the respective roles and responsibilities of the plan governor and administrators and the division of duties between them. This would eliminate any uncertainty about their roles and the stakeholders to whom they are accountable.

**5.51** We noted in the response from the Hospital – CUPE plan, which is administered by a Board of Trustees, references to subsections in their plan document that talk about dishonesty and conflicts relating to trustees and the general duties and powers of the trustees.

### **Principle 3**

#### **Responsibilities/accountabilities should be allocated in order to clearly identify stakeholders and define roles**

### **Importance**

**5.52** Because of their importance in the success of the plan, and in order to facilitate performance measurement, the terms of reference for each participant in the governance, management and operations of the pension plan should be clearly documented in the plan document. There are five key areas of responsibility in a pension plan and the pension document should clearly identify who is responsible for each area. These areas are:

- compliance with legislation;
- plan funding;
- asset management;
- benefit administration; and
- communication

**5.53** The plan governor or plan administrators should define the responsibility of each participant. Without responsibilities being clearly defined, important work may not get done, overlap can occur and it is extremely difficult, if not impossible, to hold participants accountable. In practice, many of these responsibilities may be delegated, but ultimate accountability remains with the participant who was assigned responsibility. For example, assume that the governor has been assigned responsibility for paying benefits. The governor may delegate the responsibility for paying benefits to a pension committee, who in turn

may assign this authority to a senior officer, who in turn may assign it to a more junior officer or to an external agent. However, accountability for paying benefits remains with the governor. It is not transferred by this delegation.

**5.54** Additionally, the stakeholders to whom each participant is accountable should be identified. And, to enhance communication, the names of the plan governor, the plan administrator, and other pertinent participants should be disclosed to stakeholders. Accountability is enhanced through disclosure and transparency.

**5.55** In small plans, there may be a smaller number of parties involved, but the principle of allocating authority and accountability remains the same.

***Have the parties responsible for each of the following areas been clearly defined:***

- ***Compliance with legislation***
- ***Plan funding***
- ***Asset management***
- ***Benefit administration***
- ***Communication***

## **Responses**

**5.56** The responses from the governors of the PSSA and Teachers plans indicated that there are parties responsible for all key areas of pension plan operations, although the responsibility is not always clearly identified within the plan legislation. However, the responses from the PSSA Consultation Committee did not agree. The committee members felt that the parties responsible for each of the key areas were not clearly identified. They responded by saying things like, “I have not seen anything...”, “I am not aware of...” and “Not to my knowledge.”

**5.57** For the GLT&S plan the governor’s response indicated that parties have clearly been assigned responsibility for the majority of the key areas of pension plan operations. There were however two exceptions, both in the plan funding area. One was that the responsibility for approving the actuarial method and assumptions had not been clearly established. The plan governor stated: “The Actuary develops and recommends to Board of Management as reported by the Actuarial Valuation Committee the actuarial method and adoption of assumptions. Board of Management responsible for approval.” However, a number of respondents from the Pension Committee indicated that the area of plan funding is the responsibility of the Pension Committee. Secondly, both the governor and members of the pension committee indicated that the parties responsible for projecting the pension plan’s cash flow have not been identified.

## **Observation**

**5.58** From the responses received we have identified two areas where improvement could be made. The first one is to ensure that

responsibility for each of the five key areas is clearly identified in the plan document. This should resolve the problems identified in the PSSA and Teachers plans, particularly in the former where there was some uncertainty as to who was assigned responsibility. Secondly, improvements can be made in the GLT&S plan by clearly assigning parties to be responsible for approving the actuarial method and assumptions and by projecting the pension plan's cash flow.

***Are there clear written terms of reference for each of the parties responsible for the functions below?***

- ***Compliance with legislation***
- ***Plan funding***
- ***Asset management***
- ***Benefit administration***
- ***Communication***

***Responses***

**5.59** We are pleased to report that for two of the plans the governors' responses stated that there are clearly written terms of reference for each of the five key areas of responsibility. The same cannot be said for the two largest plans, PSSA and Teachers.

**5.60** The response, from both of the plans, to the question in the area of legislative compliance stated: "No, only sections of Act that designate Minister responsible for administration of Act. Exempt from the PBA (*Pension Benefits Act*).” In the key area of asset management both the PSSA and Teachers plans rely on a provincial Crown corporation, the New Brunswick Investment Management Corporation (NBIMC), for the terms of reference.

**5.61** The pension consultation committee members for the PSSA plan either have not seen any written terms of reference for the parties responsible for the key areas or were unsure how responsibility is communicated to the parties.

***Observation***

**5.62** There should be clear written terms of reference for all parties responsible for each of the key areas. To promote accountability it is important that these terms of reference be fully disclosed so that all plan members and parties are aware of their existence. On the matter of legislative compliance it is surprising that the government pension plans are exempt from the *New Brunswick Pension Benefits Act*, legislation that is intended to set operating standards for all pension plans in the Province. And while there are terms of reference for the key area of asset management for both the PSSA and Teachers plans, they appear to have been established by the investment manager, NBIMC. Such terms of reference should be approved by the governor.



***Are the names of governors and day-to-day administrators in charge disclosed to plan members?***

**Responses**

**5.63** The governor's response from the PSSA and Teachers stated: "Yes, via legislation and communication to employees." In the other plans, GLT&S and CUPE 2745, the responses stated, "yes and no." This was explained by the following statement:

*In the Pension Plan text the Governors are identified as the Board of Management. Company names of plan administrators are disclosed to membership via employee booklet (whom to call with inquiries). Specific names are not always disclosed, with the exception of the Benefit Counsellors assigned to specific employers, so the employees and employers always have a contact name.*

**Observation**

**5.64** We are pleased to note that all four plans stated that the name(s) of the governor(s) and relevant administrator(s) are disclosed to pension plan members. We believe this enhances accountability.

**Principle 4**

**Importance**

**Performance should be measured and reported**

**5.65** Strategic objectives (pre-determined goals) should be identified for each pension plan. These objectives should be directly linked to the mission statement of the pension plan, should be measurable, and should cover all significant aspects of the plan. Objectives might be set for funding, administrative performance, investment performance, and other areas. They should be tailored to the specific requirements of a particular plan and should be adjusted over time in response to changes in stakeholder needs. Annual performance targets should be set for each of these objectives, and the results of performance measurements, complete with explanations where performance targets have not been met, should be reported to the appropriate stakeholders. Compliance with legislation should also be monitored.

**5.66** It is normally the role of the plan's governor to ensure that strategic objectives and appropriate annual performance targets are set, that performance is measured and that the results are reported to stakeholders. It should also be the responsibility of the governor to take action when performance targets have not been met.

**5.67** The governor is ultimately accountable for pension plan governance. As such, it is important that the governor be involved in setting some of the more critical strategic objectives and performance targets. For example, since asset management is critical to the ongoing financial health of the pension plans, the governor should be included in setting benchmarks in areas such as rates of return objectives, risk tolerance and asset mix.

***Are there clear and objective measures of performance of the following areas?***

- ***Compliance with legislation***
- ***Plan funding***
- ***Asset management***
- ***Benefit administration***
- ***Communication***

***Responses***

**5.68** In all of the plans the responses from the governor indicated that in at least three of the five areas there were not clear and objective measures of performance.

**5.69** The responses from the governor of PSSA and Teachers indicated that there were no clear and objective measures of performance for compliance with legislation because they were exempt from the *New Brunswick Pension Benefits Act*.

**5.70** As for ensuring the adequacy of plan funding, responses from all four governors indicated that funding policies did not exist, but they were under development in the case of PSSA and Teachers.

**5.71** The responses from the governors were split on the matter of clear and objective measures for asset management. Both the GLT&S and CUPE 2745 plans were of the view that there were clear and objective measures. They responded that investment policies and objectives were set by “Treasury and Debt Management in conjunction with approval from Board of Management.” For both the PSSA and Teachers plans the governor stated: “NBIMC Board sets and measures these”. There is no mention of approval being required by the plan governor. Of particular concern are the results of the responses received from the pension consultation committee for the PSSA plan. They indicated that they were not aware of any measures of performance being in place.

**5.72** The governor of all four plans indicated there were shortcomings in measuring performance in the area of benefit administration. Two of the plans, Teachers and PSSA, indicated that measures of performance were either under development or under consideration for development. For the other plans responses from the governor and pension committee members commented on shortcomings such as lack of standards for enrolling members, establishing and maintaining member records and calculating and processing benefit payments.

**5.73** In general all responses indicated that more could be done in establishing performance measures for communication of relevant pension information to pension plan stakeholders.

**Observations**

## Legislative compliance

**5.74** The response from the PSSA and Teachers plans would suggest that compliance is not an issue because they are exempt from the *New Brunswick Pension Benefits Act*. We disagree because in our opinion all four plans require compliance with their own pension document as well as with the federal *Income Tax Act*. This is a fundamental responsibility. The measure of performance here is quite simple: each plan should comply with all requirements of the plan document and any relevant legislation.

## Plan funding

**5.75** Generally it is the role of the plan governor or administrator to ensure that there are clear and objective measures of performance in the following three funding areas: establishing funding policies for the pension plan, approving the actuarial method and assumptions and projecting the pension plan's cash flow. To the extent this is not being done, and judging by the responses received it is not, action should be taken by the governor.

**5.76** For the PSSA and Teachers plans, should the governor or administrator continue to delegate the authority to the Actuarial Valuation Committee for approving the actuarial method and assumptions, it is important for the governor and administrator to realize that the responsibility is not transferred. Thus the governor or administrator must ensure there is a supervisory process in place to approve the actions of the Committee.

## Asset management

**5.77** We would like to draw particular attention to the area of asset management for the PSSA and the Teachers plans. Currently the NBIMC is involved in establishing investment policies and objectives, and monitoring compliance with these investment policies. These very important policies have not been approved by the governor.

**5.78** We were pleased to note that for the other two plans these important policies were approved by the governor, the Board of Management, with input provided by the Treasury and Debt Management section of the Department of Finance.

**5.79** In all cases we believe that the governor should be involved in setting clear and objective measures of performance as well as providing the final approval for such measures.

## Benefit administration

**5.80** Generally the plan governor or administrator should ensure that there are clear and objective measures of performance for each of the following areas:

- establishing service standards;
- calculating and processing benefit payments;
- enrolling members;
- establishing and maintaining member records;
- creating and distributing member communication and education materials;

- monitoring accuracy and timeliness of major services to members against established performance objectives; and
- remitting contributions to the custodian.

**5.81** We have noted that there is a lot of room for improvement in this area.

***Is there a process in place to prepare regular reports to appropriate stakeholders and evaluate the attainment of performance in the following areas?***

- ***Compliance with legislation***
- ***Plan funding***
- ***Asset management***
- ***Benefit administration***

## **Responses**

Compliance with legislation

**5.82** The governor's response for the PSSA and the Teachers indicated that reporting on compliance with legislation was not applicable because "PSEBB (Public Service Employee Benefit Branch) monitors through discussions with Revenue Canada." The governor's response for GLT&S and CUPE 2745 indicated that they did not report on compliance because they were exempt from the *Pension Benefits Act*. They did recognize however that there were specific references in their plan document to provisions of the *Income Tax Act*.

Plan funding and asset management

**5.83** The governor for each of the four plans indicated there is a process in place to prepare regular reports to appropriate stakeholders and to evaluate the attainment of performance in the area of plan funding and asset management. The response from the governor for the PSSA and Teachers plans in relation to asset management stated: "NBIMC distributes 'annual reports' to stakeholders and members." The responses from the pension committees for the GLT&S and CUPE 2745 plans did not agree with the governor. They stated that it was their belief that there is no process in place to prepare regular reports to appropriate stakeholders and to evaluate the attainment of performance in the area of plan funding and asset management.

Benefit administration

**5.84** The response from the governor of both PSSA and Teachers plans stated that there was no reporting on benefit administration measures "other than Department of Finance annual report, newsletters and general memoranda." The two other plans responded positively to the question.

## **Observations**

**5.85** The key to reporting on performance measures is to have good measures to start with. So to the extent that we identified shortcomings in the establishment of performance measures earlier in this chapter, we have reservations concerning the effectiveness of any reporting. For reporting to be effective, it should be related to measures approved by the governor. Judging from the response, this is the case when the governor of the GLT&S and CUPE 2745 plans reports to its

stakeholders on the performance of the investment managers. The case is different for the PSSA and Teachers plans where the governor only receives the investment manager's (NBIMC) annual report. When the governors of these two plans report to their stakeholders, they are reporting on performance measures approved by NBIMC, the investment manager.

**5.86** In general we believe that reporting on performance is an area where improvement can be made. In addition to the observation made above we note there is little reporting on compliance with legislation, progress made towards plan funding and the effectiveness of the administrator. Of equal concern is the inconsistency in response between the pension committees and the governors for the GLT&S and CUPE 2745 plans. These situations should be investigated.

## **Principle 5**

### **Individuals involved in pension plan governance should be qualified and knowledgeable**

#### ***Importance***

**5.87** Each person involved in governing and administering the plan should have, or acquire, knowledge and skills that are current and appropriate for the responsibilities and accountabilities they carry. Individuals responsible for the governance of the plan should be provided with orientation sessions and appropriate training to assist them in fulfilling their responsibilities.

#### ***Does the plan have criteria and a process for selecting the plan governors?***

#### ***Responses***

**5.88** For all four plans the responses from the governor indicated that the selection process for the plan governor was very clear. For the PSSA and Teachers plans, legislation establishes the Minister of Finance as the governor and for GLT&S and CUPE 2745, members of the Board of Management are the governors.

#### ***Observation***

**5.89** In each of these plans there is no opportunity to select the plan governor since the governor is set by legislation.

#### ***Are the individuals responsible for the governance of the plan provided with training and orientation to fulfil their responsibilities?***

#### ***Responses***

**5.90** The responses from PSSA and Teachers plan governors both stated: "Minister receives orientation and has professional staff. NBIMC has training available to Board members and staff." The responses from GLT&S and CUPE 2745 indicated that members of the Board of Management are not provided with any training that would help them fulfil their governance responsibilities beyond an initial orientation session.

#### ***Observation***

**5.91** While the response from the governor for PSSA and Teachers indicates there is an orientation for the Minister, there is no reference to on-going training. It is important that on-going training build on the

orientation by providing information on the principles of governance and that such training be given to the Minister of Finance and Board of Management.

**5.92** It is also important that formal orientation and training be provided to all individuals involved in governing and administering a pension plan. This will enable those individuals to fulfil their responsibilities to the plan.

## Principle 6

### Importance

### There should be a process of governance self-assessment

**5.93** It is very important that a pension plan be effectively governed. An important step that can be carried out to help improve pension plan governance is a self-assessment exercise. The governance process, including reporting to the appropriate stakeholders, should be reviewed and modified over time to ensure its effectiveness. It is important that this review assess the effectiveness of the individuals (administrators, investment managers, agents, etc.) involved in the process on a regular basis. Such reviews, if done conscientiously, serve to challenge established methods and thought patterns, thereby improving the effectiveness of the governance process.

*Are there processes and criteria in place to allow the individuals responsible for the governance of the plan to assess the effectiveness of the plan's governance, and the individuals involved in it, on a regular basis?*

### Responses

**5.94** As indicated by the governors' responses, none of the four plans reported any process of self-assessment.

### Observation

**5.95** As with any good governance model there should be an assessment on how well things are doing. At the highest level this assessment would examine the effectiveness of the current structure of having the Board of Management or Minister of Finance as the plan governor, and it would also examine the effectiveness of all administrators (investment managers, actuaries, benefit administrators, etc.). Based on the responses, governance can be improved in all plans by clearly articulating the processes and the criteria to be followed in undertaking such a review. Such a review should be undertaken on a regular basis.

### Departmental comments

**5.96** The Department of Finance provided the following general comments on our final report:

*We wholeheartedly subscribe to the underpinnings of the [Senate Committee] report and the questionnaire, but have not completely grasped all the concepts that they raise. The explanation that the "plan governor refers to the individual or body that has been assigned the highest level of plan*

*governance authority... ” seems to be circular in nature and not totally clear.*

*We do agree that there is room for improvement in the Province’s governance practices and that awareness of this issue could be more widespread. We appreciate the work done by the joint task force and the tools that they have provided to those involved with pension plans, to assist in ensuring that governance practices are at an advanced level.*

# Chapter 6

## Department of Natural Resources and Energy

### Private Forest Lands

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# Department of Natural Resources and Energy

## Private Forest Lands

### Background

**6.1** New Brunswick is Canada's most forested province with 85 % of its land area covered with forests. This forest is an important legacy. In our opinion it is the government's duty to ensure that forest resources are properly managed to provide a sustainable forest resource for all citizens.

**6.2** Three significant groups of owners currently manage the forests of New Brunswick. The Crown is the largest with ownership of 47 % of New Brunswick's productive forest lands. Private woodlot owners are the second largest group with 30 %, followed by the mills and wood processors with 21 %. Besides representing 98 % of the productive forest these groups are also significant since they all have somewhat different goals for the resource<sup>1</sup>.

**6.3** The majority of the Crown forest lands are managed by the provincial government through ten licensee agreements with forest companies. The goals for Crown lands are contained in section 3(1) of the *Crown Lands and Forests Act* (the Act). This section of the Act lists several goals for the Crown lands including fish and wildlife habitat maintenance and harvesting and renewal of timber resources.

**6.4** Lands owned by mills and wood processors are commonly referred to as *industrial freehold*. The main goal for these lands is to maximize their value to the wood processing facilities.

**6.5** Private woodlots are generally smaller tracts of land than industrial freehold. Woodlot owners maintain their land for a variety of uses such as recreation, tourism and/or eventual harvest. These woodlots are owned by a wide variety of New Brunswickers with different goals, resources, and management abilities.

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1. The percentages have changed slightly as a result of recent forest land purchased by the Crown. The new percentages are not yet available.

## Scope

**6.6** The overriding objective of all the stakeholders in the forest industry is to increase or sustain the benefits being derived from the forest resource, however those benefits might be defined. The last decade has seen a great increase in the demand for, and value of, forest products. This has put great pressure on the resource and highlighted the need for careful planning to ensure these benefits can be maintained. Critical areas include the capacity of current processing facilities, a sustainable supply of timber and the anticipated future demand.

**6.7** Due to the significance of the industry to the social and economic well being of the Province we decided to carry out a project in this area. Section 3(2) of the *Crown Lands and Forests Act* states that “The Minister shall encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province”. Therefore, we decided to undertake a review of the primary source of supply first.

**6.8** In the course of conducting this audit we reviewed legislation in New Brunswick as well as Nova Scotia and Maine. In addition we interviewed representatives of all seven forest products marketing boards, representatives of two key wood processors, the New Brunswick Forest Products Association, the New Brunswick Federation of Woodlot Owners and the Department of Conservation in Maine. We communicated closely with departmental employees in Forest Management and the Forest Products Commission and addressed a board meeting of the Forest Products Commission. Our senior field auditor also attended a conference on forest certification held in Fredericton in February 2000.

**6.9** Our objective was to determine if appropriate systems and practices are in place “to encourage the management of private forest lands as the (sustainable) primary source of timber for wood processing facilities in the Province.” In connection with our responsibilities for “effectiveness” reporting, we also wanted to know if adequate measures are in place to determine if the goals and objectives of the program are being achieved.

**6.10** To assist us in conducting our work we developed the following five audit criteria:

- *the Crown Lands and Forests Act and Regulations should clearly define the Department’s responsibilities for private forest lands;*
- *the Department should have appropriate goals and objectives to carry out its responsibilities for private forest land as assigned under the Crown Lands and Forests Act and Regulations;*
- *programs, policies and procedures should be consistent with the Crown Lands and Forests Act and Regulations for private forest lands;*

- *the Department should monitor the results of programs that address private forest land and take corrective action when necessary; and*
- *the Department should have procedures in place to report on the effectiveness of private forest lands programs.*

## Results in brief

**6.11** The *Crown Lands and Forests Act* requires attention. Some of its definitions and provisions are vague and confusing. As a result, the Department has not been able to articulate a clear mandate for private forest lands in the Province.

**6.12** There are a number of other Acts having an impact on private forest lands. The Department should consider whether all private forest land legislation should be incorporated into one Act.

**6.13** The Department has not established goals and objectives relating to its responsibilities for private forest lands.

**6.14** The Department's programs are consistent with its governing legislation. However, we noted a lack of accountability by landowners for silviculture funding provided by the Department. Further, the proposed elimination of the Department's Forest Extension services could have an adverse impact on the management of private forest lands.

**6.15** The Department is not obtaining timely and accurate information to enable it to monitor harvesting activities on private forest lands. It has no tracking system for wood that is not sold through a marketing board, and it does not monitor out-of-Province sales from private forest lands.

**6.16** The Department's annual report does not contain sufficient information to enable a reader to assess the effectiveness of the Department's private forest lands programs.

## Mandate and responsibilities

**6.17** Our first criterion was:

*The Crown Lands and Forests Act and Regulations should clearly define the Department's responsibilities for private forest lands.*

**6.18** The first criterion questions whether the *Crown Lands and Forests Act* has given the Department a clear indication or mandate as to what its involvement should be in relation to private forest lands. The first step in determining what goals are to be pursued and how they should be achieved is to have a clear idea of what mandate has been legislated.

**6.19** As well as determining the Department's clear responsibilities, we also wanted to determine if the Act has sections in which the direction given to the Department is unclear. Unclear mandates can cause departments to spend considerable time and resources in areas

where legislation does not direct them. Unclear legislation could also cause an organization to overlook or inadequately address areas where involvement was intended.

**6.20** Further, we also wanted to determine if other legislation has a significant impact on the Department's responsibilities for private forest lands. The criterion focuses on the *Crown Lands and Forests Act*, stating that Act "should clearly define" the Department's responsibilities. In our opinion, one component of clearly defining, is completeness. That is, if other legislation has a significant role in defining the Department's mandate, then it may be said that the *Crown Lands and Forests Act* does not clearly define the Department's responsibilities. Other legislation must be consulted.

***Our conclusion on the criterion***

**6.21** In our opinion, this criterion is partially met.

**6.22** Under section 3(2) of the Act, the Minister does have the mandate "to encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province." In fulfilling this mandate the Minister can "with the approval of the Lieutenant-Governor in Council, .... initiate programs for such purposes."

**6.23** And there are some very specific responsibilities assigned by the *Crown Lands and Forests Act* to the Minister. These include the monitoring of operating plans and, especially in the case of private woodlots and freehold lands, the monitoring of planned and actual harvest. The Minister also has a responsibility to review the price charged for Crown timber to ensure it is at fair market value. This has an obvious impact on "encouraging management of the private forest lands".

**6.24** But, despite this, there are a number of factors that prevent us from reaching a positive conclusion. To begin, the Act is rather vague in some of its definitions, particularly around the terms private forest lands, private lands and historic market share. As well, the Act could be clearer in its use of the term "primary source". In addition, it has very little to provide in terms of specific responsibilities for private lands of 5,000 hectares. There is also the possibility of an inherent conflict between the terms proportional supply and sustained yield.

**6.25** Further, there are three other significant pieces of legislation which give the Minister responsibility for private forest lands. Finally, despite what seems like a clear, overarching mandate with several specific responsibilities, staff administering the Act appeared to be uncertain about the Department's mandate with respect to private forest lands. They appeared to be limiting their efforts largely to private woodlots.

**Defining private forest lands**

**6.26** The term “private forest lands”, although present in the Act, is not directly defined by the legislation. Even though it is not defined, the term would appear to be differentiating all private forest land from public or Crown land.

**6.27** Section 3, which is found in the “General Administration” section of the Act, appears to be a statement of “purpose” or “mandate”, such as is common in a number of Acts. This section has two distinct subsections. The first, subsection 3(1), outlines six broad responsibilities for the Minister for Crown land. The second, subsection 3(2), outlines the Minister’s broad mandate for private forest lands – that is, the non-Crown land. In other words “private forest lands” would be virtually anything that is not public, and owned by the Crown<sup>1</sup>.

**6.28** The Act does refer to three distinct categories or types of non-Crown land that would seem to make up all of what could reasonably be referred to as private forest lands. Those three categories are:

- private woodlots;
- freehold lands; and
- private lands consisting of an aggregate of 5,000 hectares owned by one person.

**6.29** In our opinion, however, the Department may need to make some changes to the Act to clarify definitions. Firstly, it should be noted that the words “more than” or “at least” have apparently been omitted inadvertently from the definition of the third component of private forest lands – private lands consisting of an aggregate of 5,000 hectares owned by one person. It is unlikely there are too many landowners in the Province owning exactly 5,000 hectares of forest property.

**6.30** Secondly, the definition refers to “one person”. The land could be controlled by a group of individuals, such as a company or a non-profit organization, and have the same impact on the forest and its ecosystems. The term “one person” should be replaced with “one person or jointly held by a group of persons or company.”

**6.31** The term “private lands” appears to be used by the Act in different ways. In one instance “private lands” is a combined term representing the private woodlots and the lands of 5,000 hectares owned by a single person. Elsewhere in the Act, it appears that the term “private lands” may be being used synonymously with the term “private forest lands”. Section 5 in talking of the duties of a forest service officer notes the officer “may enter upon private lands whenever necessary for the proper performance of his duties under this Act.” Since that section

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1. We are aware that the federal government does own approximately 1% of the forest land in the Province. But for purposes of simplicity, that land is excluded from the discussion in this section.

does not mention freehold land separately, we have assumed that the intent is that the forest service officer can enter any of the three components of private forest land. It would seem illogical to restrict the access of the forest service officer from one component of private forest lands.

**6.32** Similarly, in a section of the Act dealing with protection of the forest, it notes “the Minister may protect forests, whether on Crown Lands, other lands vested in Her Majesty or private lands, from fire, insect and disease.” The provision is there so that the Minister may protect all forests in the Province. A fire does not stop at the border of Crown and freehold land.

### **Background and development of mandate**

**6.33** The *Crown Lands and Forests Act* was assented to in 1980 after much consultation. One key point of the resulting consensus was that the Crown should be the “residual” supplier of timber for wood processing facilities in New Brunswick.

**6.34** This principle was inherent in subsection 3(2) of the Act which at that time stated:

*The Minister shall encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province, and, with approval of the Lieutenant-Governor in Council, may initiate programs for such purposes.*

**6.35** This was the section of the Act that generated the Department’s overall mandate concerning private forest lands from 1980 to 1992. The reference to “consistent with subsection 29(7.1)”, which appears in the subsection today was added in 1992, and we will comment on that later.

### **Meaning of “primary”**

**6.36** What is meant by “primary” in section 3(2) is not defined in the Act. The *Gage Dictionary of Canadian English* defines primary as “first in time; first in order” and also as “first in importance, chief”. Using the words of “first in importance, chief” as the meaning for primary, then the supply from all three categories of private forest land would be the chief source of timber for wood processing facilities in the Province. This is consistent with the “Crown as residual” concept under which the Act was developed. It is also consistent with our observations in our 1988 *Report of the Auditor General*. In our section on *Forest Management* in that Report, we discussed the various assumptions the Department used in determining the level of silviculture activities on Crown lands. One of the key assumptions in the Department’s model was that “Crown lands will be used as the residual supply.”

**6.37** The respective roles of private forest land as primary and Crown land as the residual make sense when one considers the multiple uses of Crown land mandated under the Act. The Minister is responsible “for the development, utilization, protection and integrated management of

the resources of Crown Lands.” Subsection 3(1) lists six different uses for the Crown land. And only one of these refers to the harvesting and renewal of timber resources on Crown lands. Others include habitat for maintenance of fish and wildlife, public access, and forest recreation. The Crown, then, must balance a variety of forest objectives.

**6.38** From 1980 to 1992 the private forest lands were in fact the major or primary supplier except for two years. In 1988-89 and 1991-92 private forest lands supplied 50% of the timber to provincial wood processing facilities and the Crown (public) supplied 50%. We examined timber utilization statistics from 1960 to 1980 as well. During that twenty-year period, the Crown exceeded the supply from the private forest lands in only three years. In other words, prior to 1992, it was clear that, taken together, the private forest lands were the primary source of timber for wood processing facilities in the Province – both in the Act and in fact.<sup>1</sup>

**6.39** Prior to 1992 the Department required that contracts with private woodlot owners (through their representatives, the seven marketing boards or Producer Associations) be in place before it permitted harvesting of Crown lands by wood processors. Or, alternatively, the parties had to at least be engaged in an arbitration process before the Crown would grant access to its wood.

**6.40** Up until 1992 this “private woodlots first” was actually specified in subsection 29(5) of the Act. At that time the subsection read as follows:

- 29(5) An operating plan shall, for a five-year period*
- (a) identify, in the following order of priority, the proportions of wood supply to be used in any wood processing facility of the licensee or any sub-licensee*
    - (i) from Producer Associations in the Province,*
    - (ii) from freehold lands owned or controlled by the licensee,*
    - (iii) from other sources within and without the Province,*
    - (iv) through exchanges of wood or wood products,*
    - (v) from Crown Lands;*

**6.41** In 1992, the words “in the following order of priority” were removed from subsection 29(5). In effect, the pre-1992 wording specified an order or priority of supply, with the private woodlots (as represented by the Producer Associations) first on the list, followed by freehold lands, and then other sources. Other sources would presumably

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1. Since 1992 the trend has continued. In all but one year the private forest lands have supplied over 50%.

include the private lands of 5,000 hectares. The Crown wood came last. Up until 1992, private forest lands were not only “first in importance”, they were also “first in time; first in order”. They were primary in both senses of the word.

***Complications resulting from  
1992 amendments to Act***

**6.42** This “private woodlots first” situation gave the private woodlots and the seven marketing boards that represented them negotiating power to aid in the setting of timber prices. Our understanding is that in some cases this negotiation and arbitration process was perceived as too cumbersome by the wood processing facilities. In the 1992 debates in the House on the proposed amendments to the Act, the Minister of the day said “Under the old Act there were two or three instances where there were disputes with regard to the law.”

**6.43** Our understanding is that wood processing facilities argued that the threat of restricting their access to Crown wood created an unfair advantage for the marketing boards. Given that the Crown is the single largest supplier – that is, it clearly supplies more than any of freehold lands or private woodlots individually and supplies almost the same amount as the sum total of the two taken together- many mills cannot operate without Crown wood. By effectively barring access to that wood until the private woodlots had contracts or arbitration was in place, the Crown had given the marketing boards an important bargaining chip.

**6.44** Of course, one might argue that this is exactly how the Act should have been working. The Crown should not dominate the market since it is to “encourage private forest lands to be the primary source of supply.” Given its huge land holdings as the single biggest individual supplier, if the Crown entered the market first, it could effectively set the market price. It could easily become the dominant supplier, the supplier of first choice. Therefore, by withholding access to Crown wood until the marketing boards and the mills negotiated contracts, the Crown would have been allowing other market forces to set a price. It would have been adding a little balance to its position as dominant supplier.

**6.45** This principle is reflected in a 1990 discussion paper prepared under the name of the former Minister, the Honourable Morris Green, “*Private Woodlots: Consideration for Future Action.*” This paper discussed the direction of the Department on the issue of primary supply. It noted the Department’s approach was “intended to ensure stable markets to the private woodlot owners and to ensure that Crown timber does not compete unfairly with woodlot timber.” In other words, it was helping to encourage the private woodlots to do their part in ensuring private forest lands were the primary source of supply.

**6.46** Nonetheless, the situation was such that the legislation was amended. Our understanding is that pressure from the mills and from some private woodlot owners who wished to bypass the boards and sell



direct, led to these changes. The threat of marketing boards effectively restricting access to Crown wood was seen as contrary to the so-called “open for business” philosophy of the government of the day.

**6.47** The change in the influence of the marketing boards and private woodlot owners over the access to Crown wood was accomplished by an insertion to subsection 3(2) of the Act. It was amended to include a reference to a new subsection 29(7.1) in its definition of the Department’s mandate for private forest lands. Subsection 3(2) now reads:

*The Minister shall encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province **consistent with subsection 29(7.1)** and, with the approval of the Lieutenant-Governor in Council, may initiate programs for such purposes. (**emphasis ours to illustrate amendment to Act**)*

**6.48** Further subsection 29(7.1) states

*The Minister, during the process of approving an operating plan under subsection (7), shall ensure that private woodlots are a source of wood supply consistent with the principles of (a) proportional supply, and (b) sustained yield.*

**6.49** This short statement - **consistent with subsection 29(7.1)** - interjected an additional element into the mandate. But section 29(7.1) only refers to the “private woodlots.” It excludes the “freehold lands” and “forest land consisting of an aggregate of 5,000 hectares owned by one person” components of the “private forest lands.”

**6.50** The Department has informed us that the “proportional supply” phrase was the key to changing the negotiating position of the marketing boards. In the Department’s view, private woodlot owners no longer had to be the first (or primary) source of supply for the mills. As long as the private woodlots remained proportional, the Department had fulfilled its responsibility. Contracts did not have to be in place. The mills could access Crown wood.

#### Department’s current interpretation of its mandate

**6.51** When we began our audit, departmental representatives indicated that they had no clear mandate for all three components of private forest lands.

**6.52** In some of our discussions the Department expressed a viewpoint that the phrase “proportional supply” overrules the “primary source” reference in 3(2), even though proportional supply relates to only one of the three components of private forest lands named in the Act. The Department now sees its role as assuring that the private woodlots have a market for their wood. One might say that this goal is

strictly an economic one. It is not one that contemplates encouraging “the management of private forest lands”. It assumes that if private woodlots can sell their products, then no action is required.

### **Our opinion on overall mandate**

**6.53** In our opinion the overall mandate under section 3(2) is to “encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province”. Further, in pursuit of this mandate the Minister may, with the approval of the Lieutenant-Governor in Council, “initiate programs for such purposes.” The 1992 reference to subsection 29(7.1) merely adds an additional responsibility to the Minister for one particular component of the private forest lands – the private woodlots component. We note that this additional responsibility is very specific and not in keeping with the general theme of subsection 3(2) which is to “encourage the management of private forest lands” by initiating programs for such purposes.

**6.54** In our discussions with the Department, we have received the impression that the changes made in 1992 were done quickly. The conditions in the market were such that a quick solution was sought to dealing with the influence of the marketing boards over access to Crown wood. In retrospect, it would probably have been better to seek another way of dealing with the issue as opposed to adding this additional responsibility for only one component of private forest lands in the middle of the Department's mandate for all private forest lands. The amendment is clearly out of place. It adds a reference to a rather detailed administrative type responsibility dealing with only one component of private forest lands into a high-level purpose or mandate section of the Act.

### **Specific private woodlot responsibilities**

**6.55** We have noted that subsection 29(7.1) of the Act provides a specific responsibility that the Minister must carry out for the private woodlot portion of private forest lands as he “encourages management.” The section refers to the operating plan that wood-processing facilities with Crown timber licenses must file each year. The operating plan is one of the requirements licensees must meet for maintaining a forest management agreement on Crown land. The plan describes the licensee's plans for the volume of wood to be processed through their facilities and the sources of supply for that wood.

**6.56** With respect to the Minister's responsibilities for private woodlots, the two key terms in 29(7.1) are “proportional supply” and “sustained yield.” Proportional supply is defined by the Act as:

*equitable sharing among the sources of wood supply  
.....based on historic market share of supply to a wood  
processing facility.*

**6.57** The Act or regulations do not define historic market share. This seems to be a significant oversight. The last time the Department

established a historic market share was in 1992 based on a five-year average (1986-90) of market share by mill. These 1990 figures may have little relevance to the present market share or market conditions.

**6.58** Sustained yield is not defined by the Act. The *Gage Dictionary of Canadian English* defines sustained yield as follows:

*in the management of forest, fisheries, etc. the principle of maintaining a steady yield by keeping annual growth or increase at least as high as annual output.*

**6.59** We can see then, that it is the Minister's added duty to monitor two aspects of the planned harvest from private woodlots. First, the ratio of private woodlot wood supply to various other New Brunswick supplies for each "wood processing facility" must remain in compliance with its "historic market share of supply". Secondly, private woodlots, to be sustainable, must have a projected annual growth rate at least as high as the planned harvest. And the Department's review of the operating plans of each licensee is one forum through which these requirements can be assessed each year.

**6.60** It could be argued that proportional supply and sustained yield are conflicting goals. For example, if the supply of timber from Crown lands, freehold lands or private lands to a "wood processing facility" increases, the supply of wood from private woodlots would have to increase in order to remain "proportional". This may bring the private woodlot supply up to a level that is not sustainable. It is not clear how such a conflict could be resolved.

***Responsibilities for monitoring actual yield***

**6.61** Subsection 29(7.2) also gives clear direction to the Minister concerning private woodlots. The subsection states that:

*If, during the process of approving an operating plan of a licensee under subsection 29(7), the Minister determines that a licensee or any of its sub-licensees have, in the preceding year in relation to the wood used in a wood processing facility, failed to purchase ninety-eight per cent or more of the proportion identified to be used in any wood processing facility from private woodlots in the operating plan for that year, the Minister may amend the operating plan of that licensee for the subsequent year by reducing the volume of timber that may be taken by the licensee, or sub-licensee, or both, from Crown land in the subsequent year by a volume equal to the shortfall in volume of wood that should have been purchased from private woodlots in the previous year.*

**6.62** This subsection requires that the Minister compare the amount of wood purchased from private woodlots to the operating plan from a mill that also harvests Crown lands. Usage of less than 98% of the planned consumption from private woodlots may cause the Minister to reduce the

Crown allocation. This monitoring responsibility further emphasizes the importance of the private woodlots as a source of supply. Section 29(7.1) gives the Minister responsibility for ensuring the operating plans deal with private woodlots from the perspective of proportional supply and sustained yield. And 29(7.2) requires the Minister to ensure that actual purchases are at least 98% of the plan.

### **Minister's responsibilities for freehold lands**

**6.63** As we have noted, subsection 3(2) of the Act clearly gives the Minister the responsibility for encouraging the management of private forest lands as the primary source of timber. Under that mandate, the Minister does have some direct responsibilities for freehold land. These are specified in various sections of the *Crown Lands and Forests Act*.

### **Monitoring of planned and actual cut**

**6.64** In our earlier comments dealing with private woodlots, we discussed operating plans prepared by the Crown licensees. Section 29(5)(b)(ii) of the Act notes that the licensee must provide the Minister with the planned wood supply to its mills from freehold lands it owns or controls. Section 39 of the Act goes on to add that:

*On or before the last day of June in each year, a licensee shall provide the Minister with a report setting out . . . (b) the volume of timber by species and class harvested on the freehold lands owned or controlled by the licensee and his sub-licensees,*

**6.65** Taken together, these sections would allow the Minister to monitor actual to planned cut on freehold lands.

### **Monitoring of non-timber objectives**

**6.66** Subsection 40(1) seems to suggest that for freehold land belonging to a company that cuts on Crown land, the Minister has the responsibility to ensure additional non-harvesting goals are pursued. It states:

*Upon the request of the Minister, a licensee shall at his own expense provide the Minister with a copy of, and shall prepare if necessary, a current management plan and a current operating plan for freehold land owned or controlled by the licensee, such plans to be prepared in the same form as, and to contain comparable information to that set out in, management and operating plans prepared for Crown Lands.*

**6.67** Section 45 of the Act has an almost identical provision covering freehold lands owned by sub-licensees.

**6.68** It would seem that if the results of the Minister's monitoring under 40(1) were not to his liking, the Department could use access to Crown wood as an important incentive to bring about improvements. However, we have been informed that the Minister does not ask for these management and operating plans for freehold land. This appears to

be one clear part of the Minister's mandate which has not been exercised.

**Specific responsibilities for properties of 5,000 hectares owned by one person**

**6.69** The third component of private forest lands is what has been defined as "forest land consisting of an aggregate of 5,000 hectares owned by one person". The Act contains very little in terms of direction for these tracts of land. This seems like a significant gap in the Act. A component of private forest lands has been identified, but then virtually ignored.

**6.70** A situation could arise where the owner of a large tract of land of 5,000 hectares does not hold a lease on Crown land. The Province could not use the threat of canceling access to Crown wood to influence this landowner. He does not own a wood processing facility. There would be no requirement for the landowner to file a management plan like those that the Minister can request from owners of freehold land under subsection 40(1). It might be that the Province could not prevent a significant loss of habitat or sustainability if the landowner decided to cut every tree on the property.

**6.71** It should be noted that the State of Maine has regulations under its "*Forest Practices Act*" to protect all forest lands in the state. This Act has strict standards for forest practices such as clear cutting. It requires the landowner notify the government prior to commencing harvest operations. It would appear that the Department would be wise to consider the need to have more specifically defined responsibilities for these 5,000 hectare private forest lands.

**Influence of other legislation on private forest lands**

**6.72** There are three additional Acts we would like to provide comments on because of their impact on private forest lands. The first is an important piece of legislation that has not yet been proclaimed. The other two Acts relate specifically to the private woodlots component only.

***Transportation of Primary Forest Products Act***

**6.73** The *Transportation of Primary Forest Products Act* was assented to on 12 March 1999. The Minister of Natural Resources and Energy has been assigned responsibility for administering this Act.

**6.74** This Act deals with the requirement to possess and deliver load slips showing various information to be prescribed by regulation. The Act applies to all primary forest products, whether harvested on any of the three categories of private forest land or on Crown land. Our understanding is the Act is intended to deal with the growing problem of wood theft and to assist marketing boards in collecting levies for wood sourced from private woodlots.

**6.75** The Act has yet to be proclaimed, but it represents a significant piece of legislation which will define key ministerial responsibilities for private forest lands in a totally separate Act.

**The Natural Products Act**

**6.76** The *Natural Products Act* is an act jointly administered by the Minister of Agriculture<sup>1</sup> and the Minister of Natural Resources and Energy. The *Natural Products Act* has a goal which appears to be complementary to the Minister's responsibilities for private woodlots under the *Crown Lands and Forests Act*. Section 3(g) of the *Natural Products Act* states:

3 The purpose and intent of this Act is to provide .....

(g) for the development, conservation and management of forestry resources on private woodlots in the Province.

**6.77** Section 39(1) permits the Lieutenant-Governor in Council to make regulations giving the marketing boards authority to collect a levy on primary forest products sold off of private woodlots. These levies can then be used "for the purposes of implementing and administering forest management programs on private woodlots." These purposes would all have a direct tie to the *Crown Lands and Forests Act's* themes of encouraging management and monitoring sustainable harvest. This is also a significant piece of legislation that deals with private forest lands in a separate Act.

**The Forest Products Act**

**6.78** The Minister of Natural Resources and Energy also administers the *Forest Products Act*. This Act establishes an important organization known as the Forest Products Commission.

**6.79** The object and the duties of the Commission are in many ways complementary to the Minister's role under the *Crown Lands and Forests Act*. And the Minister has significant influence on this organization.

**6.80** To begin, the Commission Chair is recommended by the Minister. The other six members of the Commission are from a variety of groups, including one representative of the Minister. They are appointed by the Lieutenant-Governor in Council. The Minister also appoints and pays the secretary to the Commission. The secretary role is much like that of an executive director.

**6.81** This is still another example of legislation dealing with private forest lands in a separate Act.

**6.82** Based on our comments in this section regarding the Department's mandate for private forest lands, we made the following recommendations.

**Recommendations**

**6.83** We recommended that the Department revisit the *Crown Lands and Forests Act* and all relevant legislation dealing with private forest

1. When we conducted the bulk of our fieldwork, there was still a separate Minister of Agriculture. Therefore, we have used that title in this chapter.

lands. We recommended several key components to the review as follows:

- Clarification of the overall mandate and responsibility for private forest lands and a clear communication to departmental staff and representatives of all three private forest land groups.
- Clarification of various definitions in the Act. For example, we recommended that the Act be amended to more clearly define the terms “Private Forest Lands” and each category or type of land included in this definition. We also recommended the legislation clearly define such terms as “proportional supply” and “historic market share”. Further, the Department needs a means of reconciling proportional supply with the concept of “sustainable yield” as it relates to Subsection 29(7.1) of the Act.
- Clearer definition of what “encourage management” means for now and the future. For example, to what extent should the Province encourage and define non-timber objectives and certification efforts on private forest lands?
- A decision as to whether all private forest land legislation should be incorporated into one Act.
- A decision as to whether this private forest land legislation should continue to be incorporated in legislation covering Crown lands; this integration may be necessary due to the important motivational tool of access to Crown wood and the need for a total provincial forest outlook on issues such as disease and fire protection.

**6.84** Our second criterion was:

*The Department should have appropriate goals and objectives to carry out its responsibilities for private forest land as assigned under the Crown Lands and Forests Act and Regulations.*

**6.85** The second criterion addresses the next stage in the management cycle. This is the planning stage where appropriate goals and objectives are developed to fulfill the mandate of the program.

**6.86** When we asked the Department for a listing of its goals and objectives for its responsibilities for private forest lands, staff were unable to provide any such document to us. We were shown various documents; but none of these contained a specific statement of results to be achieved over a specific period of time, which was our definition of goals and objectives.

**Conclusion**

**6.87** Therefore, we concluded that the Department does not meet this criterion. Appropriate goals and objectives have not been set that would adequately address the overall mandate and responsibilities.

**Recommendation**

**6.88** We recommended that the Department conduct a long term planning exercise to establish appropriate goals and objectives that adequately address the Department's mandate relating to private forest lands.

**6.89** Our third criterion was:

*Programs, policies and procedures should be consistent with the Crown Lands and Forests Act and Regulations for private forest lands.*

**6.90** This criterion refers to the programs, and their related policies and procedures, that the Department has implemented to encourage the management of private forest lands. Our purpose here is to identify those programs, and to determine if they are consistent with the *Crown Lands and Forests Act* and Regulations.

**6.91** The programs we have examined under this criterion are drawn from the program components of Program 60-01 – Forest Management of the *Main Estimates* for 1999-2000. These program components are Silviculture, Fire Protection, Insect and Disease Protection, Timber Utilization, Private Land Development, and Program Management. They combine departmental activities related to both Crown and private forest land. In our opinion, all six program components address, at least in part, private forest lands.

**6.92** We did note, however, that it may be appropriate for the Department to add another program component to its description in the *Main Estimates*. Because the Department has a number of legislated monitoring responsibilities for private forest lands, we believe there is merit in having a formal program component for these important duties. We have called it “Timber Utilization on Private Forest Lands” for sake of discussion.

**Recommendation**

**6.93** We recommended that as part of the *Main Estimates* process, the Department formally recognize the importance of its legislated monitoring responsibilities for private forest land by designating a new program component. A title such as “Timber Utilization on Private Forest Lands” may be suitable for such purposes.

**6.94** Although not named in the *Main Estimates* as a specific program, or program component, we believe the Department may have one other program related to private forest lands. This is the work carried out by the Forest Products Commission. Under our first criterion we noted how the Minister had certain responsibilities under the *Forest Products Act* and that the Minister had significant influence on the



organization established by that legislation – the Forest Products Commission. The Commission's duties are heavily linked to encouraging the production and sale of primary forest products from private woodlots.

**6.95** The Commission serves as a link between the producer and the consumer. From our discussions with the Commission, it appears its activities are mainly concentrated in the areas of arbitrating sales disputes between firstly, the marketing boards and the processing industry, and secondly, between marketing boards and private woodlot owners. The Commission also appears to have adopted a quasi-oversight function over the quality of governance of marketing boards. For instance, the Commission receives and reviews the annual audited financial statements of the boards. It also reviews the board minutes of these marketing organizations and it receives other pertinent reports. To the extent that these activities encourage management of private woodlots owned by the “producers”, they are consistent with the *Crown Lands and Forests Act*.

**6.96** In our opinion, all of the other program components we identified are also consistent with the *Crown Lands and Forests Act*. We do have some specific comments we wish to make however, regarding the Silviculture and Private Land Development program components.

## Silviculture

**6.97** The 1999-2000 *Main Estimates* shows a total of \$23,765,200 budgeted for “facilitating of silviculture activities on both Crown and Private Land.”

**6.98** The *Main Estimates* does not provide a specific breakdown of how much is to be spent on the private woodlots component of private forest lands. Based on figures provided to us by the Department, it spent about \$8 million on private silviculture in 1998-99 and in 1999-2000. This \$8 million is a portion of the total \$23,765,200 budgeted for silviculture. Over the past five years the provincial and federal governments have spent approximately \$27 million on silviculture on private woodlots.

## Administration of Silviculture

**6.99** The Department conducts the silviculture program on private woodlots through various arrangements with the seven marketing boards. Our understanding is that half of the Department's private silviculture funds are allocated based on the percentage of private woodlots in each marketing board area. The other half of the funds is allocated based on the proportion of woodlot owners represented by the board to the total number of woodlot owners in the Province.

**6.100** Marketing boards draw funds from the Department by submitting claims. The Department's employees conduct inspections to ensure the silviculture work it pays for is completed. The Department pays the marketing boards a standard rate for each hectare of land

subjected to silviculture treatments. The board in turn removes a portion of the funding to cover administration charges or overheads and then passes on the remainder to the person or company that carried out the silviculture treatment. The Department does not mandate how much of the total subsidy can be retained by the various boards for administration. In one example we noted, the board kept 41 % of the Department subsidy for administration expenses.

***Recommendation***

**6.101 We recommended that the Department review the funding formula for silviculture and provide guidelines as to what are acceptable limits for administrative expenses. The formula should work to ensure that the marketing boards optimize the area treated with the funds provided.**

**6.102** The Department has contrasting approaches to silviculture on Crown land versus private land. We have been informed that for silviculture on Crown land, the Department's goal is to apply a level of silviculture treatments that will maximize the annual allowable cut. Silviculture is directed to maximizing the sustainable harvest. And the level of funding is based on this level of silviculture.

**6.103** For its silviculture funding on private woodlots, however, the Department has no similar goal. Therefore, there is no indication as to whether the annual funding is more or less than needed.

***Recommendation***

**6.104 We recommended that the Department establish a measureable goal or objective to assist it in determining the level of subsidy required for silviculture activity on private woodlots. The goal and the level of subsidy should give due consideration to the funding from all sources.**

***No landowner commitment required***

**6.105** We have been informed that the Department does not require landowners that benefit from the silviculture to maintain any ongoing commitments to the Department regarding that land. One might expect to see that in exchange for silviculture funding the Department might require a landowner to make a commitment to a sustainable harvest plan on the property. Or one might expect the Department to require these landowners to sell all their wood to a New Brunswick processor, thus helping to ensure the overall goal of private wood as the primary source of supply for facilities in the Province.

***Recommendation***

**6.106 We recommended that the Department adopt some form of contractual commitment for landowners who benefit from the silviculture funding. The commitment should be viewed by the Department as a means of encouraging private forest land to be the primary source of timber for wood processing facilities in the Province.**

***Silviculture on private lands of 5,000 hectares***

**6.107** We were informed during our discussions with the marketing boards and the Forest Products Commission that on at least one occasion a landowner of private lands over 5,000 hectares requested silviculture

funding from the Department through his local board. After some discussion, it was decided that silviculture funding from the Department was not available to this 5,000 hectare class of private forest land. It is our understanding that the authority for such a decision was stated to be the *Crown Lands and Forests Act*.

**6.108** We could not find any such restriction on silviculture funding based on our reading of the Act. In fact, one might argue that subsidized silviculture activities on these 5,000 hectare private lands would be one effective way to “encourage management” of these properties. This appears to be a case where an operating procedure for the silviculture program is not consistent with the Act.

#### **Recommendation**

**6.109** We recommended that the Department review the funding formula for the allocation of silviculture funds to marketing boards to ensure that private lands of 5,000 hectares are appropriately considered in the distribution of funds.

#### **Private Land Development**

**6.110** The *Main Estimates* explains this activity as the “provision of technical advice to encourage management of private woodlots and the marketing of products.” It also monitors the expenditure of private silviculture funds. Approximately \$1.6 million was budgeted for this program in the year ending 31 March 2000. Over the last five years, the Department has spent approximately \$ 7.1 million on these activities.

**6.111** This program is often commonly referred to as Forest Extension. During the period of our audit, the Department had Forest Extension representatives stationed throughout the Province at various regional facilities. These Forest Extension personnel provide a variety of courses and educational materials to private woodlot owners in the various regions of the Province. The 1998-99 Annual Report of the Department noted that during that year around 1,800 of the 35,000 private woodlot owners attended woodlot educational programs.

**6.112** Education of private woodlot owners is a direct and visible means of encouraging management of private forest land.

#### **Future of private land development**

**6.113** As we entered the reporting phase of this audit, we were informed that the government has proposed elimination of the staffing of Forest Extension. We are uncertain as to how the Department will continue to deliver an important program component without any staffing. Further, it should be noted these same Forest Extension staff are the ones monitoring the silviculture expenditures on private lands.

#### **Conclusion**

**6.114** In our opinion, the Department has met this criterion. Although we have pointed out a couple of issues in the Silviculture and Private Land Development areas, in general, the program components we examined are consistent with the *Crown Lands and Forests Act*.

**6.115** Our fourth criterion was:

*The Department should monitor the results of programs that address private forest land and take corrective action when necessary.*

**6.116** Notwithstanding our general observation about a lack of documented goals and objectives for the Department's programs for private forest lands, we would still like to make some comments regarding monitoring and measurement in this section. One reason in particular why we would like to do that is because certain monitoring activities are actually established in the legislation. For instance, the Act assigns the Department several specific responsibilities such as monitoring the planned and actual cut on freehold lands, and ensuring that private woodlots are a source of wood supply consistent with the principles of proportional supply and sustained yield. We believe it would be appropriate to comment on these legislated responsibilities in this section. In effect, one might say certain goals are established by the monitoring provisions of the legislation.

**6.117** Further, as previously indicated, the overall mandate that the Department has been given from the *Crown Lands and Forests Act* is to "encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province". Progress on this mandate must be measured. Whatever other goals the Department might develop, there should be some link to this broad over-arching objective. Therefore, under our examination of this criterion, we are suggesting some measures which may help the Department determine if it has fulfilled its mandate.

**Legislated monitoring for private woodlots**

**6.118** We have previously quoted subsection 29(7.1) of the Act, which gives the Minister the responsibility to monitor "proportional supply" and "sustained yield". In order to ensure that the principles of proportional supply and sustained yield are upheld, the Department would seem to require some type of ongoing monitoring mechanism. If either proportional supply or sustained yield fell out of balance, there would seem to be some need for corrective action.

**6.119** Subsection 29(7.2) of the Act requires that the Minister compare the amount of wood purchased from private woodlots as compared to the operating plan from a mill that also harvests Crown lands. Usage of less than 98% of the planned consumption from private woodlots may cause the Minister to reduce the Crown allocation. This paragraph clearly grants the Minister a further monitoring responsibility.

**6.120** We did not find any evidence that the Department has been monitoring for the legislative requirements of either paragraph 29(7.1) or (7.2). The Department contends that the current state of the market has not indicated concerns in these areas. Therefore no efforts have been made to monitor them. In other words, private woodlot owners are

essentially able to sell all the wood they wish. Thus, they do not currently need the Department to enforce the protection of the proportional supply clause and the 98% rule.

**6.121** Although this may very well be the case, we believe the Department is overlooking a legislated responsibility. Further, there may be strong pressures for private woodlot owners to harvest too early or to over-harvest. Without monitoring sustainability, the Department cannot be sure it is encouraging the right type of management of private woodlots.

#### **Recommendation**

**6.122** We recommended the Department comply with the monitoring provisions of sections 29(7.1) and 29(7.2) of the Act.

#### **Minister's responsibilities for industrial freehold lands**

**6.123** Section 29(5)(b)(ii) of the Act requires the licensee, through its operating plan, to provide the Minister with the planned wood supply from freehold lands it owns or controls. The planned wood supply must cover mills owned by both the licensee and its sub-licensees. The licensees and sub-licensees own or control the vast majority of freehold land. Section 39 of the Act goes on to add that:

*On or before the last day of June in each year, a licensee shall provide the Minister with a report setting out . . . (b) the volume of timber by species and class harvested on the freehold lands owned or controlled by the licensee and his sub-licensees,*

**6.124** These sections seem to require that the Minister monitor actual to planned cut on freehold lands.

**6.125** Based on the information we reviewed, it does appear that the Department is receiving the operating plans as required. And the Department is also receiving figures for actual cut on freehold lands.

**6.126** It appears though, that one other monitoring responsibility is not being carried out. We have already quoted subsection 40(1) of the Act, which allows the Minister to request management plans and operating plans regarding freehold land owned by Crown licensees. Section 45 of the Act has an almost identical provision covering freehold lands owned by sub-licensees.

**6.127** We have been told that the Minister has never asked for a report under section 40(1). Management plans for Crown lands include provisions for fish and wildlife and other non timber objectives. It follows that the Minister would have a legitimate monitoring provision to ensure those holding large tracts of land are having the "right" impact on these non-timber objectives.

#### **Recommendation**

**6.128** We recommended that the Department implement the monitoring provisions of sections 40(1) and 45 of the *Crown Lands and Forests Act*.

**Monitoring timber exports from private forest lands**

**6.129** If the Minister is to encourage management of private forest lands as the primary source for facilities in the Province, there should be a full appreciation of the extent to which private forest lands are supplying wood processing facilities out of the Province. There would seem to be a need to know the extent of such export pressures in order to better “encourage the management of private forest lands” to supply in-Province facilities.

**6.130** Based on our discussions, it appears the Department does not have an ongoing monitoring of the extent of the exports from private forest lands. Through contact with the State of Maine, we were able to obtain some export figures. We found that the net exports from New Brunswick to Maine averaged about 42,000<sup>1</sup> cubic meters of softwood in the last five years. This would have a value of about \$3 million per year. In addition, net hardwood exports to Maine are about 635,000<sup>1</sup> cubic meters per year. Depending on the market price, this would have a value of \$25 to \$30 million. Exports to Quebec and other markets may also be significant but we were unable to determine the extent.

**6.131** Given our close proximity to the U.S. market and the lower value of the Canadian dollar, the anticipated demand for New Brunswick forest products is expected to remain strong. In our view this makes it imperative that the Department adopt monitoring procedures with respect to the export of timber from private forest lands.

**6.132** One of the factors that drives owners of private forest lands to export timber is price. If these owners can get a better price in Maine or Quebec, they have an incentive to export. Given this, it would seem prudent for the Department to be monitoring export prices. If export prices are significantly higher than New Brunswick prices, the Minister may need to take action to “encourage” the property owners to keep their wood in-Province. One way to encourage management in these circumstances would be to revisit the price on Crown timber.

**6.133** Corrective action might also involve the marketing board levy. At the time we conducted our fieldwork, exported wood was not subject to the marketing board levy. This appeared to be a factor that encouraged exports of unprocessed wood. When the private woodlot owners sell to an in-Province mill, the local marketing board receives a percentage of the proceeds as a levy. But a landowner who exports the wood receives all of the proceeds. There is no “check-off” levy for the marketing board. During the course of our audit, we were informed that the Department and the Forest Products Commission were working with the Government of Canada to attempt to collect a levy on exported products. But to date, no mechanism has been established. Some form of levy on exported products would “encourage” private forest land owners to send timber to New Brunswick mills.

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1. Per *Wood Producer Reports*, 1990-1998. Maine Forest Services

**Recommendation**

**6.134** We recommended the Department develop an active monitoring program over the export of wood from private forest lands. Appropriate corrective action should be taken as required in order to encourage the management of private forest lands as the primary source of timber for wood processing facilities in New Brunswick.

**Monitoring of sustainable harvest**

**6.135** In our opinion the Department has a role in monitoring the sustainability of the harvest from private forest lands. The Department would seem to have, at a minimum, an ongoing role under the legislation to ensure that the Crown supplies less timber to the domestic market than private sources. But we believe the monitoring responsibility goes beyond that. If the Crown is not successful in encouraging private forest lands to be managed in a sustainable fashion, then eventually the private forest lands would not be the primary source of supply. Further, if private forest land is not managed sustainably, it may, because of pressure from consumers for environmental certification, be rejected as a source of supply by some processing industries. If wood can't be certified for these consumers, then it can't be sold. This "rejected" timber would not be available to help maintain private forest lands as the primary source of supply.

**Annual allowable cut**

**6.136** One of the main measures needed in order to monitor sustainable management of the resource is the annual allowable cut. This figure details how much wood can be harvested each year without reducing the wood supply for future years. It is a planning figure.

**6.137** The annual allowable cut for industrial freehold is determined by the industry itself and reported to the Department. The Department does not attempt to systematically verify these figures. But we are pleased to see that they are consistently obtained from the industry.

**6.138** The process has not been as consistent for the annual allowable cut figures from the private woodlots. In four of seven marketing board areas the figures for annual allowable cut for private woodlots are more than ten years old. None of the annual allowable cut figures are less than seven years old. Marketing boards also indicated that these important planning figures were not accurate.

**6.139** More timely and accurate annual allowable cut information is needed in order for the Minister to encourage management of private forest lands as the primary source of timber for wood processing facilities in New Brunswick. Although up to date figures are available on industrial freehold, improvements need to be made on figures from private woodlots.

**Recommendation**

**6.140** We recommended that the Department obtain and develop objective and timely information on the sustainable harvest figures for private woodlots.

**Annual cut figures not complete**

**6.141** After the plan has been set in the “annual allowable cut”, the other critical measure needed to monitor sustainability of the resource is the “annual cut”. This “annual cut” is the actual harvest statistics for the various sources and types of wood.

**6.142** The Province does not have a single coordinated system to measure the annual cut. The Department has a system for Crown lands. And the owners of industrial freehold land have systems for providing the Minister with the annual cut on their lands. But there is no system for ensuring the completeness of the annual cut data for private woodlots. This is significant as these woodlots are approximately 30% of the Province’s total woodland.

**6.143** Harvest statistics are prepared for private woodlots. Much of this information comes from the marketing boards. Many of the marketing boards have their own load slip systems for sales that they process and deduct a levy on. This allows them to develop harvest figures. But some boards indicated that as much as 30% of the “annual cut” from private woodlots does not go through a board. Therefore, this “30%” is not recorded in their annual cut statistics.

**6.144** This lack of a complete tracking system for unprocessed wood from private woodlots causes many problems. No reliable figures for the annual cut can be determined. This means the Department does not know if this harvest on private woodlots is sustainable. Furthermore, enforcement of marketing board levies is difficult. Proportional supply cannot be reliably monitored. And detection and prosecution of wood theft is difficult.

**6.145** The lack of a tracking system may also have greater implications in the future. Environmental groups, consumers and major retailers are having a greater impact on the way wood is grown and harvested. Markets are beginning to demand that wood is grown and harvested in an environmentally friendly manner. A “chain of custody” must be established for wood sold to this market so that the source of the wood can be established. A tracking system is needed to verify this.

**6.146** The State of Maine now requires a load slip for all shipments of wood. Nova Scotia is also implementing a system that will track all wood sales. In New Brunswick, the *Transportation of Primary Forest Products Act* will require load slips. However, the Act has not yet been proclaimed.

**Recommendations**

**6.147** We recommended the Department develop the means to ensure the accuracy of the annual cut figures for all components of private forest lands.

**6.148** We recommended that the Province legislate a uniform provincial tracking system for all wood sales in the Province that can



**identify and monitor the source, destination, type and quantity of wood shipped.**

***Comparison of annual cut  
(actual) to annual allowable cut  
(planned)***

**6.149** If the actual amount cut exceeds the annual allowable cut then the sustainability of supply and future of the industry is jeopardized. Industry reports<sup>1</sup> that its annual cut is at the annual allowable cut rate for softwood. For hardwood the harvest is not yet up to the annual allowable cut rate. Therefore they claim their industrial freehold lands are being managed sustainably. The Department also claims that it is harvesting at a sustainable level on Crown lands.

**6.150** The same is not true for private woodlots. Four of the seven marketing boards reported that in the years from 1994 to 1998 their average softwood harvest exceeded the annual allowable cut. Province-wide during this period softwood from private woodlots was over-harvested an average of about 17% per year.

**6.151** According to these figures, this means that in each of the last five years the forest industry has reduced the size of New Brunswick's private woodlots. Unfortunately, the actual over harvesting is greater than these figures show. Earlier we discussed that the annual cut figures for private woodlots were not complete. These statistics do not report a portion of wood exported from the Province, direct sales and sales to small sawmills and residential markets.

**6.152** If any one of the three internal sources of timber (Crown, industrial freehold and private lands) is not being managed sustainably, there will be increasing pressure on the other two sources. This combined with an uncertain import market may have a significant impact on the future of the Province's processing industry. It would also create pressure on the Crown's ability to achieve the non-timber objectives set out in legislation.

***Recommendation***

**6.153** We recommended that the Department monitor the difference between the annual allowable cut and the actual cut from private forest lands to ensure that they are harvested at a sustainable rate.

***Conclusion***

**6.154** The criterion is not met. The Department is not carrying out all of its legislated monitoring functions. Further, it has not established goals or intended results for each of the program components. This makes it difficult to monitor the results of its programs for private forest lands.

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1. Per *New Brunswick Forests at a Glance*, 1997. A publication of New Brunswick Primary Forest Products Association.

## Effectiveness of programs for private forest lands

**6.155** Our fifth criterion was:

*the Department should have procedures in place to report on the effectiveness of private forest lands programs.*

**6.156** In auditing against this criterion, we focused on the Department's public reporting through its annual report. This is consistent with the focus in the objective section of the Province's annual report policy. The objective of the policy is as follows:

*The prime function of an annual report is to be the major accountability document by departments and agencies for the Legislative Assembly and the general public. It serves as the key public link between the objectives and plans of a government entity and the results obtained.*

**6.157** We examined the Department's 1998-99 *Annual Report* to determine how it had been reporting on its programs for private forest lands. This was the latest available report at the time of our audit.

**6.158** The *Annual Report* does not have a separate section for the Department's activities on private forest lands. Its reporting on private forest lands is included in the section "Forest Management" beginning on page 8 of the report. "Forest Management" combines departmental activities on both Crown and private land.

**6.159** One thing that should be noted is that the program objective as stated in the annual report may be somewhat confusing to the reader. The program objective is "To manage Crown timber resources in accordance with government policy." It is stated in bold print at the very beginning of this section on Forest Management. Therefore it is one of the first things the reader would see.

**6.160** After seeing this objective, members of the Legislative Assembly and the general public might not expect to find that this section also deals with private forest lands. But yet it does. In our opinion this is not consistent with the annual report policy's statement that "departments and agencies should give a clear account of goals (and) objectives."

## Recommendation

**6.161** We recommended that the Department disclose its key goals and objectives for private forest lands in its annual report.

## Comments on specific program components

**6.162** The *Annual Report* section on "Forest Management" is further subdivided by six program components. These six program components (Silviculture, Fire Protection, Insect and Disease Protection, Timber Utilization, Private Land Development and Program Management) relate at least in part to private forest lands.

**6.163** The Silviculture segment speaks almost entirely of the Department's activities on Crown lands. Although not explicitly referenced to the text in the Silviculture section, the annual report does contain a table which summarizes silviculture activity on private woodlots. But there is no discussion of the effects of this activity. It would be useful if the Department reported on private woodlots silviculture in a manner similar to its reporting on Crown land silviculture. For Crown lands the annual report shows the additional harvest made possible by silviculture activity.

**6.164** It would also be useful for the Department to consider presenting information on the extent of the Silviculture program component. Later in the report under the heading of Private Land Development, the Department does discuss the fact there is combined federal-provincial funding of around \$8 million per year for silviculture. It notes the funding was cost shared with woodlot owners and that 13,370 hectares were treated. But Members of the Legislative Assembly and the general public may be interested in knowing what percentage of private woodlot owners this funding is reaching. This information would address one of the important content provisions of the annual report policy; i.e. "how well a program was accepted by its client groups."

**6.165** The Fire Protection, and Insect and Disease Protection areas do not divide their commentary into separate components of private forest lands and Crown lands. The report does clearly state, however, that "Natural Resources and Energy is responsible for providing fire protection for all forest lands." And it notes that the Department "also protects . . . private woodlots from insects and disease." Further to this point is a statement that "New Brunswick's forest did not require pest protection in 1998." This comment would presumably cover all Crown and private forest land. Improvements might be made in these areas by showing how the Department's work supports the management of private forest lands.

**6.166** The discussion of Timber Utilization does not make reference directly to the link between the "value-added" policy and private forest lands. The Department could consider if such a link can be discussed in the annual report.

**6.167** The section on Private Land Development deals, of course, only with private forest lands. Specifically, it addresses various departmental activities for private woodlots. The report has separate commentary on the activities relating to woodlot development, woodlot education, maple syrup production, and Christmas trees. One interesting point is that the report shows the Department reached 1,800 woodlot owners "through courses, seminars and field days" in 1998-99. This seems to be an important measure the Department could build upon in discussing client acceptance.

**6.168** The Program Management section includes some discussion of the Department's continuous ten-year forest inventory program, and a co-operative network to monitor growth and forecast development on various sample plots. These plots are on both Crown and private land. This too seems like important information. It touches on the Department's responsibilities under all of section 3 of the Act – both for Crown and private forest lands.

**6.169** It might be more useful if the Department provided a few more details in this subsection. The importance of forest management planning cannot be understated given its significance to the Province's economy. In our opinion, the annual report should provide more information on the relevance of these sample plots and the ten-year forest inventory program. The annual report policy notes the annual report should show "the extent to which a program continues to be relevant." Here is the Department's opportunity to show the reader just how relevant forest management planning is. It has tremendous repercussions for the future of this Province – economically, socially and environmentally.

#### **Work carried out by the Forest Products Commission**

**6.170** The Annual Report for 1998-99 does not provide any substantive discussion of the work of the Forest Products Commission. The Commission has informed us it does not prepare a separate annual report for tabling in the Legislative Assembly. At times, however, the Commission is asked to appear before the Crown Corporations Committee of the Legislative Assembly. In our opinion, however, despite occasional appearances before the Committee, there has not been sufficient and appropriate reporting to the Legislative Assembly on the results achieved by the Commission.

**6.171** One aspect of effectiveness is the achievement of intended results. We believe it would be useful to examine the object and duties of the Commission to determine if the role contemplated in the *Forest Products Act* is being fulfilled. In other words, is the Commission achieving what it was set up to achieve?

#### **Recommendation**

**6.172** **We recommended the Department carry out an evaluation of the Forest Products Commission to determine if it has fulfilled the object and duties outlined in the *Forest Products Act*. The results should be tabled in the Legislative Assembly.**

#### **Performance measurement**

**6.173** The last area we would like to touch on is found in the "Performance Measurement" appendix to the *Annual Report*. Government policy clearly calls for performance indicators. We were disappointed that this appendix had no performance indicator with respect to the government's responsibilities for private forest lands.

**6.174** While it is up to the Department to formulate what that indicator, or indicators, might be, we believe some of the suggestions

we have made in this chapter may be relevant. Certainly, as we have already discussed, the Department needs to be showing whether, in fact, the private forest lands are the primary source of supply for wood processing facilities in the Province.

**6.175** Further, the *Annual Report* could provide information on the annual allowable cut. This could be matched each year to the actual cut harvest statistics, allowing for a quick overview of the sustainability of provincial forests. The Department might then refer to its various forest management planning efforts to achieve sustainability.

**6.176** This might include results of efforts to encourage the industry towards some sort of sustainability certification. Major players in the forest industry are actively pursuing this already. By reporting on this particular theme, the Department would show how well it was doing in encouraging management of private forest lands.

### **Conclusion**

**6.177** The Department does not meet this criterion. Although the *Annual Report* does include a number of references to private forest lands, we believe these are not sufficient. We have pointed out that there is not a clear statement of goals and objectives and performance indicators for programs relating to private forest lands. The results achieved from these programs are not clearly displayed in the annual report. And there is not enough discussion of client acceptance and program relevance.

### **Recommendation**

**6.178** We recommended that as part of a planning exercise to review its mandate and goals and objectives for private forest lands, the Department should develop appropriate performance indicators for its private forest lands programs. The Department should then revisit its annual report to determine how it might best report on its programs for private forest lands in accordance with the requirements of the government's annual report policy.

### **Departmental response**

**6.179** The Department provided the following preliminary comments on our observations and recommendations:

*The document prepared by your office raises a number of issues relating to the Minister's responsibilities and mandate under the Crown Lands and Forests Act with respect to private forest land.*

*It has been noted that several recommendations require policy direction from Government and we anticipate seeking that direction through the normal ..... process. Notwithstanding, we will review all remaining recommendations to determine if any can be implemented quickly without seeking policy direction from Government. In addition the Department will be seeking clarification from Justice on certain aspects of the wording in the Crown Lands and Forests Act.*

**6.180** The Department also committed to providing a more detailed response to our recommendations.

# Chapter 7

## Department of Supply and Services

### Land Management Fund

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# Department of Supply and Services

## Land Management Fund

### Background

#### *The significance of land as an asset*

7.1 Land is one of the key resources managed by the government. Service New Brunswick tax records indicate that the Province owns over 7,000 properties covering approximately three million hectares of land. This includes land of government departments, agencies, hospitals and schools. The Province also owns an additional 2.1 million hectares of submerged land. It is difficult to establish the value of land held by the government given the current information systems. However, a starting point in establishing such a figure might be the Province's property taxation system. According to this system the total assessed value of land and buildings the Province owns is \$3.3 billion.

7.2 The Department of Supply and Services is primarily responsible for acquiring, managing and selling land and buildings for other departments. However, there are various other key departments, including Education, Natural Resources and Energy, and Transportation that are responsible under legislation for extensive land holdings.

7.3 Given the significant amount of land the Province owns and uses in delivering its programs, and the importance of exercising stewardship over this valuable asset, we decided to carry out work on various land management issues this year. We chose to focus our audit on the Land Management Fund due to its central role with respect to the Province's land portfolio; in particular its responsibilities for managing surplus land and for developing and maintaining a land inventory system. In conjunction with this work, we also decided to place some attention on a related government-wide policy called *Disposal of Real Property*.

#### *The Land Management Fund*

7.4 In 1992 the Land Management Fund was established under the *Public Works Act* with the Minister of Supply and Services assigned as custodian.

7.5 Over the years the Fund has been involved in acquiring and selling several parcels of land on behalf of a number of departments in facilitating various program needs. In the past, proceeds from sales of



surplus property have been used for some high profile initiatives, including the 1995 purchase of the Hearst Property and various purchases of railroad right-of-ways. These purchases have become important components of the Fundy Trail and the NB Trail.

***Policy AD-6204, disposal of real property***

**7.6** Established in 1988, this policy indicates procedures for the disposal of surplus government real property by all departments and agencies that administer and control provincially owned land. The policy requires government departments to submit an annual listing of all properties held to the Board of Management. The policy further assigns responsibility for administering and controlling surplus land to the Department of Supply and Services.

**Scope**

**7.7** Our audit covered the purposes and the activities of the Land Management Fund. In addition, we examined compliance with the government-wide policy on the disposal of real property. The primary focus is the Property Management Division of the Department of Supply and Services' Buildings group. This division administers the Fund and the policy related to the disposal of real property in conjunction with its general responsibilities for property management.

**7.8** We had two main objectives for this value-for-money audit:

- to determine if the Land Management Fund is achieving the purposes for which it was established as set out under the *Public Works Act*; and
- to determine the degree of compliance with Administration Policy AD-6204, *Disposal of real property*.

**7.9** We used criteria drawn from legislation and government policy for each of these objectives. Our detailed findings are organized by those criteria.

**Results in brief**

**7.10** The *Public Works Act* clearly outlines the purposes of the Land Management Fund. However, further clarification of the term "properties which have been designated by the Minister for management under the Fund" would be helpful.

**7.11** We were pleased to see the Fund has written guidelines to help ensure due regard for economy in land acquisition and disposal. All transactions we reviewed complied with the policy. We noted though that the Fund may need a couple of additional guidelines. These would help with the disposal of long-held properties and in determining when to obtain external property appraisals. In our opinion, the Fund also does not have adequate information on the cost of maintaining individual properties.

**7.12** In 1987, we recommended the Province develop a centralized land inventory. In 1992, the *Public Works Act* included this as one of

the responsibilities of the newly-created Land Management Fund. Yet today, the government of New Brunswick still does not have one inventory system that can provide rapid, reliable and complete data on the total land holdings of the Province. It is very important that the Province can demonstrate accountability to the taxpayers of New Brunswick by maintaining good records of what it owns.

**7.13** The Department of Supply and Services does not have procedures in place to measure and report on the Fund's effectiveness in achieving its objectives and purposes.

**7.14** Government departments are not fully complying with the government policy on disposal of real property.

## Role and responsibilities of the Land Management Fund (Fund)

**7.15** Our first criterion dealt with the mandate assigned to the Department of Supply and Services under legislation. The criterion was "*The legislation and regulations should clearly define the role and responsibility of the Fund.*"

**7.16** The key piece of legislation we are referring to in this section is the *Public Works Act* (PWA). There are no regulations regarding the Fund under the PWA. We also reviewed other legislation covering land transactions to assure ourselves there were no conflicting statements on the "role and responsibility of the Fund."

## Purposes

**7.17** One strength of the key legislation, the PWA, is that it contains a specific section outlining the purposes of the Fund. Section 12.1(4) of the *Public Works Act* reads as follows:

*(4) The purposes of the Land Management Fund are*

*(a) with the approval of the Lieutenant-Governor in Council, to acquire land and lands and buildings,*

*(b) to maintain properties which have been designated by the Minister for management under the Fund, and*

*(c) to develop and maintain a land inventory system.*

**7.18** Although not explicitly stated as one of the purposes of the Fund under Section 12.1(4), the role of selling is also evident in the Act.

## May be need for improved definition

**7.19** In our reading of the PWA and related discussions with departmental staff, we noted an area where the purposes outlined in 12.1(4) could be further clarified. We are referring to the phrase "*designated by the Minister for management under the Fund.*"

**7.20** This phrase seems to imply that only certain properties which are "*designated*" in some unstated fashion are maintained under the Fund. The Property Management division, which administers the Fund,

defines “*designated*” land as any land, and land and buildings that have been identified as surplus to all departmental needs. The division does not believe these properties require any formal designation by the Minister.

7.21 This may be a reasonable interpretation. On the other hand, the term “*designated*” could be interpreted as requiring some very formal identification by the Minister. During our work we found evidence which appeared to support this interpretation.

7.22 We examined documents that demonstrated that some properties may be designated to the Fund for specific longer term purposes. Lands designated to the Fund may not necessarily all have to be surplus properties designated for relatively immediate sale. In one case land was designated to the Fund for the purpose of maintaining and developing a long-term plan for the property.

### **Recommendation**

7.23 We recommended the Department of Supply and Services request an amendment to the PWA to more clearly define the term “properties which have been designated by the Minister for management under the Fund.”

### **Conclusion**

7.24 The criterion has been partially met. The PWA clearly indicates the responsibilities and roles of the Fund with respect to acquiring and maintaining property, and for developing and maintaining a land inventory system. We are recommending a clarification of the term “properties which have been designated by the Minister for management under the Fund.”

### **Goals and objectives and policies and procedures**

7.25 Our second criterion related to how the Fund implements the mandate established by the PWA. It stated:

*The Department/Fund should have appropriate goals and objectives and policies and procedures to carry out its responsibilities for land management as assigned under the legislation and regulations.*

### **General comments on goals and objectives of the fund**

7.26 Property Management provided us with a 1994-95 strategic plan, which includes the mission, objectives and goals for the division. Although the objectives of this strategic plan may still be applicable today, our discussion with staff indicated it might be time to update this document. We believe one area where a specific goal needs to be established is with respect to the inventory system. This is discussed in more detail later in this chapter.

7.27 The division does have a work plan, which consists of a selling target of at least 150 properties per year and meeting the revenue budget. However, a departmental report which examined the current operating status stated one of the weaknesses of the division was the

absence of a business plan. The division indicated there is very limited time for adequate planning.

## Acquisition

**7.28** Property Management does have guidelines structured to ensure the best price is negotiated for property being acquired. Guidelines require that certified appraisers provide an estimated market value before the Fund negotiates a purchase of land. We believe this is an important policy to ensure value for money. The legislative requirement that all acquisitions be approved by the Lieutenant-Governor in Council reinforces accountability. This is because these approvals are documented in Orders in Council which are a matter of public record.

**7.29** In addition to departmental guidelines, there is also government policy in place, which prescribes accounting and record keeping procedures for the acquisition of real property.

## Maintenance of property

**7.30** There are not a lot of formal departmental policies and procedures for maintenance of property that remains in the Fund prior to being sold. However, government policy does provide some discussion on the maintenance of buildings, which could include buildings on surplus land. The Department's guidelines for disposal also note that "vacant structures should be disposed of quickly."

**7.31** In our opinion, a key component in a maintenance program includes adequate records of costs incurred on property maintained in the Fund. Record keeping is not only important in tracking costs on a property-by-property basis, but also provides useful information to support decision making in disposing of surplus property. We reviewed the Branch's disposal listing and "sold property files" to determine if these files had any readily available information of cost of maintenance on a property-by-property basis. Costs incurred to maintain land would include such items as property taxes, land title searches, advertising, surveying and environmental costs. Although some files did include invoices, there was no indication of the aggregate of these costs in the files.

## Recommendation

**7.32** We recommended that adequate information on maintenance costs be accumulated on a property-by-property basis to assist in the decision-making process with respect to holding or selling land.

## Selling

**7.33** The Department has policy guidelines for disposition of surplus properties. The guidelines are structured to achieve due regard for economy.

**7.34** However, the Fund does not have a standard practice to follow for properties that remain in the fund for an extended period of time. For example, a situation could arise where the Fund receives an offer on a long-held property which is below 80% of the appraisal. The policy states "properties at less than 80% will only be forwarded to Executive

Council if justification can be expressed.” What constitutes “justification” is not indicated in the procedures.

**7.35** “Justification” in such a case could include performing and documenting a cost/benefit analysis on a property. Factors to consider in the analysis are costs incurred in holding the property (e.g. maintenance and security costs, and taxes) and the potential future use of the property. The analysis should also include an appreciation of the time value of money.

**7.36** Documented information on these matters would provide useful information to the Executive Council to aid in its decision on whether to approve a sale of property. In other words, does it still make sense to apply the 80% rule on some long held properties?

**7.37** A second area where the Fund may need guidelines is in determining when it is necessary to obtain an independent appraisal. The Property Management division does obtain independent appraisals for certain larger acquisitions and disposals. In the fiscal year 1998-99 the Fund incurred about \$4,000 in expenses for external appraisal services. An “external appraisal guideline” could further ensure due regard for economy in acquisitions and disposals, particularly in the case of higher value and higher profile land. And it could benefit the perception of equity and fairness in the eyes of the public.

### **Recommendations**

**7.38** We recommended the Department consider the need for additional policy guidance to assist in the disposal process for properties which remain in the Fund for an extended period of time. Specifically, the Department should consider what type of criteria justify a sale lower than 80% of appraised value.

**7.39** We also recommended the Department consider the need for policy to indicate when it is necessary to obtain an independent appraisal for either the sale or acquisition of property.

### **Conclusion**

**7.40** This criterion is partially met. Although policy is in place for the important responsibilities of acquisition and disposal, the goals and objectives from the 1994-95 strategic plan need to be revisited. In particular, a clear goal with a timeline needs to be established for the design and implementation of an inventory system.

### **Inventory system**

#### **PWA requires inventory system**

**7.41** One of the purposes of the Fund is “to develop and maintain a land inventory system.” Our third criterion reads as follows:

*The Department/Fund should develop and maintain an appropriate land inventory system to assist in the efficient conduct of its land management functions.*

**What is meant by land inventory system?**

**7.42** Although some preliminary work has been carried out recently, the Department has not yet implemented an operational inventory system. Therefore, we have concluded that this criterion has not been met.

**7.43** Very early in our audit planning we became aware that the Fund had not yet developed the system. In our view, a land inventory system would include all property holdings that are under the administration and control of various departments. This view is consistent with our initial understanding of the purposes of the Fund. Therefore, we discussed with the Department whether the scope of its planned inventory system would include all government land.

**7.44** The PWA does not define exactly what is meant by a land inventory system. Should it include all government lands? Should it include only those lands known as public works? This restriction to only public works is the interpretation the Department makes of the Act. It is proceeding with the development of a land inventory system on this basis and is currently at the preliminary analysis phase of the process.

**7.45** *Public Work* is a broad term defined in section one of the PWA. It is essentially a catch all term, defined as follows:

*“public work” includes all lands and buildings belonging to Her Majesty in right of the Province, except*

*a) highways,*

*b) ferry wharves or bridges,*

*c) Crown lands and buildings under the jurisdiction of the Minister of Natural Resources and Energy,*

*d) lands and buildings owned by the New Brunswick Power Corporation,*

*e) lands and buildings owned by the New Brunswick Development Corporation, and*

*f) such other lands and buildings belonging to Her Majesty in right of the Province as, by any other Act, are placed under the administration of a Minister other than the Minister or under the administration of another agent of Her Majesty.*

**7.46** An inventory system focused on public works would obviously catch a great deal of the land holdings of government. (The Department administers about 800 properties comprising over 11,500 hectares.) But it would miss significant holdings noted in the “exceptions.” Crown lands in particular constitute over three million hectares. Highway lands are also substantial. As well, there are over five hundred school properties which would appear to fall under the control of the Minister

of Education under the *Education Act*. Therefore they would be excluded from public works. The *Parks Act* is another example of an Act that grants specific administrative authority to a Minister other than the Minister of Supply and Services.

### **Government's stewardship role**

**7.47** Currently, the government of New Brunswick has no single inventory system that can provide rapid, reliable and complete data on the total land holdings of the Province. Most of the departments we talked to in our audit had some type of property listing or "inventory" system, but they are not linked together. Service New Brunswick does have a system which can identify provincially owned properties. Personnel in the Property Management division have access to this system and use it for various aspects of their work. But this is primarily a taxation assessment system. It is not an inventory system.

**7.48** In our opinion, the Province needs a land inventory system in order to exercise stewardship over its assets. Land is an important asset. Whether it has received the land through grants, or bought it by the expenditure of public money, in the simplest terms the Province needs to know what land it owns. It is very important that the Province can demonstrate accountability to the taxpayers of New Brunswick by maintaining good records of what it owns. It needs to know where that land is, who is administering it, what it's used for and how much it cost.

**7.49** The stewardship function includes good accounting. A land inventory system will be necessary to bring the Province into compliance with the CICA's Public Sector Accounting Recommendations regarding tangible capital assets. This September 1997 pronouncement recommends that governments report tangible capital assets on their financial statements at cost. Crown Lands that have not been purchased by government are specifically excluded from this form of disclosure. Without one central system it may be difficult to develop accurate financial statement figures for land holdings and to determine which Crown Lands meet the qualification for exclusion.

### **An inventory system is a management information system**

**7.50** Building on the stewardship role, a land inventory system can become an effective land management tool. Such a system would provide additional information as to the type of land; description of the property; administering department and name of departmental contact; costs including incidental costs of purchase such as appraisal and survey fees; date of purchase; aggregated maintenance and tax costs; and possibly information on attempts to market surplus properties. During the audit we noted a number of examples of how a comprehensive land inventory system may have provided better management information than currently exists.

**7.51** With specific reference to the role of the Land Management Fund, a central system would allow for more timely and effective identification of surplus properties. If the system indicated each

property's current use, surplus properties could be more easily noted by the administrators of the Fund. Currently, other departments identify surplus properties and inform the Department of Supply and Services when they are turning over surplus properties to the Minister's control. The Fund is predominantly in a reactive position. An effective inventory system would allow the administrators to take more control of the process of identifying surplus properties.

**7.52** The inventory system may actually be a means for reducing some expenditures and increasing tax revenues. The Department of Supply and Services is responsible for reviewing the assessments of all provincially owned property. During that review it has noted some instances where the Province was leasing real property to third parties, but continuing to pay the property tax. This is contrary to Section 14 of the *Assessment Act*. In one instance the error was not detected until three years after the property had been leased. During that time the Province paid a total of \$2,577 in property taxes. In another example, the Province paid \$1,649 over a two year period before the error was detected. In this particular example the Province also lost property tax revenue over the two years. Once the lessee started paying the property tax, the property was classified as a business property. As a business property, it attracted tax at a much higher rate. Instead of paying about \$1,000 in taxes, the Province actually began receiving property tax revenues of about \$6,000 a year. An inventory system could be used to prevent and detect such instances in the future.

**7.53** An inventory system may also help identify unreasonable assessments. We examined a sample of disposal files maintained by the Department. In reviewing the files we compared the assessment values supplied by Service New Brunswick to the estimated market values determined by the property management agents of the Department. We expected to see a similarity in amounts. At times, however, we noticed a significant difference. In the most prominent case the assessment was \$65,000 higher than the estimated market value. (Assessment \$196,000; market value \$130,000.) This could indicate the Province is paying more property tax than necessary to some municipalities.

**7.54** Another factor to consider is the administrative work stemming from not having one central system. One department we surveyed informed us that staff recently performed four title searches on land that was in the Province's name but was not actually owned by the Province. Without accurate and complete information, time and money will be expended on fixing these errors.

**Should a comprehensive system be developed and maintained by the Fund?**

**7.55** When one considers the role of the Department of Supply and Services as a common service organization to government, and the fact that no single provincial land inventory system exists, one could interpret the words "land inventory system" in the *Public Works Act* to



mean a system of all government land holdings. In this regard we noted the following statement in the Department's 1992-93 annual report:

*During this fiscal year the branch implemented a Land Management Program that . . . involved the development of a Crown Land Inventory System to identify surplus property for market. The Crown Land Inventory System will be a corporate geographic information system capable of graphically displaying any parcel of government owned land and related textual information. The system is based on the digitized property map data being developed by the [New Brunswick Geographic Information Corporation] and will be available by March 31, 1994.*

**7.56** This broader definition of "land inventory system" appeared to be accepted by the Department when we did our last major reporting on this issue in 1987. We reproduce below several paragraphs from that Report to note the need for a government-wide system has been recognized for some time.

*Exhibit 7.1*

*Excerpt from Chapter 4 of the 1987 Report of the Auditor General*

**Provincially owned Properties**

*Duplication of Services*

- 4.164 There are at least four computer-based systems now in place which, to varying degrees, can be used to identify provincially owned properties. These include Supply and Services' own system which utilizes a micro-computer, the Provincial Properties Data Centre operated by the Department of Natural Resources and Energy, the Property Tax System of Municipal Affairs and Environment and the Land Registration and Information Service of the Council of Maritime Premiers.
- 4.165 The functions of the first two systems mentioned appear very similar, and there appears to be a certain amount of overlap between others.
- 4.166 **I recommend that an analysis be carried out of the possibility of achieving greater economies in these systems and avoiding unnecessary duplication. I further recommend that a long-term goal to consolidate all information relating to property holdings in the Province under one central authority be pursued.**
- 4.167 *The Department in response indicated that it agreed with the general thrust of my recommendations. It pointed out that an extensive study of this area had been conducted by the Office of Government Reform, and that the major issues arising out of the study are being addressed in a systematic and positive manner.*

**7.57** Over a dozen years after our original 1987 recommendation, the government still does not have a central inventory system, or a central responsible body, for all government-owned land. With the Province's significant portfolio of land, a central source of information could allow for better management of this important resource.

#### **Recommendations**

**7.58** We recommended that the Department expand the scope of its preliminary analysis to examine the feasibility of consolidating all provincial property holdings in its planned land inventory system.

**7.59** We further recommended that once the preliminary analysis stage is complete, the Department set a time line, target date and budget for completion and operation of the new inventory system.

#### **Due regard for economy and efficiency**

**7.60** Our fourth criterion reads "*The Fund should carry out acquisitions and disposals with due regard for economy and efficiency.*" In other words, is the Fund carrying out its operations to ensure it obtains the best price for acquisitions? Is it obtaining the highest selling price for sales of land? Also, is the Fund performing its operations in a cost-effective manner?

**7.61** To conclude on this criterion we reviewed a sample of acquisition and disposal files. We are pleased to report that all transactions we reviewed complied with acquisition and disposal guidelines. We would like to make comments on a specific area, however, regarding the economy and efficiency of some processes.

#### **Disposal of low value properties**

**7.62** The Property Management division brought to our attention the need to improve upon the disposal process of land valued under \$1,000. In having to go through the same process as higher valued land, it is costing the division time and money to complete the sales of these lands. For example, the cost of publicly advertising the disposal of some low value parcels may exceed the proceeds of the sales. It is our understanding that approximately two-thirds of disposals each year are under \$5,000 (with the majority under \$1,000). The 1999-2000 disposal listing shows 31 properties valued at or under \$500. Sale of each of these properties have to be approved by the Lieutenant-Governor in Council.

**7.63** The Board of Management has asked the Executive Council Office, in consultation with appropriate departments and agencies, to prepare a report on land transactions requiring Board of Management and/or Executive Council approval. There appears to be concern with the number of so-called "routine" or "nominal" transactions requiring central government approval. We are pleased to see that both the staff managing the Fund and central government are interested in taking steps to improve the process.

**7.64** We would like to point out, however, that a low dollar value should not be the only consideration for removing a property from a more comprehensive sales review (e. g. approval by Cabinet). The deviation between the sales price and the appraisal should also be examined. Otherwise a valuable property could escape scrutiny by being sold for a nominal sum. Of course, we recognize the current 80% rule acts to protect against such an action.

#### **Recommendation**

**7.65** We recommended that any new legislation or policy continues to maintain a relationship between sales price and appraised value in determining which properties should be referred to Executive Council.

#### **Conclusion**

**7.66** The Fund meets the criterion in carrying out acquisition and disposal responsibilities with due regard for economy and efficiency. All transactions tested complied with departmental policy. We are also pleased to report that both the Department and central government are examining ways to improve this process.

#### **Effectiveness of the Fund**

**7.67** Our fifth criterion was that “*the Department should have procedures in place to measure and report on the effectiveness of the Land Management Fund.*”

**7.68** This criterion stems directly from the Auditor General’s reporting responsibilities under Section 13(2) of the *Auditor General Act*. This section mandates the Auditor General to bring “*to the attention of the Legislative Assembly ... cases in which he has observed that*

*procedures have not been established to measure and report on the effectiveness of programs, where, in the opinion of the Auditor General, the procedures could appropriately and reasonably be used; or*

*procedures established to measure and report on the effectiveness of programs were not, in the opinion of the Auditor General, satisfactory.*

**7.69** Some public reporting has taken place on the Fund. A budget is presented each year in the *Main Estimates*. Actual financial results are summarized in the *Public Accounts*. And since the inception of the Fund, the Department of Supply and Services’ annual reports have provided information with respect to acquisition and disposal activity.

**7.70** In our opinion, however, the reporting that has taken place is not satisfactory to measure and report on the effectiveness of the Land Management Fund. The material that has been presented to date in the *Main Estimates*, the *Public Accounts* and the Department’s annual report is mainly financial and transactional in nature. In that sense, it does not

provide a sufficient and appropriate account of the effectiveness of the Fund to the Legislative Assembly.

**7.71** One important aspect of effectiveness is the achievement of intended results. We believe it would be very important for the Department to report on this aspect of effectiveness. The Fund is considered to be a “Special Purpose Fund”. Government policy states that “special purpose revenues include any revenue formally designated (normally by donor designation or legislation) for specific purposes that enhance provincial program objectives”. We believe it would be useful for the Legislative Assembly to receive a report on how well the Land Management Fund has done in enhancing provincial program objectives; in other words, how it is doing in achieving its intended results.

**7.72** During our review of documentation and discussions with departmental staff, we had some difficulty in establishing what the original “intended results” of the Fund were.

**7.73** Some documentation, and our interviews with government personnel who were familiar with the climate that surrounded the creation of the Fund, seemed to indicate that one of the principal purposes of the Fund was to assist in the purchase of a large tract of land in Southern New Brunswick known as the Hearst property. This purchase in excess of \$10 million was accomplished to a large degree through the resources of the Fund.

**7.74** During our discussions with staff they noted that, although undocumented, one perceived purpose of the Fund was to provide flexibility in the sale and purchase of land. By forwarding proceeds of the land sales to the Fund, the government is able to accumulate Fund surpluses, which can be used to purchase significant tracts of land in subsequent periods. In times of limited capital budgets, the accumulation of surpluses in this manner does provide significant flexibility.

**7.75** Directly related to this is the staff’s opinion that the Fund has dramatically increased the incentive to identify and dispose of surplus land. The perception is that in the pre-Fund days, departments were reluctant to identify land as surplus. With no direct economic benefit in doing so, staff had little incentive to identify surplus land. The proceeds would go directly to general revenue. Neither the identifying department or the central service agency, the Department of Supply and Services, would benefit. From a departmental interest point of view, they were better off holding the land just in case it might be needed for some future project. In such a case they could reduce future costs by already having the land available when a capital project was approved. Had they instead sold the land, the future capital budget would be burdened by both the construction costs and the additional cost of purchasing a new land holding.

**7.76** Staff at the Department believe the Fund has changed this behavior although it is acknowledged there may still be occasions where other departments do not disclose surplus properties. They are convinced landholders now perceive a benefit in identifying surplus properties. The theory is that since the Fund can accumulate a surplus, those departments that identify properties for disposal can stand to benefit from the Fund in the future.

**7.77** Employees also feel the Fund has been of economic benefit to the Province by turning properties from being a source of tax expense to a source of tax revenue. As long as the Province owns a property, it pays some form of property tax to the appropriate municipality. When the Fund holds the property, it pays the tax as a standard property maintenance expense as allowed under the PWA. When the property is sold, the new owner becomes the taxpayer. This results in an immediate reduction in the Fund's expenditures. And since a number of these properties bear both provincial and municipal property taxes, the Province often generates an additional source of revenue. These tax impacts could be a possible theme when measuring and reporting on the effectiveness of the Fund.

#### **Recommendation**

**7.78** We recommended that the Department of Supply and Services perform an evaluation to determine whether the Fund has achieved, and continues to achieve, its objectives and purposes. This evaluation should be tabled in the Legislative Assembly.

#### **Conclusion**

**7.79** This criterion has not been met because the Department of Supply and Services does not have procedures in place to measure and report on the Fund's effectiveness. Although there is some reporting on the Fund, the information does not indicate if the Fund has achieved its objectives and purposes.

#### **Compliance with government policy**

**7.80** With our second objective we were trying to determine the degree of compliance with the government administration policy, *Disposal of Real Property*. This policy has been in effect since 1988. It outlines the procedures for the disposal of surplus government real property by departments and agencies. The policy also indicates that the Department of Supply and Services is to administer and control surplus real property. Real property includes land and buildings.

#### **Annual identification of surplus properties**

**7.81** The policy states "once a year, departments should prepare a list of properties held and forward it to the Board of Management (BOM). Properties surplus to their program needs should be identified". We questioned eight departments, to obtain a better understanding of the procedures they follow in preparing listings of properties held and in identifying surplus property.

**7.82** In our interviews we asked if departments had listings of property under their administration and control. Of the eight

departments interviewed, all were able to provide us with listings. The listings provided included varying amounts of information and were either generated from a database or done manually. One department obtained the information from the system administered by Service New Brunswick.

**7.83** We were not able to locate any documentation to demonstrate that listings of properties held or surplus properties were being provided to Board of Management. Our discussions with Board staff indicated the policy had not been enforced for a number of years. However, the Department of Supply and Services has been receiving various notifications directly from departments regarding land surplus to their needs. The Department notifies the Board of properties it intends to sell. The Board is not notified of surplus properties that are not being sold.

### **Conclusion**

**7.84** The policy is not being followed. Departments are not informing the Board of Management about their surplus properties. Also, listings of properties held are not submitted to the Board.

### **Notifying Supply and Services about surplus properties**

**7.85** The policy states “the administration and control of surplus properties will be transferred to the Department of Supply and Services for disposal”.

**7.86** Adherence to this policy implies the Department of Supply and Services be notified as part of the transfer process.

**7.87** In our questionnaire to departments, we asked who was notified once properties were identified as surplus. Of the eight departments interviewed, six departments said they notified the Department of Supply and Services of all surplus property under their administration and control.

**7.88** There were two Departments, Natural Resources and Energy and Transportation, that notified the Department of Supply and Services of surplus properties only to a “certain extent”.

**7.89** Under section 20(1) of the *Crown Lands and Forests Act*, the Department of Natural Resources and Energy can, subject to the approval of the Lieutenant-Governor in Council, exchange land for freehold parcels of land. It is our understanding that the Department may hold onto some parcels of land for the purpose of future exchanges. This appears to be a case where the policy is superseded by legislation.

**7.90** The other possible exception noted was in the Department of Transportation. We were informed that, given the significant number of remnant properties and the limited number of available staff, some properties may not be identified as “surplus” on a timely basis. Since the proceeds from disposal of these properties directly benefit the Land

Management Fund, the Department of Supply and Services has a direct interest in the timely identification of surplus properties.

**Recommendation**

**7.91 We recommended that the Departments of Transportation and Supply and Services work together to develop strategies to identify surplus properties on a more timely basis.**

**Department of Transportation response**

*7.92 The Department of Transportation and the Department of Supply and Services have mutual agreement that the Department of Transportation would dispose of surplus land valued at less than \$10,000. There are a significant number of small remnant properties and direct disposal saves resources otherwise required for title transfers between departments. The Department of Transportation has, on an ongoing basis, identified larger parcels of surplus lands to the Department of Supply and Services and will continue to work with that department related to its responsibilities for land management.*

**Conclusion**

**7.93** The policy is not being followed. There is no system that ensures all surplus property gets identified.

**Notifying departments that surplus land is available**

**7.94** The policy states “the Department of Supply and Services should advise other Departments and agencies of surplus properties, which have been received for disposal.”

**7.95** Our review of disposal files demonstrated that the Department of Supply and Services does notify other departments of surplus land. A standard inter-office memo is distributed to departmental contacts to provide details of the surplus land. It is our understanding that the only time this is not done is when the parcel of land is too small, or when it is “landlocked” and can only be sold to adjacent owners.

**Conclusion**

**7.96** This policy is being followed. The Department of Supply and Services advises other departments and agencies of surplus properties.

**Report to the Board**

**7.97** Finally, the policy states:

*the Department of Supply and Services should prepare for presentation to the Board, a list of properties that it is intending to dispose of within the fiscal year and a status report on surplus properties which will not be disposed of in the coming years.*

**7.98** We found that the Department submits a memorandum to Executive Council indicating a list of properties that it intends to sell. The information provided on the memorandum includes details of the property and the suggested price. The Department estimated it goes through this process eight to ten times a year.

**7.99** We could not find any evidence of the Department providing status reports on surplus properties that are not to be disposed of in the

coming years. Most surplus properties are actively advertised for sale. One exception would be if the Department believed a change in market conditions might lead to a marked increase in the value of a property. For example, an anticipated commercial development in a municipality might greatly increase the value of a property. In such a case, it would be prudent to hold the property in anticipation of the price increase.

**7.100** It should be noted that the Department does provide a regular status report on the balance of the Fund. The report indicates anticipated property sales, purchases, acquisitions to be approved and other costs, which include mostly maintenance and administration costs for land yet to be sold, and expected proceeds.

**Recommendation**

**7.101 We recommended the Department of Supply and Services provide the Board with a status report on surplus properties not to be disposed of in the coming years. The report should state the reasons the properties are being held and explain the strategy for eventual disposition.**

**Conclusion**

**7.102** The Department of Supply and Services partially complies with the policy. Although it provides a listing of properties intended for disposal within the fiscal year, it does not provide a status report on “surplus properties which will not be disposed of in the coming years.”

**Overall conclusion on compliance with the property disposal policy**

**7.103** Currently, procedures followed by departments in identifying surplus land are not consistent with government policy. Although the policy is not being enforced in its present form, there certainly seems to be merit in having a policy initiative in this area. It would seem appropriate to revisit the policy and determine how it should be revised and/or enforced to promote economical and efficient identification and disposal of surplus property.

**Recommendation**

**7.104 We recommended that compliance with policy AD-6204, *Disposal of real property* be actively enforced. Alternatively, if the policy is not appropriate, it should be appropriately revised.**

**Department of Finance response**

**7.105** *The Department of Finance, in cooperation with departments, is in the process of reviewing this policy with the intent of revising it to reflect best practices.*

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

**7.106** The Deputy Minister of Supply and Services provided comments on points of detail in our report. He also made the following overall comments:

*Generally speaking I find the report to be very comprehensive, covering most aspects of the Land Management Fund, and presenting reasonable recommendations.*



*I will be ensuring that my staff address all these recommendations in due course.*

**7.107** With regard to the land inventory system, the Deputy Minister made the following additional comments:

*In the section on the land inventory system, I am not sure it is clear that most departments do have a land inventory system for the lands that they have under their administration and control. The issue as it relates to the Department of Supply and Services is the fact that a formal land inventory system is not yet developed. As you know, we are working on this, and do consider it somewhat of a priority. One of the difficulties has been in determining the extent of the land inventory system, the necessary complexity; whether it should include all land across government, either by inclusion or by the ability to reference or include in the future, and the appropriate technologies. My own priority is that we put in place a basic land inventory system for the Public Works properties handled by the Land Management Fund, and if appropriate, expand it in the future to other areas.*

# Chapter 8

## Department of Transportation Engineering Consulting and Road Construction Materials

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# Department of Transportation Engineering Consulting and Road Construction Materials

## Background

**8.1** In the late 1980s our Office reviewed the inventory and associated purchasing systems of the Department of Transportation (DOT). In 1993 and 1994 our Office reviewed the process used by DOT to purchase engineering consulting services.

**8.2** In these audits, we found significant opportunities for the Department to improve operations. We made recommendations to the Department at that time. The Department accepted many of these recommendations and made changes. However, for various reasons some recommendations were not acted upon. In light of this, we decided to examine how the Department had improved its present-day operations in inventory and purchasing.

**8.3** In 1993, we received a copy of the EBA Engineering Consultants Ltd. (EBA) report prepared for DOT that year. Their mandate was to conduct “a review of practices and procedures which are currently utilized in design and construction of paved roads within the Province’s highway infrastructure”. Many of the findings and recommendations in that report related to areas we are interested in. Because of this, we decided to review DOT’s progress in implementing some EBA findings and recommendations relating to our work.

**8.4** The size of the expenditures surrounding these activities was a factor in our decision to review them. The 31 March 1998 inventories for DOT and the Vehicle Management Agency totalled approximately \$17 million. Associated purchases for the year were close to \$107 million. For the year ended 31 March 1999 engineering consulting fees were nearly \$10 million.

**8.5** In late 1998, we completed a preliminary review of inventory and purchasing practices. We believed that many of the findings from this review warranted further examination.

**8.6** Consequently, we planned a value-for-money audit in the Department of Transportation. We decided to focus on the purchasing of engineering consulting services and on the purchasing and inventory management of road construction materials.

## Scope

**8.7** Our two main objectives for this value-for-money audit were as follows:

- 1) *For purchasing engineering consulting services*
  - *To determine if the Department can reduce costs while maintaining quality by adopting a more competitive process for the contracting of engineering services.*
- 2) *For road construction materials*
  - *To determine if the purchasing/inventory system covering construction materials operates in an economic and efficient manner.*

**8.8** To obtain a better understanding of policies and systems we reviewed departmental and governmental policies and systems. We compared these to departmental activities to see if practice matched policy.

**8.9** We interviewed senior DOT staff in Fredericton, Internal Audit staff and other head office staff involved with purchasing and inventory. We reviewed Internal Audit testing and its results. We visited three of eight district DOT offices and spoke with personnel, including the district engineers, to obtain a district perspective.

**8.10** We performed a number of audit procedures including: calculating inventory turnover, reviewing controls over inventory, verifying prices paid to contracted pricing and various calculations and comparisons as we thought necessary.

**8.11** To gain knowledge of how others were handling the selection of engineering consultants, we contacted several provinces and interviewed staff involved in this function. We discussed the process(es) each used, and any problems encountered, in their selection of consultants. We also reviewed their policies and practices. These provinces were British Columbia, Alberta, Ontario and Nova Scotia.

**8.12** We prepared audit criteria as a means of focussing audit attention on areas where we believed there was a likelihood of productive and valuable audit comments. The criteria are an extension of the audit objective and are designed to facilitate an overall conclusion on whether an audit objective has been achieved. The criteria were shared with the Department prior to the commencement of the audit with the intention of reaching agreement on the importance of the areas chosen for audit. In this chapter we comment only on those issues that we found

to be significant, either from a positive or negative perspective. Our original audit plan did not include an examination of “end result specifications” (ERS), and as a result no audit criteria had been prepared for this area. Work was conducted in ERS as a result of decisions we made following preliminary findings in the audit of road materials.

## **Results in brief**

### ***Purchasing engineering consulting services***

**8.13** The Department recently developed a rating form and rating system for measuring the past performance of engineering consultants. Information on past performance, together with information on the qualifications of the consultants, will improve the Department’s ability to select the best-qualified consultant.

**8.14** The Department does not notify all consulting firms when there is an opportunity to compete for government contracts.

**8.15** The Department does not ask for competitive proposals when purchasing engineering services.

### ***Road construction materials***

**8.16** We found that controls were operating effectively to ensure that supplier pricing agrees to contracted amounts. We also found that controls were in place to ensure materials are only purchased from appropriate suppliers. We concluded that DOT has a process in place which should ensure that materials meet the required product specifications.

**8.17** Road construction materials that the Department used to purchase direct from suppliers are now purchased from contractors. It would be appropriate to review if this change is saving money.

**8.18** The DOT inventory system is not integrated with the Maintenance Management System.

### ***Assuring road construction quality***

**8.19** End Results Specifications (ERS) offers the Department the opportunity for guaranteed road construction quality and the benefit of having ongoing responsibility reside with the contractor.

**8.20** The Department has only implemented ERS for asphalt paving and only 35% of such contracts are covered.

**8.21** The Department should extend ERS to all asphalt paving contracts and other aspects of road construction, when it is beneficial to do so.

### ***Purchasing engineering consulting services***

**8.22** Our objective for this component of the audit was:

*To determine if the Department can reduce costs while maintaining quality by adopting a more competitive process for the contracting of engineering services.*

**The importance of qualifications**

**8.23** Our first criterion was:

*The Department should determine which suppliers have the necessary qualifications, including technical, financial and managerial competence, to discharge a contract.*

**8.24** Departmental branches that extensively use consultants keep current information on consultants on file. This information includes a company profile, and key personnel resumes. This information describes the experience, background, specialty and capability of the individuals and the firm. The information is updated on an on-going basis.

**8.25** The Department has recently developed a rating form and a rating process for measuring the performance of consultants. Development started about three years ago with the first usage of the new process and forms beginning in 1998-99. The impact of the new process is just beginning to be felt. The Department noted that changes to the process are still envisaged. Information gathered on the rating forms, together with the existing qualifications of the consultant, will give the Department the ability to hire the best-qualified consultants. We strongly support the moves of DOT to include past performance as a factor in its consultant-selection process.

**8.26** The information is de-centralized and stored manually. Several branches of the Department are responsible for establishing their own engineering consultant performance measurement process and for determining what information is required to measure performance. De-centralization of the process and of the information being gathered, may increase the risk of the system becoming inconsistent between branches. The result might be that the same consulting firm is rated differently by each branch. Other Canadian jurisdictions we contacted use computerized systems to record and track this information.

**Assessment of the criterion based upon the audit**

**8.27** Because a performance based system has been developed and because a common consultant evaluation document has been developed we conclude that this criterion has been met.

**Recommendations**

**8.28** We recommended the Department continue to develop the performance measurement system and formally use its results in making the decision as to which engineering consultants to hire.

**8.29** We recommended that the Department ensure the performance measurement system remains consistent between branches.

**8.30** We recommended the Department consider the use of a computer-based system for recording, saving and comparing the qualifications, including past performance, of engineering consultants.

**Departmental response**

**8.31** The Department indicated that a common evaluation document has been developed. They also indicated that although measurement

*results could differ between branches, the performance measurement system is similar in the branches. Following a business case analysis, the department will consider a computer-based system, although they conceded that it is not a priority at present.*

## Competition by all firms

**8.32** Our second audit criterion was:

*Where it is cost effective to do so, all qualified firms should have an opportunity to compete for government contracts.*

**8.33** When consulting work becomes available, departmental staff choose a consultant using the following considerations:

- the skills required for the job;
- consultants available;
- departmental staff's knowledge of a consultant's staff qualifications;
- availability of the consultant's staff required for the project (only considering DOT projects the consultant might be involved in); and
- past work performance of the consultant.

**8.34** A letter is then sent to the consultant chosen describing the nature of the work, the date the work has to be completed and other general instructions. DOT asks for a proposal from the consultant by a specific date confirming their interest in the work and naming staff who will work on the project and stating their qualifications. A cost estimate for the project and agreement with the timing requirements is required.

**8.35** When the Department receives an appropriately prepared response from the consultant it compares the consultant's cost estimate with the Department's own cost estimate. The Department's estimate is calculated by reviewing its past cost experiences with similar work contracts. If the Department believes the firm's estimate is reasonable and other arrangements are satisfactory, the consultant is hired and work begins. If there is a significant difference in cost estimates, the two parties negotiate to find a mutually acceptable price. If no solution is found, the Department will look for another consultant to do the work and the process starts over again.

**8.36** To review the process we obtained four consulting contract files. We reviewed files in the Structures Branch and the Design Branch, both major users of consultants in the Department. Our findings were as follows:

- Overall we believe the hiring process operates as described above.
- Files did not document whether the Department determined the availability of all consultants qualified to do project work (staff had noted that determining the availability of all qualified consultants was not normally done).

- Only one consultant was asked to submit a proposal for each project – the files do not document why only that particular consultant was chosen. No information on file indicated that this was the only qualified consultant or that it was the best qualified of those available at the time.
- Information on past performance of the consultants was present and considered for contracts given by the Structures Branch.
- Information on past performance was not part of the process in 1999-2000 for the Design Branch and therefore not on file (the Department indicates this information will be in place in the near future).
- Letters requesting the proposals, replying to the requests and accepting the consultant's proposal were on file.
- There was no competitive bidding on these projects, but the Department did require from the consultant a cost estimate of the work to be done.
- Two cost estimates were accepted as is.
- One cost estimate was initially too high and the consultant was required to reduce its bid.
- The review of one cost estimate by DOT indicated that the cost seemed high but the eventual price for the work remained unchanged.
- Proposals had cost estimates ranging from \$40,000 to \$110,000 plus HST.

**8.37** In reviewing our findings, we have a number of concerns with the current hiring process. For instance, how can departmental staff be aware of the availability of the various consulting firms who are capable of performing the work? Would it not be more effective to let the consulting firms decide themselves whether or not they are available? How can the department ensure that all consultants are being treated fairly?

**8.38** We believe the process should be opened up to permit all interested and qualified firms to express an interest in the work being contracted.

***Assessment of the criterion  
based upon the audit***

**8.39** The Department does not notify all consulting firms when there is an opportunity to compete for government contracts so this criterion is not met.



**Recommendation**

**8.40** We recommended the Department publicly advertise each engineering consulting project so that all consulting firms have the opportunity to express their interest in the available work.

**Departmental response**

**8.41** *Given the Province's size and the dominance of the Department's requirements for engineering consulting services, information is readily available to the Department on the availability and expertise of the various consulting firms. Potential benefits of publicly advertising should be balanced against the costs of the preparation of formal proposals by the consulting firms and the additional costs to the Department of assessing these proposals. The Department will consider piloting projects in order to evaluate the recommendation.*

**Process should be cost effective**

**8.42** Our third audit criterion was:

*The method of selecting consulting engineers for projects should be cost effective.*

**8.43** In the current DOT consultant hiring process, we found that there is no competition between consultants for work, as only one consultant is asked to submit a proposal for each project. No other proposals are obtained.

**8.44** We believe the Department should choose from all interested applicants and require proposals from several of the best-qualified candidates in order to allow competition. Documentation of the decision-making process used to determine which firms would be asked to submit a proposal should be complete and clearly defend any decisions made.

**8.45** Under DOT's current methodology, the Department carries out a reasonableness test on the consultant's cost estimate to ensure that the estimate is not excessive. However this is not the same as requesting competitive quotes from several firms. Normally governments request bids from several suppliers when buying goods or services. This is done to encourage competition and to ensure there is transparency in the process.

**8.46** We have concerns with the current process. If the Department only asks one firm to do the work how can the Department benefit from and support innovation? Is the Province getting the best cost when the comparison is only between the consultant's cost estimate and the Department's? Could there be another firm that could do the job for a lesser amount if given an opportunity to quote? Could another firm do a better job for the same cost? And how can the Department demonstrate transparency when there is so much discretion in the current decision-making process?

**8.47** Some departmental staff expressed concerns regarding price competition for design contracts. They were concerned that design

work, if left to the lowest bid, may suffer from a lack of innovation. That is, if cost becomes too much of an issue then the Department will only get the basic design that will work for the particular job in question.

**8.48** However, we believe that, since cost is only one of the factors in the hiring decision, the Department can still have a process that encourages innovation while allowing cost competition. For example in Ontario's selection process, cost is included in each proposal. Detailed proposals are rated against each other technically and then a ratio of technical rating to cost is done with the winner having the best ratio.

**8.49** Another option would be for the Department to do as Nova Scotia does. Nova Scotia uses the two-envelope system. In this process the bids come in from consultants in two envelopes, one containing the qualitative aspects of the bid and the other the cost quote. The Department evaluates the qualitative aspects of the bids and then opens the cost envelope and assigns a rating to the price. The decision is heavily weighted on the first envelope contents. Usually 90 points are awarded for it and 10 for the price. However, Nova Scotia does reserve the right to reject any proposal where the price is deemed unreasonable.

**8.50** As shown, both Nova Scotia and Ontario have selection processes where both qualitative and cost factors impact the final decision as to who will be hired. Staff in these provinces noted that significant cost-savings were achieved by including cost as an important factor in the selection process.

**8.51** We believe that New Brunswick should adopt a selection process that includes both qualitative and cost factors. Undoubtedly, there would be some additional costs to the Department if a more competitive process were implemented. For example, the evaluation process for qualified firms would be more involved as comparisons would have to be made to rate the different proposals against each other. While the situations in Nova Scotia, Ontario and New Brunswick may not be identical, we do feel that there is the potential for savings to far exceed any incremental costs. In 1998-99 the Department spent nearly \$10 million in engineering consulting fees.

***Assessment of the criterion  
based upon the audit***

**8.52** Because the Department does not ask for competitive proposals when purchasing engineering consulting services, we conclude that this criterion has not been met.

***Recommendations***

**8.53** We recommended the Department ask for proposals from several qualified consultants for each engineering contract.

**8.54** We recommended the process by which the Department chooses consultants to request proposals from be formalized and documented.

The process, associated evaluation criteria and results of the process should be transparent to all consultants.

**8.55** We recommended that the Department require the cost of the project to be included in the proposals received from the competing consultants.

**8.56** We recommended the process by which the Department chooses which consultant to hire be formalized and documented. Cost should be an important component of this. The methodology, associated evaluation criteria and results of the process should be available to all consultants.

**Departmental response**

**8.57** Further to the response to the first recommendation, the Department is prepared to consider piloting the requesting of proposals for engineering contracts. The cost of the project would be required to be included in the proposals. It is agreed that the process used to request proposals and to choose consultants would be documented and available to all consultants.

**Road construction materials**

**8.58** Our objective for this component of the audit was:

*To determine if the purchasing/inventory system covering construction materials operates in an economic and efficient manner.*

**8.59** We are pleased to report that as a result of our audit we were able to conclude positively on four of our criteria. These four criteria were:

- *Controls exist to ensure that supplier pricing agrees to contracted amounts.*
- *These controls are operating effectively.*
- *Controls exist to ensure materials are only purchased from appropriate suppliers (preventing overpriced purchases).*
- *There is a process to ensure materials meet product specifications (as required by DOT).*

**8.60** For four other criteria, we noted shortcomings.

**Importance of a cost benefit analysis**

**8.61** Our criterion in this area was:

*A cost benefit analysis should be performed before a decision is made to change significant departmental policies.*

**8.62** As the Department recently extended its policy of outsourcing road construction materials, we decided to review this decision. We also reviewed the decision-making process supporting this change in policy to see if a cost benefit analysis was included.

**8.63** Outsourcing means some items DOT used to purchase through tender for contractors to use on work for DOT are now purchased directly by the contractors and included in the contract cost.

**8.64** A DOT steering committee reviewed the extension of outsourcing and determined the initiative would be beneficial to DOT. The committee considered many relevant factors in arriving at its decision. However, we did not find any analysis that laid out the overall financial implications of the change. Nor did we find consideration of an option such as the Department tendering items but allowing contractors to access the Province's lower costs for their bids on provincial work.

**8.65** Departmental staff noted that other jurisdictions also outsource some items.

**8.66** We believe that where a change in policy may have significant financial impact, a cost-benefit analysis should be used to determine if the decision is expected to be beneficial to the Department. The financial implications of changes together with logical alternatives should be set out and compared to ensure a department chooses the best alternative.

#### **Recommendations**

**8.67** When a department decides a significant change may be needed it should ensure the change is supported by a decision-making process that includes a cost benefit analysis.

**8.68** Expected benefits should be identified so a department can later determine if they were achieved.

**8.69** We recommended that management explore the alternative of tendering goods and allowing contractors to use the tendered pricing for provincial work.

#### **Departmental response**

**8.70** *As stated in your findings, the Department made this decision to outsource specific construction materials after significant external and internal review. Although this was not a formalized cost benefit analysis, the benefits and costs both tangible and intangible were considered in arriving at this decision.*

**8.71** *The Department will strive towards utilizing a more formalized cost benefit analysis approach to document the future decision making process for those of a significant financial nature.*

**8.72** *The Department agrees to explore this alternative with Supply and Services since it would involve issues concerning the public purchasing process (e.g. allowing the private sector to purchase off government-tendered prices and possible issues with suppliers).*

#### **Evaluating the impact of the outsourcing initiative**

**8.73** Our criterion in this area was:

*The purchasing/inventory system should be monitored periodically to ensure it is economical and efficient and meets the needs of managers and users.*

**8.74** There has been little monitoring of results from the road materials outsourcing initiative. We determined that DOT districts carried fewer inventories than before the new policy was put in place. We also found that district DOT staff generally like the new policy.

**8.75** However, there has been no formal evaluation to determine if the expected benefits from the change in policy have been achieved. A comparison of road material prices the Department is now paying to contractors against the tendered prices which the Department has for its own purchases should be part of the evaluation.

**Recommendation**

**8.76** We recommended the Department determine if the policy of purchasing goods indirectly through contractors rather than directly through suppliers is saving money.

**Departmental response**

**8.77** Departmental staff informally evaluate material cost options on a routine basis, as part of their day to day operations. If substantive evidence of material cost discrepancies arose, the Department would perform a more formal review.

**Importance of standards**

**8.78** Our criterion in this area was:

*Management should establish a policy setting minimum standards for the proper management and control of inventories. Inventory levels should be cost justified and related to needs (adequate inventory turnover and minimized carrying costs).*

**8.79** The Department's policy manual for inventory management is titled *Purchase/Inventory Control/Issuing Procedures*. The policy outlines departmental staff responsibilities. Some standards for responsibility and control of road construction and maintenance materials (materials) inventory are documented. However the manual was last updated in 1992 and does not reflect the Department's current practices.

**8.80** The manual does not cover all aspects of inventory management for all inventories. For example, there are no standards for management of materials inventory. Nor is the process DOT uses for determining how much materials inventory to order documented. The rule of thumb used for ordering of materials is to order what was used last year adjusted to take account of the superintendent's knowledge of upcoming jobs.

**8.81** We believe the policy manual should be completed and brought up to date. This will ensure it reflects current practices and current

philosophies in inventory management. It should include all significant facets of inventory management. These should, at a minimum, include policies addressing purchasing, economic order quantities, minimum/maximum inventory levels, price break purchasing, expected turnover, and minimizing carrying and other costs.

**8.82** The policy manual states that the inventory co-ordinator is responsible to ensure vehicle parts stock levels are adequate, reasonable and in compliance with policy. However, the inventory co-ordinator has no responsibility for materials inventory and has no authority to make recommendations relating to that inventory.

**8.83** We found that while vehicle parts inventory is reviewed for compliance with policy, this was not true of materials inventory. While Internal Audit performs some test counts on materials inventory, it does not review factors relating to inventory management. The policy manual should indicate who is responsible for reviewing materials inventory to ensure policies are followed.

#### **Recommendations**

**8.84** We recommended management review, update and communicate its *Purchase/Inventory Control/Issuing Procedures* to ensure that standards exist for the proper management and control of all inventories.

**8.85** We recommended management ensure compliance with the DOT inventory policy.

#### **Departmental response**

**8.86** *The Department will ensure its Purchase/Inventory Control/Issuing Procedures is updated as required. It should be noted that this policy manual or compilation of procedures was based on the current automated Inventory Systems' functionality and since this system is still being utilized, especially for vehicle repair part transactions, it is still relevant.*

**8.87** *The Department is doing this as part of our Internal Audit activity on a prioritized basis, according to risk and materiality and will continue with an enhanced focus on construction materials.*

#### **Information systems for inventories**

**8.88** Our criterion in this area was:

*Senior management should monitor results and ensure that information provided by the information system is complete and accurate.*

**8.89** The computerized inventory system cannot produce reports that include all inventories. While the districts can produce inventory reports for their district, no one can produce a comprehensive report of total DOT inventory. To better manage departmental inventory an inventory system is needed that allows management, or others, to have information on total inventory.

**8.90** Additionally the DOT inventory system is not integrated with the Maintenance Management System (MMS) which collects cost information on maintenance projects. Neither of these systems is integrated with the government accounting system (FIS). As a result:

- inventory releases must be entered separately for each of the DOT inventory system, the MMS system and the FIS system;
- additions to inventory must be entered separately for FIS and for the DOT inventory system; and
- obtaining timely information for job costing maintenance projects was noted as a weakness by some engineers we talked to.

**8.91** Therefore:

- there is a duplication of entries;
- there is an additional risk of errors occurring; and
- more work is done than necessary.

#### **Recommendations**

**8.92** We recommended that the computerized inventory system be fully integrated with the departmental maintenance management system and the accounting system of the Province.

**8.93** We recommended DOT develop an inventory system that allows senior management and others responsible for inventory review to better manage and monitor both district and departmental inventory. The system should allow head office staff to produce timely and comprehensive inventory reports.

#### **Departmental response**

**8.94** *The Department agrees that complete integration should be considered but implementation should be based on a business case analysis. Due to the technical limitation and incompatibility of the current system and the fact that the majority of the inventory system transactions involve non-construction material items, this is not a priority issue at this time.*

**8.95** *A preliminary review towards replacement was completed in addressing the Y2K compliance issue. The Department intends to carry out a business case analysis to determine the costs and benefits of materials inventory system improvements. Monthly, year-end and ad-hoc comprehensive inventory reports can and are produced by Head Office staff.*

#### **Assuring road construction quality**

**8.96** In our initial audit plan, we had not intended to investigate whether the Department had adopted “end result specifications” (ERS) in assuring road construction quality. However departmental staff cited an instance where contractors were required to repave a road because their work did not meet the end result specifications set out in the contract signed with DOT. While we were familiar with ERS through

our audit work in 1993, we were unsure of the Department's progress in adopting ERS into its everyday operations.

**8.97** Since we believe ERS offers the Department the opportunity for guaranteed road construction quality and the benefit of assigning responsibility for this quality to the contractors, we decided to review the adoption of ERS by the Department.

**8.98** In 1993, EBA Engineering Consultants Ltd. was hired by DOT to review various departmental operations. One of the major topic areas covered in their report was ERS. The consultants recommended DOT "implement end result specifications at the earliest opportunity." They stated that adoption of ERS was necessary to "send a clear signal to the construction industry that a new way of doing business prevails, one which rewards quality but no longer condones mediocrity". They also noted the traditional method of doing business had been abused.

**8.99** The report stated that some contractors doing work for DOT had successfully abandoned most, if not all, of their responsibilities. For instance, DOT staff was required to provide direction on jobs that should have been the responsibility of the contractors. Also, contractors had abdicated responsibility for the quality of work to DOT. Consequently, the consultants recommended total implementation of ERS by 1996.

**8.100** As explained in the EBA consultant's study, ERS is a form of specification in which the purchaser (DOT) identifies a number of criteria that the product being supplied is required to meet. An ERS contract would normally also require the contractor to guarantee the product for a period of time. If the work does not meet the contracted terms, penalties can be applied.

**8.101** ERS differs substantially from the traditional approach. The traditional methodology contains considerable detail as to all operational aspects, which essentially spell out how the contractor is to do the work. It requires DOT to continuously monitor or inspect the process to ensure its consistency and uniformity. In end results specification DOT only has to assure itself that the product is acceptable by conducting a limited quality assurance testing program. As seen in the repaving example cited by staff, if anything is wrong with the product the contractor is responsible to correct it.

**8.102** There are two significant benefits coming from the adoption of ERS. First, responsibility for the quality of the product shifts from DOT to the contractor and is enforced through a contractor guarantee. This should improve the quality of road construction. The second benefit is that the Department no longer has to continually monitor and inspect the process but now can reduce its workload by only having to do quality assurance testing.



**8.103** We examined progress the Department has made in implementing ERS. In 1993, DOT did not use ERS. In 1998-99 DOT used ERS on six asphalt-paving contracts with the quality of the work guaranteed for one year by the contractor. This represented 27% of the total tonnage of 1998-99 asphalt-paving contracts. In 1999-2000, DOT awarded seven contracts or 35% of total tonnage, using ERS. Because of the drop in large paving contracts issued in 2000-01 the percentage is expected to fall this year.

**8.104** Departmental staff noted that 50% to 65% coverage of all asphalt paving was the expected goal for ERS. Staff noted that smaller operators would be unable or unwilling to adopt ERS and, consequently, competition would be reduced on smaller contracts. However, while DOT staff believes total (100%) implementation of ERS on asphalt-paving contracts is not practical or cost-efficient, no formal analysis has been done by the Department to support this belief.

**8.105** We support the Department's use of ERS. We believe the Department should increase the speed of implementation of ERS to better ensure the quality of contractors' work. Finally, while many problems with road construction work may show up in one year, a longer guarantee period might better protect the Department from poor road construction quality that only shows up after the first twelve months.

#### **Recommendations**

**8.106** The Department should do a formal cost-benefit study to determine the smallest contract size at which the adoption of ERS represents good value for money to the taxpayers of New Brunswick.

**8.107** We recommended that the Department implement ERS on all asphalt paving contracts where it is cost beneficial to do so.

**8.108** We recommended the Department implement ERS in aspects of road construction in addition to paving, where it is cost beneficial to do so.

**8.109** We recommended the Department perform a formal cost-benefit study to determine if lengthening the product guarantee term in ERS contracts would be beneficial to the Province. If the results of the study indicate a longer guarantee term is beneficial then it should be adopted.

#### **Departmental response**

**8.110** *The Department concurs with these recommendations and will pursue the cost-benefit analyses to determine contract size at which ERS should be adopted, applicability of ERS in other aspects of road construction and the most beneficial length of product guarantee. In the interim, the Department believes that valuable information can be gained from the experiences with a staged implementation of ERS on its contracts.*

## **Conclusion**

**8.111** Our audit plan involved two distinct areas within the Department, engineering consulting services and road construction materials. The audit resulted in recommendations for improvement in some cases and conclusions that existing processes were adequate in others.

**8.112** In our opinion, a number of significant changes should be made to the process for hiring engineering consulting services. We believe these changes can reduce costs while maintaining quality. In the Department's response it indicated that it will employ a piloting process to evaluate the potential benefits of our recommendations. We will be monitoring the results of this work.

**8.113** The results of our audit of the purchasing/inventory system were mixed and we recommended some changes to the Department. These were generally well received. There are a number of areas where subsequent action is referred to in the Department's response. Here too we will be assigning resources to examine the follow-up conducted by the Department.

**8.114** Although not originally defined as part of the audit, several important recommendations were made to the Department in the area of assuring quality of road construction. The Department responded positively.

# Chapter 9

## Follow-up on Prior Years' Audit Work

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# Follow-up on Prior Years' Audit Work

## Background

**9.1** One of the performance indicators for our Office is to measure the extent to which recommendations which appear in our annual Report are accepted and implemented. We believe that each of our recommendations, if implemented, would either have a positive impact on the cost or delivery of a government service or would improve the accountability of government to New Brunswick taxpayers. Where a recommendation is not implemented we feel it is important to understand the reason why. It may be necessary for us to raise an issue again, if we believe the action or the response on a recommendation is not satisfactory.

**9.2** Our policy is to track the disposition of our recommendations for a period of four years.

## Scope

**9.3** Last year, in our follow-up chapter, we concluded that the Departments of Education, Finance and Transportation had implemented the recommendations included in our 1996 Report. Accordingly, it is no longer necessary to track those recommendations. We also concluded that the Departments of Finance and Health and Community Services (Ambulance Services Branch inspection function) had substantially implemented the recommendations included in our 1997 Report, so we are no longer tracking those recommendations. However, we are continuing to report on recommendations included in our 1997 Report relating to the Departments of Health and Community Services (air ambulance service), Natural Resources and Energy and Supply and Services. We are also indicating the current status of recommendations arising out of our broad scope audits first reported in our 1998 Report. Our follow-up review consisted of examining the responses we received at the time of our audit and at the time of our 1999 follow-up work, as well as talking to appropriate officials in each Department.

**9.4** We also asked departments and agencies to provide us with their assessment of the current status of recommendations included in our 1999 Report. Since there has been less than a year between the time our 1999 Report was published and when we did our follow-up work we thought it would be premature to comment on progress to date. We will review these self-assessments during 2001.

## Results in brief

**9.5** This chapter includes only the original recommendations made by our Office, the various departmental responses and our current assessments. In order to fully understand the issues that gave rise to our original recommendations, it may be necessary for the reader to refer back to the Auditor General's Report where we first discussed the audit and our findings.

**9.6** The Department of Economic Development and Tourism has implemented few of the recommendations included in our 1998 Report, relating to its Financial Services section. It has not implemented any of our recommendations relating to performance reporting.

**9.7** Neither the Department of Education nor the Department of Health and Community Services has yet implemented the recommendation included in our 1998 Report, relating to reporting on Early Childhood Initiatives.

**9.8** The Department of Health and Community Services is continuing to make progress in implementing the recommendations included in our 1997 Report, relating to air ambulance service.

**9.9** The Department of Health and Community Services has substantially implemented the recommendations included in our 1998 Report, relating to ground ambulance services.

**9.10** The Department of Health and Community Services is taking steps to implement the recommendations included in our 1998 Report, relating to hospital corporation governance and accountability.

**9.11** The Province's regional hospital corporations indicate that they have substantially implemented the recommendations included in our 1998 Report, relating to their governance and accountability arrangements.

**9.12** The Department of Human Resources Development did not implement our recommendation, included in our 1998 Report, relating to the maintenance contract for its NB Case System.

**9.13** The Department of Natural Resources and Energy has still not implemented the recommendations, included in our 1997 Report, relating to revenues received under the *Metallic Minerals Tax Act*.

**9.14** The Department of Supply and Services is taking steps to implement the recommendations, included in our 1997 Report, relating to the privatization of the Province's data processing facility. However, two significant issues are still outstanding.

## Department of Economic Development and Tourism

### *Financial assistance to business*

**9.15** In our 1998 Report, we made twenty-two recommendations as a result of an audit of the Department's Financial Services section. This section provides financial assistance to business. We also made seven recommendations designed to help the Department to enhance the effectiveness of its performance reporting.

**9.16** We recommended that the policy and procedures manual be updated for the application evaluation area to reflect current practice, including guidance on the current economic payback and risk evaluation methodologies that are in use. Areas of discretionary judgement in application evaluation should be identified as such, and areas where a particular procedure must be followed should also be highlighted. The Department should assess applications consistent with the departmental policy and procedures manual or file sufficient explanations as to why the process was not followed in specific cases. This will ensure consistent evaluation of applications by staff.

**9.17** The Department responded:

*On September 25, 1998, an Inter-Office Memo was sent to the Financial Program Group instructing to follow a new presentation format.*

*This new format provides more guidance to the Project Executives on current practices. Among other topics, areas like economic payback, risk assessment and monitoring plan are developed and explained in more detail with sufficient documentation.*

*This new process is at the implementation stage and will be re-examined and improved within the next six months to then be part of the departmental policy and procedure manual.*

*Methodology for economic payback is already part of the Policy and Procedures Manual.*

**9.18** We recommended that the policy and procedures manual define benchmark acceptance levels for each selection criterion, as well as guidelines for use in evaluating client information.

**9.19** The Department responded:

*Our main benchmark is economic payback. The Policy and Procedures Manual contains the Board of Management minute 96.0505 which spells out the benchmarks of the economic payback and the method of calculation. Although the minute refers only to interest free forgivable loans, we apply this method for all financial assistance.*

*The other "decisive" benchmark is if the project fits with Economic Development Strategies. This section .... will also be part of the Policy and Procedures Manual.*

*Other major issues are addressed and evaluated as part of the overall evaluation of the client's application and are not subject to benchmark acceptance levels. We are in the opinion that adding such additional benchmarks would tend to narrow the focus of the presentation and evaluation process.*

**9.20 We recommended that each client file document each of the selection criteria considered and show whether it meets the established benchmark. Information and analyses supporting the evaluation and a conclusion regarding each criterion and key analysis should be present.**

**9.21 The Department responded:**

*We agree to a certain extent. As discussed earlier, only certain factors are subject to "established benchmarks". For those factors, documentation on the evaluation process and the conclusion will be part of the client files and will be part of the Policy and Procedures Manual.*

**9.22 We recommended that in cases where approval of the application has been recommended even though one or more benchmarks have not been met, a rationale for the approval be documented.**

**9.23 The Department responded:**

*In cases where the New Brunswick Industrial Development Board has recommended the projects, a rationale for the approval will be documented. This process will also be part of the Policy and Procedures Manual.*

**9.24 We recommended that where not all selection criteria and key information have been considered for a specific client, the rationale for the omissions be documented.**

**9.25 The Department responded:**

*This process is part of our new presentation procedures and will be disclosed in the Policy and Procedures Manual.*

**9.26 We recommended that, where it would increase the chance of success of the applicant, the Department tie corrective action on the part of the applicant to approval of the assistance.**

**9.27** The Department responded:

*Conditions stated by the New Brunswick Industrial Development Board have always been part of the letter of offer signed by the client.*

**9.28** We recommended that one of the Financial Services coordinators review all client files to ensure all applicable procedures have been completed prior to sending the proposal to the NBIDB.

**9.29** The Department responded:

*Procedures will be changed to ensure that every client's files are reviewed prior to sending the proposals to the New Brunswick Industrial Development Board.*

**9.30** We recommended that client assertions be subjected to sufficient analysis and review to determine, within reasonable limits, that plans are reasonable and achievable.

**9.31** We also recommended that requirements to verify client assertions be documented in the policy and procedures manual.

**9.32** Documentation showing the analysis and review performed by the Department in determining the validity of client assertions, along with client backup documents, should be placed in the client files.

**9.33** Consideration should be given to using outside experts in evaluating assertions made by applicants where specific industry expertise is not available in-house.

**9.34** The Department responded:

*The Financial Program Group supported by expertise from this Department or other Departments of the Province do review client assertions within reasonable limits to ensure they are reasonable and achievable. Where appropriate, we will use external expertise.*

*As part of the enhanced account monitoring of the Group, we will develop a better-documented follow up of the results achieved by the clients on our investments. This will provide us an "experience" data source, which will be an additional tool in evaluating future applicants' assertions.*

*The Policy and Procedures Manual will include documenting and supporting instructions as part of the new process.*

**9.35** We recommended that consideration be given to increasing the cut-off for assistance applications that must go to the Board of Management for approval from \$100,000 to a higher limit.



**9.36** The Department responded:

*The matter is under consideration.*

**9.37** We recommended that the workload and staff requirements be examined and modified as required to allow time for essential monitoring activities.

**9.38** The Department responded:

*A review on staffing has been completed and submission of increasing the staff level was approved by Government and acted on.*

**9.39** We recommended that a monitoring program be developed for each client as part of the application approval process. The extent and nature of monitoring procedures in that program should be based upon a risk evaluation of the client. The program should be presented to the Industrial Development Board for approval as part of the assistance approval process. Each client should be subject to routine monitoring on an ongoing and timely basis as documented in their approved monitoring program.

**9.40** The Department responded:

*As a result of the new process . . . ., we adopted the "account monitoring" plan. The plan is prepared by officers and submitted to the New Brunswick Industrial Development Board as part of the assistance approval process. For the new approvals, clients are subject to routine monitoring as specified in the account monitoring plan.*

*Over the next 2 to 3 months, monitoring plans will be developed and followed for all other "active" clients following the plan's approval by the Director of Financial Programs.*

*Monitoring activities will be supervised within the Department.*

**9.41** We recommended that monitoring and performance reporting information to be provided by the client be specified in the formal agreement(s). For all clients identified as high risk, this information should include audited financial statements and audited job creation and payroll information.

**9.42** The Department responded:

*As a result of the new process, account monitoring plans approved by the New Brunswick Industrial Development Board are attached to the letters of offer. Those letters of offer signed by the clients and the Minister ensure compliance to the monitoring plan attached.*

**9.43** We recommended that all requirements relating to monitoring programs and file documentation for assistance clients be included in the departmental policy and procedures manual.

**9.44** The Department responded:

*...., the new process is at the implementation stage and will be re-examined and improved within the next six months to then be part of the departmental policy and procedure manual.*

**9.45** We recommended that policies be added to the departmental policy and procedures manual to cover actions to be taken in cases when monitoring activities have indicated client problems. Such policies would be most effectively applied if there was also a regular monitoring regime in place, as this would allow for the early identification of client problems.

**9.46** The Department responded:

*To accommodate the improvements in the approval and monitoring phases, problems identified from the monitoring plan will be managed on a discretionary basis by officers under supervision. Future considerations will be given in light of our new monitoring results.*

**9.47** We recommended that policies for loan forgiveness be clearly defined in the departmental policy and procedures manual. These policies should clarify what steps must be taken to verify a client's assertions. They should also clearly indicate under what conditions loan forgiveness may be recommended, and when other actions must be taken.

**9.48** We recommended that these policies be followed in determining whether to forgive the loan, or whether to take some other action.

**9.49** Documentation of steps taken to verify a client's assertions and evidence supporting those assertions should be in the client's file. This documentation should support the action taken.

**9.50** The Department responded:

*Policies will be written in conjunction of the Policy and Procedures Manual update.*

**9.51** We recommended that effective remedies be included in loan agreements to cover cases of client non-compliance with agreement terms.

**9.52** Policies should be documented in the departmental policy and procedures manual to cover actions to be taken when a client has not met the terms of their agreement.

**9.53** The Department responded:

*We will conduct a review of our standard loan agreement and review the remedy actions. We will document procedures to cover cases of major non-compliance.*

#### ***Performance reporting***

**9.54** We recommended that the mission statement of the Department be formalized.

**9.55** Measurable strategic objectives should be developed for the Department. These strategic objectives should allow for an objective evaluation of the success of the Department in achieving its mission.

**9.56** The Department should develop more precise definitions for existing departmental performance indicators relating to jobs created and wealth generation.

**9.57** The Department should develop performance indicators to report against all strategic objectives. This would allow for an evaluation of the degree of success of the Department in achieving its strategic objectives and therefore its mission.

**9.58** The Department responded:

*The Department is going through a full program review with Executive Council and the Department of Finance where all of those items will be reviewed.*

**9.59** We recommended that the Department show annual targets for all departmental performance indicators that are reported in the departmental annual report. Reporting against these annual targets should allow for a yearly evaluation of the Department's achievement in meeting strategic objectives. Such annual targets could be part of longer-term targets established in the Performance Measurement supplement to the Main Estimates for particular performance indicators.

**9.60** The Department responded:

*Annual targets are included in the 1997/98 EDT&C Annual Report. From then on, the targets are and will be presented and improved.*

**9.61** We recommended that the Department comply fully with the provincial annual report policy in future departmental annual reports. Specifically, the following content should be added to the annual report:

- a discussion of the continued relevance of key departmental programs;
- a discussion of the level of client acceptance of key departmental programs;
- an actual versus budget presentation of key financial information; and
- an explanation of any significant variances from budget.

**9.62** The Department responded:

*We will do everything we can to comply fully with the provincial annual report policy in our 1998/99 Annual Report.*

**9.63** We noted that additionally, once departmental strategic objectives have been defined, it would be useful to have performance indicators and narrative descriptions of achievements presented by strategic objective in the annual report. This would make it much easier for a reader to evaluate the degree of success of the Department in achieving its strategic objectives.

**9.64** The Department responded:

*Strategic objectives are included in the 1997/98 EDT&C Annual Report. From then on, the objectives are and will be presented and improved. For this year, the strategic objectives will be presented to Board of Management this November.*

*For the first time ever, all PNB Departments reporting on performance measurement will have a meeting in the near future to work on this issue.*

**9.65** Based on our 2000 review, we are disappointed to note that, in our opinion, only two of the twenty-two recommendations relating to the Financial Services section have been fully implemented. These two recommendations relate to monitoring activities, and are the ones set out in paragraphs 9.39 and 9.41 of this chapter. We consider that four other recommendations have been partially implemented. Sixteen of the twenty-two recommendations have not, in our opinion, been implemented. One major factor appears to be the government's departmental reorganization and the need to clearly define the roles and responsibilities now divided between the Departments of Investment and

Exports and Business New Brunswick. A number of our recommendations are to be addressed in a new policy and procedures manual that the Department of Investment and Exports expects to have completed and in use by December 2000.

**9.66** None of our recommendations related to departmental performance reporting have been fully implemented. As a result of the departmental reorganization, the department to which our recommendations were directed no longer exists. Because of the pending reorganization, no significant changes were made to the old department's 1998-99 annual report, and none are expected for 1999-2000. We consider that our recommendations are still valid for the two new departments, and will monitor their future annual reports for evidence of implementation.

## Department of Education

**9.67** In our 1998 Report, we made one recommendation as a result of our audit of the government's response to the recommendations of the Commission on Excellence in Education.

**9.68** We recommended that the results of the evaluation of the Early Childhood Initiatives be tabled in the Legislative Assembly.

**9.69** This recommendation has not yet been implemented.

**9.70** As explained in our 1998 Report, the Department of Health and Community Services (now Health and Wellness) has developed a rather sophisticated approach for evaluating the Early Childhood Initiatives. This evaluation is ongoing, focusing initially on children born in 1994, but to date no results have been tabled in the Legislative Assembly.

## Department of Health and Community Services

### Air Ambulance

**9.71** In our 1997 Report, we made six recommendations as a result of an audit of the air ambulance service that is administered by the Ambulance Services Branch of the Department.

**9.72** We recommended that future lease agreements be signed in advance of the period covered by the agreement.

**9.73** The Department responded at the time:

*[We] concur that it is optimal to completely conclude final contract negotiations prior to the initiation of any contract for service, but it was necessary to begin providing service prior to this occurring.....the Department and the service providers did duly execute a memorandum of agreement prior to service initiation binding both parties to the provisions, conditions and limitations of the Request for Proposal and the service provider's response to it. The Department of Justice reviewed this document, and considers such documents to be legally binding on both parties.*

**9.74 We recommended that clear, measurable objectives be designed for the air ambulance service and linked to the existing air ambulance mandate.**

**9.75** The Department responded at the time:

*An application for accreditation of the service by the Commission for the Accreditation of Air-Medical Services will take place during the 1998-99 fiscal year. The application process requires that goals and objectives be set and measured. These will be linked to the mandate.*

**9.76 We recommended that an appropriate group of operating reports be developed by NB AirCare and provided to the Ambulance Services Branch on a regular basis. These reports should allow management to monitor operations at NB AirCare and to assess the degree to which strategic objectives are being met.**

**9.77 We further recommended that incident reports and responses to questionnaires be summarized and included in regular reporting to Ambulance Services Branch management.**

**9.78** The Department responded at the time:

*This.....will be addressed in two ways: development of a strategic information plan for the Ambulance Services program to provide an integrated approach to contractual and finance, air and land operations, patient information, and inspection and enforcement needs; and development of the application for accreditation of the service, which will require comprehensive standardized reporting for the air ambulance service to be available.*

**9.79 We recommended that the rates per service currently being charged to the other provinces be re-evaluated to ensure that they adequately cover all costs associated with the provision of air ambulance service.**

**9.80** The Department responded at the time:

*The current tri-partite agreement between Nova Scotia, PEI and New Brunswick expires March 31, 1998. These comments will be considered at that time. .... During negotiation of any such agreements, care must be taken to not exceed the market value of such a service.*

**9.81 We recommended that the current facilities be reassessed and that improvements be made as necessary.**

**9.82** The Department responded at the time:

*We are working with the aviation service contractor to examine opportunities for improvement; however there is currently no additional hangarage at the Moncton Airport. In regard to the physical plant provided for the coordination function, a detailed examination will be undertaken as part of the evaluation of a pilot for land ambulance dispatch. Changes will be made as appropriate subsequent to this evaluation.*

**9.83** Based on our 2000 review, the Department is continuing to make progress in implementing our recommendations. However, there are still no measurable objectives for the air ambulance service. The application for accreditation of the service, referred to in the original departmental response, has not yet been prepared. Operating reports have been developed and are regularly reviewed, but incident reports are still not summarized and included in the regular reporting. Government has made a decision to bill to other provinces all fixed and variable costs of providing air ambulance services, and is currently negotiating new agreements with Nova Scotia and Prince Edward Island. The current facilities for the air ambulance service have been improved.

## Ambulance Services

**9.84** In our 1998 Report, we made two recommendations as a result of an audit of the consequences of the withdrawal of volunteer ambulance services by St. John Ambulance in 1996.

**9.85** **We recommended that the Department assess the success of the private sector model and compare the incremental benefits to the increased costs. We promote accountability in our work and in this regard we suggest the results of this analysis appear in the departmental annual report.**

**9.86** The Department responded:

*The Department is continuing to consider operational and policy options regarding the effectiveness and efficiency of the delivery of ambulance services. Steps have been taken to collect operational, clinical and financial information to allow this to occur. We plan to further this work during 1999-2000.*

**9.87** **We recommended that the Department continue to work to develop funding guidelines and standards to use both in determining compensation rates for sole source providers and for evaluating RFPs.**

**9.88** The Department responded:

*The Department has implemented several funding guidelines to date and work continues to develop parameters for later implementation. Specifically, guidelines have been established for variable expenditures by distance travelled, wages and benefits, honoraria for volunteers, administrative salaries, retained earnings and procurement.*

**Hospital Corporation  
Governance**

**9.89** Based on our 2000 review, we are satisfied that the Department has substantially implemented our recommendations. Although the Department has not included the results of its analyses in its annual report, we are satisfied that it has completed an appropriate assessment of ambulance services options.

**9.90** In our 1998 Report, we made six recommendations to the Department relating to its responsibilities in the area of hospital corporation governance and accountability.

**9.91** We recommended that the Department of Health and Community Services, in consultation with the regional hospital corporations, clarify and document the roles and responsibilities of regional boards and Department vis-à-vis policy-setting and decision-making.

**9.92** We recommended that the Department provide the hospital corporations with long-range budgets in order to facilitate board strategic and operational planning. Boards should be given the opportunity to provide input into this long-range budgeting process.

**9.93** We recommended that the Department develop more formalized mechanisms for obtaining the feedback of regional corporations/boards with regard to policy decisions and directives being considered by government.

**9.94** We also recommended that the Department strive to improve its timeliness in communicating policy-decisions and directives to the regional corporations/boards.

**9.95** We recommended that the Minister/Department review and formally approve the strategic plans of the regional hospital corporations before they are adopted.

**9.96** We recommended that the Minister/Department require the regional hospital corporations to develop performance indicators for their strategic objectives and set annual targets for each performance indicator identified. The Minister should approve these performance indicators and targets. The Minister/Department should also consider setting standard performance indicators for all regional corporations where considered appropriate. These could be used for comparative purposes.

**9.97** Based on our 2000 review, we are satisfied that the Department is taking steps to implement our recommendations. Three of our recommendations, relating to communication between the Department and the regional hospital corporations, have been implemented to date. The other three recommendations are under consideration. The Department would like to develop a longer-range budget process. It is also trying to take a more proactive role in the strategic planning of



## Hospital Corporation Governance

regional hospital corporations, and is working with the corporations in developing performance indicators. However, in each of these areas our specific recommendations have not yet been addressed.

**9.98** In our 1998 Report, we made nine recommendations to the Province's eight regional hospital corporations following a review of the corporations' governance and accountability arrangements.

**9.99** In 2000, we wrote to each of the regional hospital corporations to obtain the current status of their response to our recommendations. We have accepted these responses as provided, and have not attempted to audit or otherwise confirm their validity. The responses are summarized following each recommendation.

**9.100** We recommended that regional hospital corporation boards develop and maintain model profiles for new members in consultation with the Minister of Health and Community Services. These model profiles should be referred to by the board and the Minister in screening potential new board members. Such profiles should include generic requirements and should also attempt to reflect the special requirements of individual boards.

**9.101** Most boards agreed that model profiles would be useful, and some indicated that they were being developed. Some regions indicated that model profiles might not be practical, or that alternative, informal arrangements were in place to ensure well-rounded boards.

**9.102** We recommended that orientation sessions be given to all new board members and that attendance at those sessions be made a requirement of serving on the board.

**9.103** All boards reported that this is being done.

**9.104** We recommended that each regional hospital board develop clearly-stated position descriptions for individual board members, along with a roles, responsibilities, and accountability description for the board as a whole.

**9.105** Most boards indicated that this is done. A number of boards stated that the duties and responsibilities of board members and officers are set out in the by-laws of the corporation.

**9.106** We recommended that all boards develop an education policy for their board members. Such a policy could include a requirement for certain core training to be completed by all board members. The policy should be reviewed and updated regularly.

**9.107** Most boards indicated that training is available, and board members take advantage of the opportunities provided. A number of

boards admitted there is no policy requiring their members to take training, but indicated that such a policy is being or will be developed.

**9.108 We recommended that corporate strategic plans be updated at least every three years. Boards should be involved in the development of these plans, not just in their approval.**

9.109 Most boards indicated they are directly involved in strategic planning, and that these plans are updated on a regular basis, which is usually every three years.

**9.110 We recommended that the division of responsibilities between the CEO and the board be defined in writing for each regional hospital corporation.**

9.111 Most boards indicated that the duties of the CEO are clearly defined, often in the by-laws of the corporation. A number of boards also submitted documents outlining the board members' responsibilities.

**9.112 We recommended that management reporting to the board be formally structured to provide comparisons between actual and targeted performance. Additionally, some reporting should address management compliance with board policies and the education of members. Such reporting should be provided on a regular, periodic basis.**

9.113 All boards indicated they receive regular reports from management comparing actual and targeted performance. A number of boards also indicated they are working with the Department of Health and Wellness to develop additional performance indicators.

**9.114 We recommended that regional hospital corporations comply fully with the provincial annual report policy in future corporate annual reports.**

9.115 Most boards agreed with the thrust of this recommendation. A number of boards expressed an opinion that the policy does not fit easily into the hospital environment, and that their annual reports fulfill a promotional as well as an accountability requirement.

**9.116 We recommended that the Chair of the board and CEO of each regional hospital corporation appear annually before the Crown Corporations Committee.**

9.117 As indicated elsewhere in this Report, all regional hospital corporations appeared at hearings of the Crown Corporations Committee beginning in January 2000.

**Department of Human  
Resources Development**

**9.118** Based on the responses received from the boards of the regional hospital corporations, it appears that our recommendations have been substantially implemented.

**9.119** In our 1998 Report, we made two recommendations as a result of an audit of the implementation of the Department's automated NB Case System.

**9.120** We recommended that HRD prepare a full-cost analysis of alternative methods of operating and maintaining the NB Case System. This analysis should be prepared prior to the expiry of the .... agreement with Andersen Consulting.

**9.121** The Department responded:

*HRD still intends to explore its options with regard to the maintenance contract prior to the expiration of the current agreement with Andersen Consulting (AC). Although HRD feels that the relationship with AC has been a good one, and that it has received value for its investment in the way of good solid support at competitive pricing, it does recognize the fact that there may be other options available for provision of this support or changes in government direction regarding outsourcing as a preferred route for this type of work. The Department plans to examine its options in the spring of 2000.*

**9.122** We recommended that the Department facilitate the necessary changes to the NB Case System to provide the appropriate audit trail for all entries to FIS.

**9.123** The Department responded:

*The solution to address this recommendation was put in place on October 7, 1998. HRD-NB assumes this matter has been resolved to the satisfaction of Auditor General's Office and considers this issue closed barring any further feedback from his office.*

**9.124** Based on our 2000 review, the Department has implemented our second recommendation. Regarding the first recommendation, the Department opted for a two-year extension of its maintenance contract with Andersen Consulting. However, it appears that there was no analysis of alternatives prior to this decision being taken. The Department chose a path of stability and continuity at a time of considerable organizational change.

**Department of Natural  
Resources and Energy**

**9.125** In our 1997 Report, we made eight recommendations as a result of an audit of revenues received under the *Metallic Minerals Tax Act* and royalties pertaining to potash mining.

**9.126 We recommended the Department continue its efforts to improve the Metallic Minerals Tax submission forms and ensure the Regulations are revised as appropriate.**

**9.127** The Department responded at the time:

*The Department is in agreement with this recommendation. The Department will continue its efforts to improve the Metallic Minerals Tax submission forms and this continuing project will result in the incorporation of the electronic version of the forms in the Regulations.*

*The Department is currently reviewing the Metallic Minerals Tax Act (MMTA) and regulations and these changes will be completed by March 1998 to be incorporated in the legislative package for the fall session in 1998.*

**9.128 We recommended that the Department amend the MMTA to include a requirement that the taxpayer provide an audited statement of its operations in New Brunswick or an audit opinion on a statement of taxes payable under the MMTA.**

**9.129** The Department responded at the time:

*We agree and will take steps to include the requirement in the forthcoming legislative package to be completed by March 1998.*

**9.130 We recommended the MMTA be amended to indicate the basis of accounting is Generally Accepted Accounting Principles.**

**9.131** The Department responded at the time:

*We agree and a reference to Generally Accepted Accounting Principles will be incorporated in the legislative package to be completed by March 1998.*

**9.132 We recommended the Department finalize the revised unsigned potash leases.**

**9.133** The Department responded at the time:

*We are in agreement with this recommendation and we are working on finalizing the leases in conjunction with our solicitor at the Department of Justice. These negotiations are complex and time consuming therefore we are targeting a time frame of three to six months to complete this exercise (i.e. by March 31, 1998).*

**9.134** We recommended the Department ensure both producers compute royalties on the basis of the signed leases.**9.135** The Department responded at the time:

*Your recommendation is noted and steps are being taken to ensure both companies comply with the existing leases notwithstanding the current negotiations. However we do note that with the quarterly basis of reporting versus monthly, because of the fluctuations in selling price and production, that there would be an opportunity cost in the amount of approximately \$280,000 which operates in the Province's favour. This figure is based on information supplied by the company for the period of July 1995 to March 1997.*

**9.136** We recommended that when the present leases expire, the Department improve cash flow by requesting monthly remittances from potash producers.**9.137** The Department responded at the time:

*Your recommendation is noted and will be reviewed by both parties during the negotiations for renewal of the leases in 2001.*

**9.138** We recommended the Department develop an analysis of the various royalty alternatives prior to the Minister's option to unilaterally change the royalty in 2002. We recommended that a royalty based on production be one of the alternatives.**9.139** The Department responded at the time:

*Your recommendation is noted and we agree that alternatives for royalty determination will be explored in advance of the renewal of the leases in the year 2001.*

**9.140** We recommended the Department improve its approach to the audits of potash producers.**9.141** The Department responded at the time:

*We agree with this recommendation and have just recently developed and carried out a significantly strengthened audit*

*approach to potash audits which addressed your recommendation for a more formal documentation of the planning, conduct and reporting of the audit.*

**9.142** As we reported in 1999, the Department is taking steps to implement our recommendations. Proposed changes to the *Metallic Minerals Tax Act* have been drafted, but partly as a consequence of the election in 1999 have still not been submitted to the Legislative Assembly. However, the revised potash lease has now been finalized and signed.

## Department of Supply and Services

**9.143** In our 1997 Report, we made five recommendations as a result of an audit of the government's decision to privatize its data processing facility (Data Centre).

**9.144** **We recommended the Department of Supply and Services ensure the Consortium bring the Data Centre in line with control requirements set out in the chartered accountants' report.**

**9.145** The Department responded at the time:

*The Consortium, in consultation with this department, is addressing the issues identified for improvement. The TTSS security protocol replacement is a very costly undertaking to government as major modifications are required to a large suite of customized applications. These changes are being made as systems are replaced and as applications support budgets permit. The pace of reaching the requirement is heavily dependent on budget available for this priority with respect to the TTSS replacement.*

**9.146** **We recommended that the relevant section of the agreement be clarified so that appropriate financial information can be obtained from the Consortium partners.**

**9.147** The Department responded at the time:

*.....the purpose of this section was to ensure we would annually have evidence of the solvency of the Consortium companies. It is not clear.....that this is in fact what is requested and whether an Auditor's Report, not a financial statement, is the requirement. In any case we would not expect any "management letters" unless the external auditor found discrepancies. In the case of Datacor/ISM they did submit a letter that basically testified that the audit had been done. In the case of Unisys, they replied with an Annual Report stating that "Unisys Canada Inc. does not complete external audits on their financial statements". As you know however the U.S. parent is a publicly traded company, and their financial position was investigated when the clear path technology was*

*acquired in 1996-97. The contract allows for a "report on the financial statement" not audited financial statements. Perhaps the external audit report from Datacor/ISM should be more detailed. Unisys, clearly has not attempted to fulfil their requirement here unless one accepts the Annual Report as evidence of solvency.*

*It should also be noted that the Province has extensive right to audit under 4.12(a) on a confidential, non-disclosure basis all "books, records, documents and other evidence....". There has not been any evidence that financial problems, in either partner, has impacted on the performance of the contract so no audit has been initiated by ourselves.*

**9.148 We recommended that the Department analyse the results of the value assurance study, document the results, make recommendations for change where appropriate and prepare an appropriate action plan.**

**9.149** The Department responded at the time:

*The Department has done this. The results of this study were reviewed by Department of Supply and Services (DSS) Contract Management and communicated to the Departments. The Departmental contract advisory committee (DCWG) was given the report and it was discussed and accepted at their 21 March 1997 meeting.*

**9.150 We recommended the Department review the cost allocation model currently in place and give consideration to suggestions put forward by the user group.**

**9.151** The Department responded at the time:

*This is in process. Principles have already been discussed with the ITSSC. Some detail issues remain but we are in the process of coming up with a recommendation. We are very cognizant of the issue of "paying twice for the same service". Each service including the mainframe is priced separately and care is taken with each new order to ensure the price reflects competitive market rates. As departments migrate off the mainframe there may be an issue of the remaining departments having to cover the price of the mainframe but this is now being watched to ensure decisions account for sunk costs and value for money. This is a government problem and is being addressed through collective planning. A cost allocation model is under review and will shortly be taken to the government by DSS for ratification.*

**9.152 We recommended the Department of Supply and Services take advantage of provisions of the agreement that transfer up to 15% of the**

**mainframe personnel resource costs annually from mainframe to client server environments or re-negotiate this part of the agreement if necessary.**

**9.153** The Department responded at the time:

*The government usage of the mainframe has continued to increase since the Consortium has assumed its operation. As (and when) this utilization decreases the Contract Management will diligently pursue the reallocation benefits.*

**9.154** As we reported in 1999, the Department is taking steps to implement our recommendations. Two significant issues are still outstanding, relating to our recommendation set out in paragraph 9.144 dealing with the Data Centre's control procedures. The first is that the Data Centre is unable to obtain assurance that its security procedures surrounding the processing of transactions meet acceptable industry standards. The security system was developed in-house by the government more than twenty years ago. The second is that the Data Centre does not have a Disaster Recovery Plan that would enable it to continue to provide services to the government in the event of a major disruption. The Department has indicated that, because of the costs involved, these situations are unlikely to change in the near future.

**9.155** It should be noted that the make-up of the Consortium operating the Province's Data Centre has changed. It now consists of Unisys Canada Inc. and xwave.



# Chapter 10

## Financial Audits in Departments and Crown Agencies

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# Financial Audits in Departments and Crown Agencies

## Background

**10.1** The Legislative Assembly approves the budget that sets out the government's financial plans. The duties imposed on our Office require us to audit the actual financial results and report our findings to the Legislative Assembly.

**10.2** Our audit work encompasses financial transactions in all government departments. As well, we audit pension plans and other trust funds.

**10.3** We also audit the Crown Corporations, Boards, Commissions and other Agencies which are listed below. By the date this Report is released we will have issued audited financial statements of all these agencies for the year under review.

**10.4** Agencies included in the Public Accounts:

- Advisory Council on the Status of Women
- Algonquin Golf Limited
- Algonquin Properties Limited
- Kings Landing Corporation
- Lotteries Commission of New Brunswick
- NB Agriexport Inc.
- New Brunswick Credit Union Deposit Insurance Corporation
- New Brunswick Crop Insurance Commission
- New Brunswick Highway Corporation
- New Brunswick Municipal Finance Corporation
- New Brunswick Research and Productivity Council
- Premier's Council on the Status of Disabled Persons
- Provincial Holdings Ltd.
- Regional Development Corporation
- Regional Development Corporation - Special Operating Agency
- Youth Council of New Brunswick

**10.5 Other Agencies:**

- Le Centre communautaire Sainte-Anne
- Legal Aid New Brunswick
  - Criminal Legal Aid Fund
  - Domestic Legal Aid Fund
- New Brunswick Public Libraries Foundation

**Scope**

**10.6** To reach an opinion on the financial statements of the Province, we carry out audit work on the major programs and activities in departments. In addition, we audit major revenue items and a sample of expenditures chosen from all departments. We also test controls surrounding centralized systems.

**10.7** We take a similar approach to our testing of the Province's pension plans. Our objective in doing this work is to reach an opinion on the financial statements of each plan.

**10.8** Because of the limited objectives of this type of audit work, it may not identify matters which might come to light during a more extensive or special examination. However, it often reveals deficiencies or lines of enquiry which we might choose to pursue in our broader-scope audit work.

**10.9** It is our practice to report our findings to senior officials of the departments concerned, and to ask for a response. Some of these findings may not be included in this Report, because we do not consider them to be of sufficient importance to bring to the attention of the Legislative Assembly.

**10.10** Our work in Crown agencies is usually aimed at enabling us to give an opinion on their financial statements. During the course of this work, we may note errors in accounting records or weaknesses in accounting controls. We bring these matters to the attention of the agency, together with any recommendations for improvement.

**10.11** This chapter of our Report summarizes issues related to departments, pension plans and Crown agencies which we consider to be significant to the members of the Legislative Assembly.

**10.12** Our examination of the matters included in this chapter of our Report was performed in accordance with generally accepted auditing standards, including such tests and other procedures as we considered necessary in the circumstances. The matters reported should not be used as a basis for drawing conclusions as to compliance or non-compliance with respect to matters not reported.

## Financial audits in departments

### Results of general expenditure testing

**10.13** As discussed under “Scope”, we select for testing a sample of expenditures from government departments. This sample is selected using statistical sampling techniques. However in some cases, expenditures are audited more efficiently by using other audit procedures. The overall approach is designed to give us confidence that, in total, provincial expenditures reported on the financial statements are correct in all material respects.

**10.14** Our tests and procedures are not just designed to reveal monetary errors, of which there are few. We also check to ensure the expenditure is properly approved, is reasonable in the circumstances and complies with the legislation, regulations and policies which give authority to the transaction. We find more deficiencies in these areas. When we suspect a deficiency is more than just an isolated incident, we may schedule additional audit work in that particular area to confirm or deny our suspicions. This additional work may take place in a subsequent audit year.

**10.15** The deficiencies noted in our 2000 audit of expenditures are summarized below. Where the deficiencies related to statistical samples, they are shown as a percentage of the number of items sampled.

- Documentation did not properly support the expenditure recorded (4.3%). For example, no agreement was present to support payment, supporting documentation did not agree with amount paid or email was used as support.
- Transactions were not properly authorized (5.7%). For example, payment was approved by persons without proper signing authority (the result of out-of-date signing authority listings).
- Payments were made late which exposes the Province to the risk of being charged interest on overdue accounts (2.6%).
- Purchases did not agree to contract or tender price (2.3%).

**10.16** One issue we noted this year is the use of email as the backup for certain transactions. The current provincial policy does not allow email as support for an expenditure.

**10.17** We were told the policy for using email as backup is presently under review. According to the Comptroller, departments should obtain the best supporting documentation available under the circumstances. We are interested in the tendency towards the use of email in this increasingly electronic age. We intend to monitor it in the upcoming year. Our concern is that the current practice and government policy be the same.

**10.18** We want to emphasize that the Province spends in excess of \$4 billion each year. The instances referred to in this chapter of our Report represent a tiny fraction of these expenditures. No large organization can operate perfectly, all the time. Errors can occur, and mistakes can be made. The overwhelming majority of transactions processed by the Province are accurate, authentic and in compliance with established policies and legislation.

## **Annual review of the internal controls**

### ***Bank reconciliations***

**10.19** Monthly bank reconciliations are a key control for the management and control of government financial data. At the time of our audit in March, the last completed reconciliation was for the month of December. However we did note that one key aspect of the bank reconciliation is performed each day. Cancelled cheques are reconciled to the accounts payable system on a daily basis and discrepancies are followed up immediately.

**10.20** We also noted that the completed reconciliations are neither signed nor dated. As well, although someone is responsible for reviewing the reconciliations, there was no evidence of this review having been completed. We recommended that the bank reconciliation be performed each month on a timely basis. The reconciliation should be signed, dated and reviewed. There should be evidence of the review noted on the reconciliation.

## **Provincial financial accounting system**

**10.21** For the last few years, the Office of the Comptroller (OC) has been developing and implementing a new financial accounting system for the Province. The OC is customizing accounting software called Oracle Financials. By December 1999, this new system was being used to process payments for government transactions. Because of its significance, and the fact we rely on it for our provincial audit, we decided to review the system. Our review focused mainly on the system's security. However, we also had findings with respect to Internal Audit's review of the system and the general management of the development efforts.

### ***No formal process for granting or changing system access***

**10.22** Through discussions with members of the development team, we discovered that there is no formal process in place for granting system access to new users. We believe that having a formalized process in place to grant access to new users is extremely important. It provides a mechanism that the OC can use to ensure all users are valid and authorized. It also provides a process for departments to follow when requesting access.

### ***Recommendation***

**10.23** We recommended that the OC develop and document an Oracle system access policy. This policy should describe the process to be followed for granting or changing system access. We also recommended the OC inform departments of the process they should follow when requesting system access.

***Four Oracle users had incompatible functions***

**10.24** As part of our review of the Oracle system, we compared users who had “input access” in the system to users who had a “release responsibility” in Oracle. (These two functions are incompatible as one allows a user to enter transactions and the other allows a user to effectively submit or approve the transaction for payment.) We identified four users who had the ability to both input and release transactions. The separation of these functions is an important internal control as it prevents one individual from having total control of the payment. A good accounting practice would see transactions initiated and approved by different individuals. Discussion with the OC revealed a staff member does verify that there are no conflicting responsibilities before a new user is added. However, this verification process is time consuming and thus subject to error. The OC was going to make changes to eliminate these incompatible access rights.

***Recommendation***

**10.25** We recommended that the OC continue to verify that there are no conflicts before approving user responsibilities in Oracle. However, the verification method should be modified so that it is easier to identify potential incompatibilities. Also, the OC should ensure the rights of the four users we identified are changed so that they are no longer incompatible.

***Multiple users with system administrator rights***

**10.26** During our system review, we noticed that at least four members of the development team have system administrator rights. System administrator rights give a user complete access to the system. The team members noted that being able to perform some of the system administration duties, in a sense, provides a backup of the system administration function. While having a backup to this critical position is good, we question whether more than two people should have system administrator rights. Increasing the number of users with system administrator rights increases the risk of error and of unauthorized access to the system should a password become known.

***Recommendation***

**10.27** We recommended that the OC review the necessity of having multiple (more than two) users with system administrator rights.

***No documentation of unique system functions***

**10.28** The OC has made many customizations to the out-of-the-box Oracle Financials application. Inherent in any such customizations is the need to document the customizations and their effect on the application. This is necessary because the application is no longer in its original state and parts of it are now unique to the organization. If key personnel were no longer available to work on the project, this documentation would help protect the organization from unnecessary delays and errors. New personnel should be able to review the documentation and quickly be knowledgeable on the unique features of the application.

**10.29** From our discussions, we learned that the OC has documented many of the customizations that it has made to the application, but more

work is needed especially in the area associated with the Database Administrator.

***Recommendation***

**10.30 We recommended that the OC review documentation for the Oracle application and ensure there is adequate documentation for anything that is unique to its installation and necessary in case of personnel turnover. This includes the unique functions of the Database Administrator, the System Administrator and any other key personnel.**

***Lack of system sign-off by internal audit***

**10.31** The Internal Audit section of the OC reviews all key financial systems implemented by government to ensure these systems have adequate internal controls. Before the systems go into production, the OC signs-off on the systems based on the results of the review conducted by Internal Audit.

**10.32** We were informed that in the case of the Oracle system, Internal Audit did not perform this formal review or sign-off. The OC had many individuals with a background in financial accounting working on the project. These people were very conscious of the need for systems to have strong internal controls. Also, the manager of information systems audit attended regular project meetings and could give her input on issues and problems at those times. We were told that because of the foregoing considerations, Internal Audit did not perform a formal review or system sign-off.

**10.33** In the absence of a formal review by Internal Audit, we believe that the person or group that is responsible for testing the system should sign-off as evidence that controls are in place and working properly. We found no such evidence of a documented system sign-off. We believe the lack of a formal review by Internal Audit does not relieve the OC of the responsibility to ensure there is a formal sign-off to support the system implementation decision. This sign-off should be supported by documented evidence that the system has been adequately tested. This documentation should be available for all future major enhancements.

***Recommendation***

**10.34 We recommended that the OC have a formal sign-off to support system implementation decisions. This sign-off should be supported by documented evidence that adequate internal controls are present in the system and operating effectively.**

***System development methodology and project management***

**10.35** The Oracle financial system had to be implemented before the year 2000, as its predecessor would have been unable to carry out key functions at that time. Essential parts of the system were implemented by that date. Thus the OC was successful in accomplishing one of its major goals - having the key parts of the system in place prior to year 2000.

**10.36** During our review, we noticed that some important documentation traditionally found in system development projects was

not prepared. Such items as a detailed project plan, a detailed budget and a detailed tracking of project costs were not available. While the OC was successful in meeting this major goal, we wonder if its success could have been even greater had it used some aspects of traditional system development methodologies and project management practices.

**10.37** We believe it would be useful for the OC to prepare a project plan for the additional system enhancements yet to be implemented. This would help determine the scope and expected length of the project. It would also enable government departments to know the future direction of the Province's financial information system.

**10.38** We also believe it would be useful for the OC to prepare a budget for expected future system costs. Even though this may be a difficult task, it will provide valuable information for decision-making. It will also make some form of performance measurement possible and enhance accountability.

**10.39** We would also like the OC to track project costs in detail. These costs should include not only the salary of the development team, but also an estimation of the cost associated with the OC and Department of Supply and Services staff who have spent time working on the development of the project. This would enable the government to get a picture of the actual cost of the project.

#### ***Recommendation***

**10.40** We recommended that the OC implement some key aspects of traditional system development methodologies and project management practices. In particular, we would like to see a future project plan and budget. We also recommended that the OC track project costs and compare such costs to the budget. This should assist in managing the future work.

#### **Department of Education** ***Reconciliation of accounts***

**10.41** A great deal of our time this year was spent in auditing certain clearing or suspense accounts. Our audit determined that both the opening and closing balances in one major account were incorrect. We believe the error could have been prevented if the Department had better procedures for reconciling accounts at year end. We recommended the Department improve its year end reconciliation procedures.

#### ***Transfer of funds to TeleEducation***

**10.42** TeleEducation is a branch within the Department. It receives funding for its innovative work from a variety of government organizations. These include the federal government, the community colleges and the Maritime Provinces Higher Education Commission (MPHEC).

**10.43** In regards to an amount of \$350,000 transferred from MPHEC to TeleEducation, we had two concerns. The first is that there appeared to be no formal written agreement between MPHEC and TeleEducation



specifying the amounts to be paid. We believe that there should have been, and recommended that to the Department.

**10.44** Secondly, the Department considers the money TeleEducation receives from MPHEC as a reduction of expenditures, not revenue. In our opinion, however, the funds received from MPHEC are clearly revenue. Disclosing them instead as a reduction of expenditures obscures the true size of the TeleEducation component. We recommended the Department review the accounting and budgeting procedures for TeleEducation to ensure the users of financial information are provided with a clear picture of financial plans and results.

## **Department of Municipalities and Housing**

### ***Grant with no authority***

**10.45** The *Community Planning Act* states that the Minister may enter into an agreement with a planning commission to share expenses. We examined a grant to a planning commission in an amount of \$95,000 but were unable to find an agreement that authorized the grant. We understand that grants have been given to planning commissions since 1995. We conclude that this grant has been issued without the necessary authority in a manner that is not in compliance with legislation.

### ***Departmental response***

**10.46** *Agreements, as defined as duly executed contracts, between the District Planning Commissions and the department are not held. We believe, however, that an agreement, as defined as an arrangement to a course of action, does exist between the individual Commissions and the department. This arrangement has been ongoing since 1995. It is evidenced by the published paper "A Proposal for Improving Service Delivery", discussions and negotiations between the parties, and the annual budget approval process which records the grant as a portion of the individual Commission's funding. To remove any doubt as to the interpretation of an agreement, the Department will undertake to obtain signed contracts with each of the Commissions. However, we believe the Department has not made an expenditure "without authority".*

### ***State of emergency funding***

**10.47** According to a regulation under the *Emergency Measures Act*, municipalities may obtain assistance from the government when a state of emergency had been declared. We found that although some municipalities did receive assistance following the event referred to as the January 2000 storm surge, no state of emergency had been declared. The Department accrued an expense of \$2.4 million.

### ***Departmental response***

**10.48** *The Department acted under the authority of Section 9(1) of the Financial Administration Act, which allows the Minister to enter into agreements with Canada pursuant to any financial assistance program of the Government of Canada. Copies of letters between the Minister of Municipalities and Housing and the Minister responsible for Emergency Preparedness Canada in regard to assistance under the federal program, Disaster Financial Assistance Arrangements, for the January 2000 Storm Surge are on file. The procedures involved in the actual granting of*

*financial aid were in accordance with the Disaster Financial Assistance Manual. We believe the Department has not made an expenditure “without authority”.*

**10.49** *We agree that there appears to be an inconsistency between Regulation 83-71 of the Emergency Measures Act and the direct involvement of Emergency Measures Organization staff in the granting of financial aid. The Department of Public Safety has indicated it will undertake a review of the regulation and procedures and take whatever steps are necessary.*

## **Department of Human Resources Development and Housing**

**10.50** As at 31 March 2000 the Department of Human Resources Development and Housing (HRD) had approximately \$27.5 million in accounts receivable resulting from overpayments of assistance to clients. In a report to the Department this fiscal year the Comptroller recommended that they once again consider participating in a project to use Revenue Canada set-off to help collect overpayments receivable.

**10.51** Although the Province chose not to pursue the initiative at that time, our understanding is that other provinces have achieved substantial results through their participation. HRD staff indicated to our Office that they continue to support this collection initiative. We recommended the Province enter into an agreement with Revenue Canada to help collect overpayments.

## **Financial audits in Crown agencies**

### **New Brunswick Highway Corporation**

**10.52** On 22 January 1998 the Province, through the New Brunswick Highway Corporation (NBHC), entered into agreements with a private sector consortium, the Maritime Road Development Corporation (MRDC) and a not-for-profit company, the New Brunswick (F-M) Project Company Inc. (Project Co.) to develop, design, build, operate, maintain, rehabilitate, and finance a toll highway between Longs Creek and Moncton.

**10.53** Effective 1 March 2000, the Fredericton-Moncton Highway agreement was amended to eliminate tolling on the highway. Repayment of the underlying toll-based debt will now be funded through traffic volume payments. These are monthly payments being made by the Province through NBHC to Project Co. based on usage of the highway. The responsibility of the Province to make semi-annual payments through NBHC to service lease-based debt issued by Project Co. remained unchanged under the amended agreements.

### **Direct cost implications**

**10.54** Certain direct costs associated with the removal of tolls from the Fredericton-Moncton highway were incurred by NBHC as detailed in the 1 March 2000 amendments to the agreements.

Fee paid to the Maritime Road Development Corporation	\$30,000,000
Reimbursement of costs incurred by the Maritime Road Development Corporation	\$400,000

Fee paid to the toll-based lenders	\$1,015,000
Legal expenses of the New Brunswick (F-M) Project Company Inc.	\$58,469
Legal and other expenses of NBHC	\$501,331

**10.55** Total direct costs associated with the removal of tolls as reported in the 31 March 2000 financial statements of NBHC were \$31,974,800.

**10.56** Additional direct costs to be incurred during the 2000-2001 fiscal year relate to the removal and restoration of toll plaza sites. It is our understanding that these costs will be borne by Project Co. and repaid by the Province through scheduled lease payments.

#### ***Other cost implications***

**10.57** The overall capital cost of the project was reduced by the decision to eliminate tolling on the highway. Eliminating tolling meant that the construction of toll plazas could be cancelled, and that related toll system operation, maintenance and management costs would be eliminated. A Province of New Brunswick press release dated 1 March 2000 indicated that the total savings as a result of eliminating tolling were in the order of \$34.5 million.

**10.58** However, we would not necessarily conclude that the decision to eliminate tolling provided a net positive contribution to the Province. It was previously estimated that approximately twenty percent of toll revenues collected for the highway would have been from out-of-Province traffic. Therefore, given that the toll revenue over the thirty-year lease period was projected to be \$615 million, we would estimate that \$123 million in out-of-Province toll receipts were foregone through the elimination of tolls. Under the original agreement, these toll revenues were intended to help defray the provincial cost of servicing the toll-based debt.

#### ***Accounting implications***

**10.59** The decision to eliminate tolls on the Fredericton-Moncton highway had a major effect on the way in which the highway transaction was accounted for.

**10.60** Initially, because over ten percent of revenue came from toll receipts, the Province accounted for the arrangement as an operating lease in accordance with accounting guidelines issued by the Canadian Institute of Chartered Accountants (CICA). This meant that the highway cost was to be expensed over the period during which lease payments were being made.

**10.61** Once the toll revenue stream was eliminated, the arrangement no longer qualified as an operating lease, and therefore had to be accounted for as a capital lease. The Province, at that point, essentially purchased an asset, the Fredericton to Moncton highway. Consequently, the Province was required to recognize the cost of the highway, some \$872

million, during the fiscal year ended 31 March 2000. This was in keeping with the standards of the Public Sector Accounting Board of the CICA.

**Kings Landing Corporation**  
***Approval of the annual budget***

**10.62** Following the completion of our audit we raised an issue relating to the approval of the annual budget. The minutes of the Board of Directors' meetings should include a direct reference to the approval of the annual budget and include an attached copy of the approved budget. We found that the approval of the budget in the minutes of the board meetings was vague. The Corporation responded that the approved budget would be attached to the minutes when the 2000-01 budget is approved.

***Expiration of board members' terms***

**10.63** We noted that the approved terms of the members of the Board of Directors had expired, yet the board continued to meet. There are no provisions in the *Kings Landing Act* that allow this. The Corporation noted our comments but did not report any specific action would be taken.

**Advisory Council on the Status of Women**  
***Accountability for disbursements***

**10.64** Early in the 2000-2001 year the Council spent funds on activities throughout the Province. The expense was recorded in the 1999-2000 year. We were concerned with the accountability for the disbursements. There was no evidence that the Council approved the amounts given out and the only supporting documentation for the payments, by the Department of Finance on behalf of the Council, was a letter from the Council itself.

**10.65** We recommended that no amounts be given out to other groups or organizations unless the Council approved them. We also recommended that supporting documentation should be retained in support of all payments.

**10.66** The Council responded that several projects had been proposed after the last board meeting of the year. The cheques were issued before closing the books for 1999-2000. All projects were subsequently approved at the next meeting of the Council.

**Algonquin Properties Limited**

**10.67** Following our audit of Algonquin Properties Limited, we passed along some very positive comments to the Comptroller at the Algonquin Hotel. We are pleased to report that the accounting records created and maintained by the Controller and his staff continue to improve each year. The quantity and quality of the records placed at our disposal have increased dramatically and helped us to significantly reduce the work we must conduct to complete the audit.

**Provincial Holdings Ltd.**  
***Condition of the accounting records***

**10.68** In 1999 we sent a management letter to Provincial Holdings Ltd. (PHL). In this letter we explained that in recent years it has been necessary for our staff to spend considerable time to prepare the draft financial statements for the Company. We recommended that PHL

maintain complete financial records and that draft statements be completed in preparation for the audit.

**10.69** This year we reported to PHL that there was some improvement over last year. However we still encountered many accounting deficiencies during the audit. It is the responsibility of PHL to perform the necessary accounting in a proper and timely manner. Our Office is engaged to perform an audit and this can only be undertaken in an efficient manner when the accounting work is complete.

**10.70** We recommended that the deficiencies be dealt with.

**10.71** PHL responded that all of the items raised in the letter can be or have been dealt with satisfactorily.

## **New Brunswick Public Libraries Foundation**

### ***Accounting for Foundation transactions***

**10.72** The first ever audit of the Foundation was completed following the end of the 1998-99 year. We had several recommendations for the Foundation.

**10.73** During the year under audit the Foundation, as a separate entity, had been using the Province's library fund as the operating account for its transactions. It was determined from examining the *New Brunswick Public Libraries Foundation Act* and policies relating to the Foundation, that the purpose of this library fund was to control the Province's yearly maximum grant to the Foundation. The only transactions in this library fund should be valid claims by the Foundation for matching funds and a yearly replenishment of the fund by the Province.

**10.74** We recommended that a separate operating account be set up for the Foundation. The Foundation Chairperson responded that they would establish both a separate bank account and a separate operating fund for its own purposes.

### ***Receipts for donations***

**10.75** We found that receipts were not being issued for donations to the Foundation in 1998-99. We recommended that following each donation, a receipt should be issued to the donor showing the amount of the donation and the date and name of the donor. The Foundation responded that they have now designed an official receipt and have also implemented accounting procedures for recording donations.

### ***Defining donations to the Foundation***

**10.76** There was a great deal of discussion on the definition of a donation that qualifies for a matching payment by the Province. Normally only funds directly received from private sources outside the library service should qualify for matching by the Province. In response to our concern the Foundation developed criteria which must be met in order to qualify as donations. We reviewed these criteria and suggested improvements that the Foundation accepted.

## Research and Productivity Council

**10.77** The Canadian Institute of Chartered Accountants (CICA) now requires the cost of employee future benefits, such as retirement allowances, to be recognized over the period in which the employee delivers the service to the employer. It is our understanding that the Research and Productivity Council (RPC) has historically recorded the cost of lump sum retirement allowances as an expense of the year in which the amount was paid.

**10.78** The CICA change is to be adopted by all organizations that have a fiscal year commencing after 1 January 2000. As a result, we recommended that RPC develop appropriate methods for calculating and accounting for the cost of retirement allowances and other employee future benefits for the year ending 31 March 2001. The Council indicated that it would be taking the necessary action on this issue over the next few months.

## Losses through fraud, default or mistake

**10.79** Section 13(2) of the *Auditor General Act* requires us to report to the Legislative Assembly any case where there has been a significant deficiency or loss through fraud, default or mistake of any person.

**10.80** During the course of our work we became aware of the following significant losses. Our work is not intended to identify all instances where losses may have occurred, so it would be inappropriate to conclude that all losses have been identified.

### Department of Education

Missing equipment and supplies	\$13,733
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### Department of Health and Community Services

Ineligible service claims and theft of cash	\$2,946
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### Department of Human Resources Development

Cheques cashed by persons not eligible to receive the funds	\$50,277
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### Department of Justice

Cash shortages and amounts paid out in error	\$1,323
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### Department of Labour

Cash receipts not deposited	\$33,549
Cash shortages unexplained	\$5,738

### Department of Natural Resources and Energy

Loss of equipment	\$9,151
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**10.81** Losses reported by our Office only include incidents where there is no evidence of break and enter, fire or vandalism.

**10.82** The Province reports in Volume 2 of Public Accounts the amount of lost tangible public assets (other than inventory shortages).

**10.83** In 2000, the Province reported lost tangible public assets in the amount of \$219,158, compared to a loss of \$167,786 reported in 1999.

# Chapter 11

## Crown Agencies Audited by Others

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# Crown Agencies Audited by Others

## Background

11.1 We do not audit the financial statements of all the Crown Corporations, Boards, Commissions and other Agencies included as part of the provincial reporting entity. Following is a list of the agencies audited by other auditors.

11.2 Agencies included in the Public Accounts:

- Board of Commissioners of Public Utilities
- Forest Protection Limited
- Kingsbrae Horticultural Garden Inc.
- New Brunswick Investment Management Corporation
- New Brunswick Liquor Corporation
- New Brunswick Museum
- New Brunswick Power Corporation
- Service New Brunswick
- Strait Crossing Finance Inc.
- Workplace Health, Safety and Compensation Commission of New Brunswick
- The eight regional hospital corporations

11.3 Other Agencies:

- Atlantic Lottery Corporation Inc.

## Scope

11.4 We review the financial statements and other documents as they are received. We also visit the auditors periodically to review their working papers. We do this to determine whether we can continue to rely on their work in carrying out our audit of the financial statements of the Province.

## Delay in submitting financial statements and management letters

11.5 The *Auditor General Act* requires the auditors of the agencies, listed above, to deliver to the Auditor General immediately after completion of the audit, a copy of any reports and recommendations arising out of their audits and a copy of the audited financial statements of the agency. Most of these agencies have a 31 March year end like the Province.

11.6 Despite the fact that provincial legislation requires the immediate submission of the financial statements and the auditors'

comments and recommendations to the Auditor General's Office following the audit, the practice has not always conformed with this requirement.

**11.7** Often the required documentation has been sent only after repeated requests by our Office. In some cases the information is provided well after the Province's financial statements have been issued and our annual Report written.

**11.8** One agency copies the Office of the Auditor General on management letters as they are issued. This ensures that the letter is always made available to our Office as soon as possible. Others could adopt such a practice. This enhancement could eliminate many of the delays we currently experience.

**11.9** At 1 October 2000, only 15 of the 19 sets of financial statements had been received by our Office.

## **New Brunswick Power Corporation**

**11.10** During the year, we reviewed the working papers of the auditors of New Brunswick Power Corporation. We were satisfied with the work done by the auditors of the Corporation for the year ended 31 March 2000.

**11.11** The auditors issued a management letter to the Corporation at the conclusion of their audit. Their letter addressed a number of concerns they had during the annual audit. Some of the comments related to issues raised in the prior year and some were issues first raised in 2000.

**11.12** One of the issues brought forward from the previous year's management letter was the recommendation that management undertake a review of certain existing liabilities. The liabilities relate to the costs of disposing of irradiated nuclear fuel and decommissioning Point Lepreau Generating Station. The costs were previously being accumulated on the basis of the Point Lepreau Generating Station operating until 2014, but this was changed to 2008.

**11.13** Management indicated last year that cost studies in these two areas would be updated in 1999. This was not completed as anticipated. However the Corporation responded to their auditors that they are now in the process of being updated and the results should be available for inclusion in the 31 March 2001 financial statements.

## **Workplace Health, Safety and Compensation Commission of New Brunswick**

**11.14** The auditors issued a lengthy management letter to the Commission at the conclusion of their audit. The auditors' comments focussed mainly on information systems. Other areas dealt with in the letter included internal controls and the role of internal audit. Management of the Commission agreed with the recommendations and

noted the actions that have been taken or will be taken to address the issues raised.

## **Hospital Corporations**

**11.15** Auditors of five of the eight hospital corporations issued management letters following the completion of their audits of the financial statements for the year ended 31 March 2000. In general, auditors continue to report good co-operation from the hospital corporations in implementing recommended changes. In one management letter it was disclosed that all issues raised in the previous year, including a significant delay in invoicing accounts receivable, had been rectified.

**11.16** Following the audits, hospital corporations received a number of recommendations for improvements to internal controls. A management letter to one corporation pointed out that detailed listings of its fixed assets were not maintained, leading to a concern about the safeguarding of the assets.

# Chapter 12

## Special Report for the Crown Corporations Committee NB Agriexport Inc.

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# Special Report for the Crown Corporations Committee

## NB Agriexport Inc.

### Background

12.1 NB Agriexport Inc. is a Crown agency established in 1996 under the Business Corporations Act of New Brunswick. It is an agricultural trade development company which is backed by the resources of the provincial government. It facilitates exporters' access to international markets and helps exporters manage the risks of international marketing.

12.2 Officials from NB Agriexport Inc. appeared before the Crown Corporations Committee on 22 September 1999. This was the first time the Corporation had been invited to meet with the Committee.

12.3 Following the completion of all Committee meetings, the Standing Committee on Crown Corporations issued its report to the Legislative Assembly. The Committee made the following background comments:

*NB Agriexport is a bit of a virtual company in that its operations are closely tied with the operations of the Department of Agriculture. The Committee is concerned that the figures presented in the financial statements of the company may represent an inaccurate accounting of activities, as it appears that expenditures of the Corporation are actually being borne by the Department of Agriculture and Rural Development.*

12.4 The Committee recommended that a full examination of the operation and accountability of NB Agriexport Inc. be carried out by the Auditor General.

### Scope

12.5 The scope of our audit was dictated by the wording of the recommendation submitted by the Crown Corporations Committee. Once the request to conduct this audit was accepted, the first priority was to translate this audit request into terms that could be used in an audit to fully address the concerns of the Committee.

**12.6** Audit benchmarks were established in the form of six audit criteria. Audit criteria are seen as reasonable and attainable standards of performance and control that can be used to assess the adequacy of systems and practices. They were discussed with the staff of the Department of Agriculture and Rural Development in advance of the commencement of the audit fieldwork.

**12.7** The audit approach involved a combination of interviews and meetings with appropriate staff of the Department. It also involved a review of documentation related to the establishment and the operation of the Corporation.

## Results in brief

**12.8** The Corporation should prepare and issue an annual report in accordance with the requirements of the provincial annual report policy.

**12.9** We concluded that all activities in which the Corporation has been involved to date are consistent with the mandate and strategic objectives of the Corporation.

**12.10** No formal update to the business plan has been submitted to the Board of Management for approval, since the original plan was approved in 1996.

**12.11** The Corporation should take appropriate action to ensure there is no confusion between the role of management and the role of the board of directors. This could be done by substituting outside board members for departmental employees who currently sit on the board.

**12.12** The board should ensure that management prepares and reports performance information including performance indicators and an evaluation of the achievement of the indicators.

**12.13** Interest expense on the advance from the Province should be recorded in compliance with the terms of the 1996 business plan or, if appropriate, the business plan should be changed to agree with current practice.

## Accountability

**12.14** Our first evaluation criterion was:

*There should be a process in place whereby the Corporation is accountable to the Legislative Assembly for all of its activities.*

## What is accountability?

**12.15** There are many valid ways of defining accountability. A general definition of accountability is the obligation to render an account for a responsibility conferred.

**12.16** From the perspective of the Legislative Assembly, receipt of the following information would provide the necessary accountability information:

- a clear explanation of the operations of an organization;
- an indication of what it was expected to accomplish;
- an indication of how the success will be measured; and
- feedback on the performance showing how expectations were met.

**12.17** Evidence should be made available to the Legislative Assembly each year to allow a regular assessment of the performance of an entity.

**Is NB Agriexport Inc. being accountable?**

**12.18** According to the Province's policy for annual reports, the prime function of the report is to be the major accountability document by departments and agencies for the Legislative Assembly and the general public.

**12.19** The Province's annual report policy suggests the following should be shown:

- a clear account of goals and objectives;
- performance indicators;
- the extent to which the program is relevant;
- how well the Corporation performed in achieving its plans;
- how well it was accepted by its client groups; and
- budget and actual financial information and explanations of differences.

**12.20** No annual report has been prepared by the Corporation since its inception, so the Corporation has not been in compliance with provincial policy.

**12.21** The 1999 annual report of the Department of Agriculture and Rural Development mentions NB Agriexport Inc., however the information set out in the report does not meet the annual report requirements from the perspective of the Corporation. No accountability information is provided about the Corporation.

**12.22** At the present time the only information available to legislators is the annual audited financial statements of the Corporation. There is no reference in these financial statements to goals or expectations and there is no reference to how well the Corporation did in relation to their goals. The financial statements do not include budget information to allow a comparison between expected activity and actual results.

**12.23** An important part of the existing accountability process is the annual meeting with the Crown Corporations Committee. As a Crown agency of the Province, NB Agriexport Inc. can be asked to appear before the Committee. In the case of the Corporation, this did not take place following either the 1996-97 or the 1997-98 years. However, members of NB Agriexport Inc. did meet with the Committee members when requested, following the completion of the 1998-99 year.

**12.24** The meeting with the Crown Corporations Committee is a process that involves a question and answer format but there is no formalized approach directed towards answering how well the Corporation did in comparison with its plan. Distribution of a corporate annual report in advance of these meetings has the potential to provide significant improvement to the effectiveness of the meetings. With the assistance of a properly prepared annual report, the Committee's questions would better evaluate and challenge the annual operations of the Corporation and ultimately improve the accountability process.

***Assessment of the criterion  
based upon the audit***

**12.25** The Corporation appeared as requested before the Crown Corporations Committee during the year, however its major accountability document should be the annual report and no report has been issued. As a result, this criterion has been only partially met.

***Recommendation***

**12.26** **The Corporation should prepare and issue an annual report in accordance with the requirements of the provincial annual report policy.**

**Approved activities**

**12.27** Our second evaluation criterion was:

*All activities carried out by the Corporation should be anticipated and allowed under its approved mandate.*

**12.28** We examined the articles of incorporation, the Business Corporations Act and the corporate bylaws to establish the restrictions and the requirements under which the business of the Corporation is carried out. The articles of incorporation neither set restrictions on the operation of the Corporation nor established required business practices. The Business Corporations Act and the bylaws describe requirements of the Corporation in terms of administration but do not describe, limit or specify the nature of the business to be carried on by the Corporation.

**12.29** It is the business plan of the Corporation that provides the description of their approved mandate. No other source of authority provides substantive guidance on the business of NB Agriexport Inc.

**12.30** The business plan describes a number of activities in which NB Agriexport Inc. will participate. A comparison of this list to the activities that the Corporation has actually been involved in shows some differences. The major difference was the decision to be involved in equity ownership, which took place in the 1999-2000 year. Business ownership was not anticipated in the listed activities in the business plan. It should be noted however that this business decision did not come about without authority. In fact the Board of Management approved the investment. It is the Board of Management that approved the business plan itself.

**12.31** The other difference between the business plan and actual practice was that the Corporation was expected to grant lines of credit.



In fact this practice has not been used to date and funding was given instead in the form of working capital advances.

**12.32** The mandate and strategic objectives of the Corporation are general in nature and leave room for a variety of activities that could successfully lead to improvement in international trade in the agriculture industry. Based on the review of all activities in which the Corporation has been involved to date, we concluded that they are consistent with the mandate and the strategic objectives of the Corporation.

***Assessment of the criterion  
based upon the audit***

**12.33** Given that the corporation's activities are carried out in compliance with the mandate approved by Board of Management, this criterion has been met.

**Compliance**

**12.34** Our third evaluation criterion was:

*The Corporation should comply with all of its reporting and accountability requirements.*

**12.35** The Corporation's 1996 business plan sets out reporting and accountability requirements. The business plan was approved by the Board of Management on 4 September 1996. It requires that the annual financial statements of the Corporation be audited by the Office of the Auditor General. It is also required that the audited financial statements be reported in volume III of the Public Accounts for the Province. Audited financial statements have been published in the Public Accounts for each of the three years in which the Corporation has operated.

**12.36** Another requirement of the business plan was that it would be updated on an annual basis. It stated:

*An updated annual business plan reflecting the corporation's income and revenue will be submitted to Board of Management for review and approval.*

**12.37** The business plan also stated:

*A business plan is an evolving document and as such will be updated on a regular basis to incorporate major new development opportunities.*

**12.38** Staff of the Corporation have been preparing regular updates of certain aspects of the business plan. These comprehensive documents contain much of the same type of information that was included in the original plan. They are provided to NB Agriexport Inc. board members for information purposes at each meeting, but the board does not officially approve them.

**12.39** No formal update to the business plan has been submitted to the Board of Management for approval, since the original plan was approved in 1996.

**12.40** The requirement for Board of Management approval of all project financing levels was also recognized under the approved business plan. This requirement extends to a case by case approval by the Board for all future requests for loans and loan guarantees. NB Agriexport Inc. has reported to the Board as anticipated and has received the necessary Board approval for all loans and loan requests.

***Assessment of the criterion  
based upon the audit***

**12.41** Although the Corporation has complied with the majority of the requirements of the 1996 business plan, it has not prepared the required annual plan updates for the approval of the Board of Management. In addition NB Agriexport Inc. has not prepared required corporate annual reports. Therefore this criterion has been only partially met.

***Recommendation***

**12.42** An updated business plan should be submitted to the Board of Management and approved on an annual basis in compliance with the terms of the approved 1996 business plan.

**Governance**

**12.43** Our fourth evaluation criterion was:

*There should be a structure in place that promotes effective governance of the Corporation.*

**Action to ensure that the  
objectives are met and that  
performance is satisfactory**

**12.44** Normal board and management relationships would see the board involved in approving major policy, while management will be involved in ensuring the policy is carried out as approved. While boards are focussed on the long term and the larger picture, management tends to work on the shorter term and the associated intricacies of management. The role of the board is to monitor results while management conducts business in an approved manner. There is a distinction between the responsibilities of the two levels.

**12.45** NB Agriexport Inc. has an unusual structure. The Board of Directors is led by the Minister of the Department. Also serving on the Board of Directors are the Deputy Minister, the Assistant Deputy Minister and the Director of Corporate Services, all from the Department. There are three representatives from other government departments.

**12.46** Being mainly composed of employees of the Department, it is possible for the board to play an active role in the administration of the program as well as conducting traditional board responsibilities. With the lack of separation of responsibilities between the board and management, the potential exists for confusion between the roles of the Board of Directors and staff of the Department.

**12.47** One of the responsibilities of a board is to evaluate the performance of management. Given the existing composition of the board, this would result in having several of the board members effectively evaluate themselves. While the board has not requested that management provide information to facilitate monitoring of the

achievement of objectives, there is evidence that the board is aware of the deficiency. A previous board member was quoted in the minutes of meetings as recommending that due consideration be given to measurable activities and targeted goals. No changes took place as a result of these comments.

**Fulfilling accountability obligations**

**12.48** NB Agriexport Inc. provides a clear explanation of the purpose of the organization through its business plan. The plan also explains what it wishes to accomplish and it puts forward a corporate mission, a mandate and strategic objectives. Together these lay the groundwork for a sound accountability process.

***Accountability to the Board of Management***

**12.49** The first level of accountability for the Corporation is to the Board of Management. The business plan requires that project financing levels be approved by the Board. As well, all individual loans and loan guarantees are to be approved by the Board. Another accountability requirement in the business plan is for the Corporation to bring an updated business plan to the Board for approval each year. As mentioned earlier we are satisfied that the Corporation has been accountable to the Board of Management except for the fact that the original 1996 business plan was not updated and brought to the Board for approval as required.

***Achievement of objectives***

**12.50** The NB Agriexport Inc. brochure indicates that the Corporation measures its performance by the successful business relationships that are fostered between international and domestic partners. This is a very important aspect of the business of NB Agriexport Inc. and certainly should form an integral part of both the strategic objectives of the Corporation and its performance measurement.

**12.51** Although the Corporation has developed strategic objectives, it has not identified a means of measuring whether or not they have been achieved as planned. For instance one strategic objective identifies the intent to increase the number of New Brunswick companies exporting agriculture and agri-food products. Without performance measurement there is no way to measure and report on the success of the Corporation in achieving this.

**12.52** To properly measure achievement, it is necessary to establish indicators of performance. It is difficult to report on how well the Corporation has performed when the means of measuring its success has not been defined. The result for NB Agriexport Inc. is that there is no organized reporting on performance.

***Measurable strategic objectives***

**12.53** When establishing strategic objectives, it is important that they be stated in terms that can be meaningfully measured. Preparation of very broad or general objectives can make it difficult to link them to measurable performance. Two of the Corporation's existing strategic objectives may be of this nature:

- enhance the reputation of New Brunswick as a provider of top quality agricultural products; and
- attracting investment and technology to New Brunswick.

***Defining who is accountable***

**12.54** An area of concern in the area of accountability is the potential for confusion due to the overlapping of roles between the Corporation and the Department. The roles of NB Agriexport Inc. and the Marketing and Rural Development Branch of the Department are very similar. Based on interviews conducted during the audit, as many as twenty-one persons from the Department have participated to some extent in the operations to date. However the Corporation itself has no full time staff.

**12.55** A more formal definition of the differences between the operation of the Corporation and the Department would improve the corporate accountability process and prevent misinterpretations and confusion on the part of legislators such as happened in the meetings of the Crown Corporations Committee.

***Assessment of the criterion based upon the audit***

**12.56** The board of directors has been set up in such a way that the majority of the members are staff of the Department. As well the Corporation has not prepared performance measurement information and has not communicated this and the other required information to the Members of the Legislative Assembly in the proper form. As a result, this criterion has not been met.

***Recommendations***

**12.57** The Corporation should take appropriate action to ensure there is no confusion between the role of management and the role of the board of directors. This could be done by substituting outside board members for departmental employees who currently sit on the board.

**12.58** The board should ensure that management prepares and reports performance information including performance indicators and an evaluation of the achievement of the indicators.

**12.59** Strategic objectives should be reviewed to ensure that they are clear enough to allow their achievement to be reasonably measured.

**12.60** The Corporation should consider the following in respect of the annual report:

- performance information should be presented to legislators in an annual report to the Legislative Assembly;
- existing information on the purpose of the organization, the mission, the mandate and the strategic objectives (currently in the business plan) should be included in the annual report; and
- the annual report should make a clear distinction between the operations of NB Agriexport Inc. and the Department.

***Expenses***

**12.61** Our fifth evaluation criterion was:

*All significant expenses incurred by, or on behalf of, the Corporation should be recorded as expenses in the annual financial statements of the Corporation.*

**12.62** By far the largest component of NB Agriexport Inc. expenditure over the past three years is the cost of products exported (\$1,031,141). This represents 96% of the total costs of \$1,071,856 recorded to date. The corporate accounting policy is to record the export sales and corresponding expenditures in the accounts of NB Agriexport Inc. only when the Corporation is named as the exporter of the product. In some cases the Corporation facilitates the international trade and does not become the exporter.

**Costs not included in the audited financial statements**

**12.63** In compliance with the stated accounting policy of the Corporation, there are a number of costs that have been excluded from the figures referred to above. On the other hand there is also an excluded cost which, according to the business plan, is required to be reported by the Corporation.

**Costs excluded by accounting policy**

**12.64** There are no salaries or employee benefits costs charged to NB Agriexport Inc. The Corporation has a part-time general manager, a part-time financial analyst and as many as nineteen other departmental employees who work on NB Agriexport Inc. activities for varying percentages of their time. Calculating the actual salary costs that could be attributable to NB Agriexport Inc. is difficult because staff are often working on both departmental and corporate projects at the same time. There are no formal time records that would provide the necessary information to allow calculation of actual salary costs. Therefore estimation is required. Based on results of interviews of three key members of the administration of the Corporation, we estimate an annual salary cost of \$89,000.

**12.65** Employee travel cost is another expense that is not always disclosed in the Corporation's financial statements. It is reported only in those cases where employee travel is recoverable (from Regional Development Corporation or Canadian International Development Agency) and it is included in order to match the travel cost with the associated cost recovery. Other travel costs are difficult to calculate in a precise manner. Once again the problem is that staff are working on both corporate and departmental goals at the same time and no means exists to separate the costs accurately. Interviews with staff were again used to make estimates that could be used for this audit. Using the information received in the three interviews, we estimate an annual cost of \$9,900.

**Excluded cost that should be reported**

**12.66** The business plan indicates that the Corporation is permitted to make working capital advances to qualified recipients. The Province advances these funds to the Corporation at an interest rate of between 4.75% and 5.25%, depending on what financing can be arranged. The

Corporation in turn advances these funds at slightly higher rates and retains the interest received. No expense has been recorded or paid for the interest on the funds advanced by the Province since the inception of the Corporation. Corporation staff point out that they have been in contact with the Department of Finance about this matter. A bill for interest due was discussed but none was issued. Since the charging of interest is set out in the approved business plan and there has been no official change to this requirement, it is appropriate to conclude that the interest could be considered an annual cost of operating NB Agriexport Inc. Using a rate of 5% and using the amount due to the Province at 31 March 1999, \$1,588,000, there would be an annual interest cost of \$79,400.

### ***Other excluded costs***

**12.67** There are many other amounts that could be attributed to the operations of the Corporation. For example data processing, communications, printing, copying, rentals, postage, translation, general office and equipment costs could be accounted for. However due to the relatively small nature of these costs, no detailed calculations were attempted. Instead, a simple assignment of costs incurred within the branch was made using the percentage of salary cost assigned to the Corporation relative to the total personnel costs of the branch. The result was an estimated annual cost of \$18,000.

**12.68** No attempt was made to assign a value to other items including legal, audit and accommodation costs.

### **Summary of estimated unrecorded annual costs**

Salaries and employee benefits	\$ 89,000
Travel costs	9,900
Administration costs	18,000
Interest costs	<u>79,400</u>
Total	\$196,300

### ***Conclusion***

**12.69** The audited financial statements are prepared on a basis that does not include all costs associated with the operation of the Corporation. The audited financial statements explain this in a note, as follows:

*The administration of the Corporation's affairs is carried out by employees of the Province of New Brunswick under the direction of the Corporation's Board of Directors. All costs associated with these employees are paid by the Province.*

**12.70** There are significant costs not shown in the financial statements as a result of this accounting policy. Our examination also disclosed that the annual interest cost of holding an advance from the Province has not been recorded. If all costs associated with the operation of the Corporation were considered, the costs would be roughly double the level at which they are shown now.

**12.71** The 1996 business plan indicates that all revenues generated by the Corporation are to support new export marketing projects. The Province is absorbing the majority of the administration costs and it is only because of this that it has been possible to recognize net revenues. It should be noted that an accounting policy such as that adopted by NB Agriexport Inc., which sees salary and administrative costs excluded from the financial statements, is also seen in other New Brunswick Crown agencies.

***Assessment of the criterion  
based upon the audit***

**12.72** There is a large value of expenses incurred by or on behalf of the Corporation that has not been recorded in the financial statements. Therefore this criterion has not been met.

***Recommendations***

**12.73** The corporate financial statements should include an accounting for all significant costs.

**12.74** Interest expense on the advance from the Province should be recorded in compliance with the terms of the 1996 business plan or, if appropriate, the business plan should be changed to agree with current practice.

**Revenues**

**12.75** Our sixth evaluation criterion was:

*All significant revenues earned by the Corporation should be recorded in the annual financial statements of the Corporation*

**12.76** NB Agriexport Inc. records two types of income, export sales and other income. Total export sales revenue recorded in the three years of operation is \$839,767. Other income totals \$279,610.

**12.77** Export sales are made up entirely of cattle and seed potato sales. As mentioned in the expenses section, the Corporation has the policy of recording transactions as export sales only when NB Agriexport Inc. itself is the exporter. Sales which are facilitated, but for which the Corporation was not the exporter and for which the Corporation charged no administration fee, are not shown as sales of the Corporation and as a result are not reflected in the financial statements in any way.

**12.78** Administration or facility fees are charged in conjunction with certain of the contracts facilitated by NB Agriexport Inc. The fees are paid under the authority of the agreements signed with the producers. These fees are referred to in the 1996 business plan as management fees that are normally charged at a rate of 1.5% of the value of the contract negotiated. Staff indicated that this rate is considered as a guideline.

**12.79** The business plan states:

*NB Agriexport Inc. works with the New Brunswick exporters to help them identify market opportunities, make appropriate contacts in the target markets, and negotiate contracts for*

*export sales. It is paid for these services by charging a management fee, normally 1.5% of the value of the contract.*

**12.80** There have only been two cases thus far where the 1.5% fee has been charged. However there are cases where deals have been facilitated but the fee has not been charged. The Department, rather than the Corporation, deals with these cases. According to staff, the Corporation would only get involved when a loan guarantee or working capital advance is involved. There may be potential for further cost recovery by also charging the management fee in cases where other types of assistance have been provided to businesses.

**12.81** There is no documented policy that covers situations where anything lower than the 1.5% management fee can be charged nor is there guidance to explain all situations in which it is appropriate to recover costs.

**12.82** Based on our review, our conclusion is that the financial records of the Corporation capture all significant revenue it has earned.

***Assessment of the criterion  
based upon the audit***

**12.83** This criterion has been met.

***Recommendation***

**12.84** Current policy should clearly explain the situations in which NB Agriexport Inc. can assess the management fee. Policy should also cover a description of those situations where percentages lower than 1.5% can be used.



# Chapter 13

## Special Report for the Crown Corporations Committee Arising from Hearings with Regional Hospital Corporations

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# Special Report for the Crown Corporations Committee Arising from Hearings with Regional Hospital Corporations

## Background

13.1 On 14 December 1999 the First Report of the Standing Committee on Crown Corporations for the fifty-fourth Legislative Assembly was tabled in the House. Among other matters, the Committee's Report discussed the themes of governance and accountability of the regional hospital corporations. In doing so, it referred to the previous work of the Office of the Auditor General in these areas.

13.2 Following along these themes of governance and accountability the Committee recommended:

*that the Chair of the Board and the CEOs of the Hospital Corporations of New Brunswick be requested to appear on an annual basis before the Standing Committee on Crown Corporations beginning with the annual report fiscal year 98-99, with hearings commencing no later than the end of January 2000.*

13.3 At a Committee meeting on 22 December 1999 the Chairman of the Committee explained to the corporations:

*This is about really giving the public a better understanding of how health care corporations work so that we can understand the accountability involved in it and the service that you do provide to the public and really give you an opportunity as well to have input into what you feel some of the major issues are within the whole system.*

## Scope

**13.4** In January 2000 the regional hospital corporations began appearing at hearings of the Committee. The Committee requested that staff of the Office of the Auditor General attend those meetings to assist it in its deliberations and to provide a discussion paper of observations arising from the process.

**13.5** This chapter summarizes our report to the Committee under the following general headings:

- observations on the process; and
- discussion points on key themes raised at meetings.

**13.6** This chapter is somewhat different in style as compared with our standard Report chapters. There are fewer recommendations and conclusions. There are more of what might be termed observations and points for further discussion. It reflects our role as observer of the process as opposed to auditor of the issues under discussion.

## Results in brief

**13.7** The direction provided to the regional hospital corporations, and the preparation of the participants, contributed significantly to the success of the hearings.

**13.8** Hospital corporations should include audited financial statements (including budget figures) in their annual reports.

**13.9** The Minister of Health and Wellness should formally approve all regional hospital corporation budgets and should provide the hospital corporations with their revenue budgets on a more timely basis. The Minister should also clarify the role of the hospital corporations in meeting the services set out in the hospital system Master Plan in a fiscally responsible manner.

**13.10** The hospital corporations and the Department need to improve and co-ordinate their strategic planning activities.

**13.11** The Auditor General's role with respect to the Crown Corporations Committee should be clearly defined in legislation.

## Observations on the process

### Introductory session and information requests

**13.12** In our opinion, one thing that contributed to the success of these initial meetings with the regional hospital corporations was the obvious preparation by the participants. The degree of preparation was not surprising. Professional people staff the corporations. And boards of able volunteers govern them. Therefore, one would expect them to have put considerable time and effort into preparing for this unique step forward in accountability.

**13.13** We believe, though, that another key factor needs to be mentioned; the fact that the corporations were provided with significant direction by the Committee at the 22 December 1999 meeting. This meeting, which included representatives from all eight regional

corporations, firmly established the purpose and expectations of the Committee.

**13.14** At the meeting, the Chairman provided the corporations with a package of documents consisting of the Committee's report to the House of 14 December 1999, the Province's annual report policy, chapter 12 of the 1998 Report of the Auditor General on the subject of Hospital Corporation Governance, and a one page document summarizing the type of information the Committee members were seeking from the meetings.

***Importance of preparation and opening presentation***

**13.15** We believe this type of direction from the Committee helped the meetings to be a success. Further, we believe there are lessons implicit in this observation. That is, we believe the success of future meetings can be governed to a large extent by the direction provided to the participants.

**13.16** In regards to their initial presentations, the Chairman summarized it by saying that the opening comments from the corporation should be "really a presentation based on your annual report." We believe that the Committee can have success in its meetings in the future by continuing to make the annual report the focus of the initial presentation from the corporations. By focusing on the annual report as the basis for the initial presentation, and the questions that follow, the Committee would provide an important structure to the meetings. We believe that a focus on the annual report will also provide impetus to move corporations towards fuller compliance with the Province's annual report policy. This policy ties together the important elements of strategic planning, performance measurement and financial reporting in one concise format.

**13.17** If the hospital corporations began each session with a brief presentation on an annual report prepared in compliance with the policy, we believe the accountability process would be improved. Corporations would presumably begin by discussing their key strategic plans with their key objectives and goals. Key strategic objectives would then have to be linked to key performance measures presented in the report. And the discussion would need to include reference to the accompanying financial statements, providing the fiscal context for how the organizations did in achieving their plans. This form of presentation would enable the Committee members to clearly understand what the corporations were trying to accomplish and then to compare that to actual results.

**13.18** We recommended that the Committee instruct all hospital corporations to begin their 2000-2001 appearances before the Committee with a presentation centered on the annual report for the year in question.

**13.19** We feel that such an approach would assist the Committee not only for the hearings involving hospital corporations, but also for the appearances by all agencies, corporations and commissions. By focusing attention on the key accountability document for the Legislative Assembly and the general public, this approach could lead to overall improvements in the quality of annual reports. **Therefore, we encouraged the Committee to consider extending our recommendation to apply to all agencies, corporations and commissions that appear before the Committee.**

***Some additional work required  
on annual reports***

**13.20** At this time the annual reports of the hospital corporations are not the complete accountability documents called for in the policy. Although the hospital corporation reports often refer to strategic plans, they do not give a “clear account of goals, objectives, and performance indicators” as called for in the policy. The reports tend to be activity oriented, without giving a clear account of how the corporations performed in achieving the strategic objectives outlined in their plans.

**13.21** This activity type reporting is also insufficient to “show the extent to which a program continues to be relevant” and “how well a program was accepted by its client groups.” One might argue that relevance and client acceptance do not need to be directly reported by the hospital corporations. The fact that people continue to show up at the doors of the institutions in increasing numbers, could be seen as a direct attestation to both program relevance and client acceptance. But, in our opinion, it is not merely enough to say that increasing demand for services is a clear measure of relevance and acceptance. Rather, these are two key areas that should be addressed systematically in the annual reports. One positive note in this respect is that the corporations already seem to have been gathering some data on patient satisfaction. This could be very useful in addressing the client acceptance requirements.

**13.22** During the Committee meetings, we heard on several occasions the Department of Health and Community Services (now known as the Department of Health and Wellness)<sup>1</sup> is developing a “report card” of performance indicators for hospitals. This report card could go a long way in addressing the information requirements of the annual report policy. It will be interesting to watch how this project develops and how the indicators from that project can be integrated with the annual reports of the regional hospital corporations.

***Need for full set of financial  
statements with budget figures***

**13.23** Most of the annual reports did not contain full financial statements. (We did note, however, that separate financial statements were provided to the Committee members.) In some instances the summary information that was present in the annual reports did not agree to the information in the audited financial statements. This

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1. For convenience, we will use the name “Department” throughout the rest of the chapter rather than either the full former or present departmental title.

inconsistency sometimes prompted questions from the Committee members.

**13.24** It is important to ensure that financial information in the annual report agrees with that in the published financial statements. This type of agreement is easiest to ensure by including audited financial statements in the annual reports.

**13.25** Some of the hospital corporations remarked they were not clear on the direction provided in the policy with respect to actual and budget financial information. The policy states the report should have “actual and budget financial information in summary form and a narrative explaining major variances.” The policy also notes “other aspects of financial performance are to be included in all annual reports.”

**13.26** As the corporations noted, however, the appendix attached to the policy only shows the format for how government departments should be reporting this information. We recognize this is the case and note that it is one area where perhaps the policy could be improved.

**13.27** In our opinion, when speaking of Crown corporations, the phrase “actual and budget information in summary form” would require an audited set of financial statements with budget figures. We examined a selection of recent annual reports for other Crown corporations and noted that all had audited financial statements. A number of them also have budget data.

**13.28** Further, in our opinion, “explaining major variances” would require a Crown corporation to explain major line-by-line variances as they were apparent in the financial statements. Since the policy does not explicitly state this, the sections of the policy referring to financial information should be clarified. That would ensure consistency of financial information and variance analysis between the reports of the various corporations.

**13.29** We recommended that the Committee include in its report to the House a recommendation that all hospital corporations include audited financial statements (including budget figures) in their 2000-2001 annual reports. Further, these reports should contain explanations for major variances between actual and budget, and current year actual and prior year actual.

***Use of annual report as  
publicity document***

**13.30** Many of the annual reports are produced with a publicity element in mind. The boards appear to be interested in using these documents for publicizing such things as fund raising campaigns and various activities involving the community. As well, staff at the hospital corporations appeared to feel that the photos and other publicity elements of the report made it a useful recruiting tool.

**13.31** Our emphasis in this section has been on the importance of the annual report as an accountability document. And we trust that the work of the Committee will lead to improvements in the reporting process. It should be noted, however, that the annual report policy does allow for an annual report to include certain publicity features. If, after having developed reports in compliance with the annual report policy, the corporations wish to produce reports to fulfil both accountability and publicity aims, they can do so. They must simply request permission from the Clerk of the Executive Council to use photos in their reports. Another option would be for the corporations to produce an annual report for the Legislative Assembly that meets the requirements of the policy, and a separate report or brochure to achieve various public relations and recruiting objectives.

#### **OAG support role for Committee**

**13.32** For a number of years our Office has been attempting to broaden our support for the Legislative Assembly. As part of this process, we have continued to look for opportunities to provide support to Legislative committees. Therefore, we welcomed the Committee's invitation to assist its members during its review of the regional hospital corporations.

**13.33** We noted, however, that our Act refers specifically to our role in relation to the Public Accounts Committee. It is silent with respect to the Crown Corporations Committee.

**13.34** **We recommended the Committee propose an amendment to the Auditor General Act to more clearly define the Auditor General's relationship with the Crown Corporations Committee.**

#### **Discussion points on key themes raised at meetings**

**13.35** A number of themes received ongoing discussion at the Committee meetings. From our vantage point as auditors and accountants, with our Act's emphasis on accountability and reporting matters of significance, we decided to bring to the Committee's attention our comments on the following:

- New Brunswick Hospital System Master Plan;
- strategic planning; and
- miscellaneous governance and board matters.

#### **New Brunswick Hospital System Master Plan**

##### ***Legislative mandate and direction***

**13.36** Section 13 of the *Hospital Act* reads as follows:

*In controlling and managing the business and affairs of a hospital corporation, a board of trustees shall ensure that the hospital services delivered by the hospital corporation are delivered within the parameters established and the direction issued by the Minister.*

**13.37** One prominent way in which the Minister establishes parameters and issues direction is through the New Brunswick Hospital System Master Plan. The most recent version of the New Brunswick Hospital

System Master Plan tabled at the Committee meetings was dated October, 1997. It states:

*The intention of this Plan is not to limit the development of the hospital system, but rather to ensure that in the future it evolves in an organized, complementary, and equitable fashion, while also helping to ensure the optimum use of all available resources. Improved coordination and balance are key objectives of the Plan.*

13.38 It goes on to say:

*The Plan also serves as a basic reference point in determining funding priorities for the hospital system at both the Departmental and Regional Hospital Corporation levels.*

13.39 It appears that the Department intends the Master Plan to be the policy guide for regional hospital corporations in the Province. Indeed, the regional hospital corporations indicated that new services added in recent years have been as documented in the Master Plan. Hospital corporations have also indicated that, under the current funding arrangements, they feel they must incur deficits in order to meet the requirements of the Master Plan.

13.40 However, we note that the Master Plan also states:

*While the Plan established objectives for service development in relation to each regional hospital corporation, it does not set priorities or a specific time for achieving them. These will continue to be dependent on the availability of resources, including the necessary medical specialists, as well as the funds for other professionals, support staff, supplies, equipment, new construction, and renovations.*

13.41 This seems to indicate that services are only to be provided where resources allow it. Thus, there appears to be a contradiction between the wording in the Master Plan and the interpretation being made by regional hospital corporations.

#### ***Budgeting based on Master Plan***

13.42 As noted, the Master Plan is the basic reference point in determining funding for the regional hospital corporations. Budgeting should be linked back to the Master Plan given its place as a reference point.

13.43 In general, regional hospital corporation boards indicated that their budgeting process is concluded in the February to March period each year. They also indicated that this is somewhat of an expenditure budgeting exercise, since the Department usually has not indicated the level of funding (revenue) that they can expect for the coming year by



that time. Regional hospital corporations said funding information is often not provided by the Department until May or June (i.e. after the beginning of the fiscal year). Therefore, regional hospital corporations have no way of matching planned expenditures with funding during their own budgeting process.

**13.44** Several boards indicated that they knew from the time funding information was received from the Department that they would incur deficits based on planned expenditures, and chose not to adjust their spending plans. Boards argued that they were only delivering services mandated under the Master Plan. Regional hospital corporation operating budgets are provided to the Department, so the Department is aware when deficits are being planned. However, regional hospital corporation representatives stated that no-one from the Department has ever come back and said “do not spend at that level.” In the view of some, this appears to constitute tacit departmental approval for regional hospital corporations to budget for deficits.

**13.45** Legislation seems to indicate, however, that the Minister has a more direct role in approving the budget. Tacit approval is not sufficient. Section 25(2)(b) of the *Hospital Act* stipulates “a hospital corporation shall . . . operate within the budget approved by the Minister under the *Hospital Services Act*.”

**13.46** Regulation 84-167 under the *Hospital Services Act* provides further guidance on the issue of budget authority:

*19(1) To qualify for payments under the hospital services plan, an approved hospital corporation shall submit annually to the Minister on a prescribed form not later than the date prescribed by the Minister, a proposed annual budget for the hospital corporation for the ensuing fiscal year.*

*19(2) The budget of an approved hospital corporation shall indicate, as nearly as may be calculated, the estimated cost of providing services.*

**20** *The Minister shall:*

*(a) approve a budget for each approved hospital corporation;*

**13.47** Based on this review of the legislation and regulations, the Minister has a direct and formal responsibility to approve regional hospital corporation budgets. One question that may be outstanding on this “approval” process is what exactly should be approved? For instance, would the approval include just the portions of the budget funded by the Department? Would it only include standard hospital services? Does the phrase “approve a budget” indicate the Minister should approve one budget applying to all activities of the corporation?

**13.48** There are a couple of additional issues that could be raised around the budgeting process. Firstly, is the intention of the Department that the main goal of regional hospital corporations be to achieve the terms of the Master Plan regardless of the financial consequences? The section noted above from the Master Plan would indicate that this is not the case.

**13.49** Secondly, to contribute to a more effective budgeting process, it is our opinion that the Department should be providing funding information to regional hospital corporations on a much more timely basis. We also feel that the Department should be working in cooperation with regional hospital corporations to ensure that an appropriate balance of services and funding is achieved (i.e. one that provides an appropriate level of service as set in policy while balancing funding with expenditures).

**13.50** We recommended that the Committee include in its report to the House the following recommendations:

- that the Minister formally approve all regional hospital corporation budgets in a manner consistent with the Act and regulations;
- that the Minister provide the regional hospital corporations with their revenue budgets on a more timely basis; and
- that the Minister clarify the balancing of fiscal responsibility with the responsibility for the provision of services in the Master Plan.

### Strategic planning

**13.51** Each regional hospital corporation prepares its own strategic plan, based on the New Brunswick Hospital System Master Plan. Regional hospital corporations and their boards initiate this process. At least one corporation remarked that its strategic planning process was initiated in response to a recommendation from the accreditation process. The Department does not require that regional hospital corporations do strategic planning. But strategic planning is a key criterion of success for a well functioning board.

**13.52** We noted certain weaknesses in strategic plans presented. Mission statements do not always answer the questions “what?”, “why?”, and “for whom?”. As well, strategic objectives (sometimes called strategic goals or strategic orientations) are often vague and not measurable. Measurable strategic objectives are needed to identify the organization’s targets or ends, to set up a means to monitor progress towards those ends, and to establish an effective performance reporting regime. We also noted that most corporations do not have a strategic objective establishing the requirement to make service provision decisions in a fiscally responsible manner.

**13.53** Currently, not all regional hospital corporations are filing their strategic plans with the Department. And in fact there is no requirement for them to do this. Also, for those corporations that have provided the Department with their strategic plan, not all have received feedback. As

a minimum, the Department should be coordinating strategic planning and approving all plans to ensure that they are congruent with departmental plans, particularly those documented in the Master Plan. Our 1998 Report included the following recommendation:

*We recommend that the Minister/Department review and formally approve the strategic plans of the regional hospital corporations before they are adopted.*

**13.54** One area in which the Department has provided planning feedback to at least some regional hospital corporations is in the area of wellness. Several of the regional hospital corporations indicated that they feel this is a valuable area of service that hospital corporations should be more involved in. They felt that such preventative activities would save money in the long run and therefore saw wellness as being within their mandate. In fact, some regional hospital corporations do provide limited wellness programs, but do not receive funding from the Department for these activities. The Department feels that wellness issues are in the domain of the Department, not the hospital corporations. Some regional hospital corporations have been told not to include references to wellness in their strategic plans.

**13.55** The discussion surrounding the provision of wellness services raises an interesting issue. Regional hospital corporations are involved with only a subset of the total of healthcare services provided in a region. Some of the regional hospital corporations introduced the alternative of expanding regional hospital corporations into regional health authorities that would cover all facets of health care. They felt that this would allow potential duplication of services to be avoided, thereby reducing expenditures. They also indicated that they have been successful in integrating the extramural service into their operations and that they now have practical experience that could be applied in further integration. It might be worthwhile to investigate this option. The question to be answered is, "would service delivery be more efficient and effective in a system with full integration of all health services?" This is a major strategic question facing the Department and the corporations.

**13.56** There may be some question as to whether regional hospital corporations should be developing their own strategic plans. By its nature, strategic planning is akin to policy development. Policy development is the responsibility of the Department, not the regional hospital corporations.

**13.57** Based on comments made by representatives of the regional hospital corporations, the corporations do seem to be facing many common issues. The Department and the corporations, perhaps through the New Brunswick Healthcare Association, could work together to develop a comprehensive strategic plan which links appropriately to the Master Plan. We feel that this option should be given consideration.

**13.58** There is a need as well to link the strategic plans to performance reporting. We have discussed this matter earlier in the chapter in proposing that the annual report be used as the focal document for the Committee review process.

**13.59** Performance reporting involves developing performance indicators and targets, and measuring and reporting the results. Typically, performance indicators should allow for the measurement of success in achieving strategic objectives. Each performance indicator should tie directly to a specific strategic objective. Regional hospital corporations, in general, have not yet succeeded in developing corporate performance indicators. This may, in part, be due to the current lack of truly measurable strategic objectives for regional hospital corporations. This would make it more difficult to establish meaningful performance indicators.

**13.60** Several regions did mention an initiative of the Department to develop a provincial report card system of performance indicators. If this is to be “the” performance reporting system for regional hospital corporations, it calls into question the need for individual strategic plans for hospital corporations.

**13.61** Alternatively, if individual strategic plans are still felt to be appropriate, each regional hospital corporation should take the provincial “report card” and add additional indicators to ensure complete performance measurement information relating to the strategic objectives in its own strategic plan is captured. This exercise may require reworking their own strategic objectives to make them more measurable.

**13.62** **We recommended that the Committee include some discussion of the need to improve strategic planning in its report to the House. In particular, as noted in our 1998 Report, there is a need for the Department to approve all strategic plans, performance indicators and targets to ensure they are congruent with departmental plans.**

#### **Miscellaneous governance and board matters**

##### ***Code of ethics***

**13.63** Only one of the meetings dealt at any length with the concept of the board’s code of ethics. One corporation noted in its annual report that the board had adopted a code of ethics based on the values in the strategic plan. Another corporation also discussed its work on a corporation-wide code of ethics. We believe this is a move forward.

**13.64** A code of ethics can form an important addition to the board’s high-level policy framework that gives guidance to management and staff of the institution. Policy and goal setting are used by effective boards in clearly establishing the anticipated results, or ends, for the organization being governed. This focus on ends, versus means, is a key to governing an organization to effective results. But, as stated by John Carver in his well-known work *Boards that Make a Difference*,

*The Board is accountable for how its staff achieves these results . . . . The board has a moral obligation to ensure the prudence and ethics of operations . . . . A board that wishes to ensure the organization's actions are prudent and ethical must delineate ahead of time exactly what is imprudent and unethical. Any staff action that does not violate the board's standards, then, is automatically approvable. . . The total message the board sends to staff, then, is comprised of what outputs are to be achieved (Ends) and what may not be done in the process of achievement (Executive Limitations).*

**13.65** We noted as well that the New Brunswick Healthcare Association's publication *The Informed Trustee* also speaks to this issue. This important orientation document states:

*It is important for the board to develop a code of ethics. . . The board's code of ethics needs to address conflict of interest. . . . . The board's code of ethics also needs to address certain behaviours. Board and staff members are expected to maintain high standards of honesty, integrity, impartiality and ethical conduct.*

**13.66** Without being too voluminous, the code can address those key areas where the board feels it is essential to set limits. Some examples may be in vendor relations, treatment of patients and their families, protection of assets, addition of new services, and financial conditions to avoid.

**13.67** Providing such an ethical framework is a key function of an effective board. It is one prime example of how a board oversees through policy as opposed to a detailed transaction-based operational outlook. Therefore we proposed that the Committee recommend all boards take steps to put a code of ethics into practice. Presumably a code of ethics would fit well within the mandate of each institution's strategic planning process.

**13.68** We recommended that the Committee include in its report to the House a recommendation that those regional hospital corporation boards that have not yet done so develop a code of ethics.

### ***Corporation names***

**13.69** The *Hospital Act* has a standard naming convention for all of the regional hospital corporations. In various sections of the legislation there is a standard introductory phrase: "There is established a body corporate to be known as Region --- Hospital Corporation." Since there are two distinct bodies corporate in Region 1, the Act has added the further distinctions of South-east and Beauséjour in the naming process.

**13.70** It was noted that three of the regional hospital corporations (i.e. Regions 2, 5 and 6) have adopted names other than those specified in the *Hospital Act*. This became a subject of discussion at one of the

Committee hearings. The CEO of the hospital corporation noted that the Region 2 Hospital Corporation renamed itself the Atlantic Health Sciences Corporation as a by-product of its strategic planning process. While this may be appropriate, it would be advisable for the boards of these corporations to seek legislative approval for the name change. After all, the corporations were created and named in legislation passed by the House. Therefore, any change or amendment to the name should be approved by the Legislative Assembly.

**13.71 We recommended that the Committee include in its report to the House a recommendation that the three corporations, which have adopted names in addition to those in the *Hospital Act*, seek legislative amendments to validate those changes. Further, other corporations should be instructed to approach the Legislative Assembly for amendments to the Act before adopting any changes in corporate name.**

# Chapter 14

## Office of the Auditor General

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# Office of the Auditor General

## Background

**14.1** In recent years, our Reports have contained a checklist relating to our assessment of our compliance with the Annual Report Policy of government. A comparative version for 2000 is presented below.

**14.2** It is our intention to continually improve the information available in our annual Report on the performance of our Office.

*Exhibit 14.1*  
*Self assessment checklist*

	2000	1999
Was a report prepared?	Yes	Yes
Is there a discussion of program relevance?	Yes	Yes
Are goals and objectives stated?	Yes	Yes
Does the report discuss achievement of plans?	Yes	Yes
Are performance indicators presented?	Yes	Yes
Are details available on level of client acceptance ?	Yes	Yes
Is actual and budget financial information presented?	Yes	Yes
Does the report explain variances from budget?	Yes	Yes

## Office Role and Relevance

### *Our role*

**14.3** Our role within the provincial public service is unique. We are independent of the government of the day and provide information directly to the Legislative Assembly. The Legislative Assembly uses our information to help fulfil its role of holding the government accountable for how public monies are managed and how services are delivered. We also assist government by providing recommendations to senior officials of the departments and agencies we audit.

### *Our vision*

**14.4** We are committed to making a difference for the people of New Brunswick by promoting, in all our work for the Legislative Assembly, productive, open and answerable government.

### *Our mission*

**14.5** We promote accountability by providing objective information to the people of New Brunswick through the Legislative Assembly.

### *Our values*

**14.6** Our values impact our performance. We are committed to:

- ***Independence and objectivity*** - Being independent and objective, in fact and appearance.
- ***Accountability*** - Being accountable ourselves, and promoting accountability through example and reporting. In doing so, we strive to be a key influence for effective government.



- **Adding value** - Focusing our resources on areas of government where value can be added.
- **Learning** - Enhancing quality by placing emphasis on staff learning and development.
- **Improvement** - Improving our work through innovative thinking and the use of technology.
- **Fairness and respect** - Developing and maintaining professional relationships by treating our own staff and those we contact with fairness and respect.

### **Office relevance**

**14.7** Both volumes of our 1999 Report generated significant interest. Six hundred copies of each volume were printed and distributed. Access to our Report is also available through the Internet, and for the first time we are tracking the number of times our Report is visited. During the four-month period when our two volumes were released there were approximately 12,500 visits to a complete volume. In addition to this there were specific visits to individual chapters. Discussions of our findings in the Legislative Assembly and the Public Accounts and Crown Corporations Committees are evidence of the continuing relevance of our work.

**14.8** Each year we include in our Report matters that we believe are significant to the Legislative Assembly and the public. These include our findings, conclusions and recommendations arising out of our audit work during the year.

**14.9** Our service also includes separate audit conclusions on the reliability of financial statements. These conclusions (auditor's reports) are provided to the Legislative Assembly with the financial statements for the Province as well as the Agencies and Trusts that we audit.

**14.10** We see our work remaining relevant and contributing to:

- public confidence in our system of government;
- the Legislative Assembly's ability to carry out its responsibility of holding the government to account; and
- the government's ability to carry out its responsibilities using sound management systems and practices.

### **Performance Indicators**

**14.11** Early in 1998 we finalized a strategic plan for the Office. This plan identifies our priorities and strategic goals. As part of this exercise, we also established performance indicators. We are tracking our progress against these indicators. This section of our Report identifies each indicator by strategic priority, and discusses our progress to date.

### **Responding to the needs of users**

**14.12** We will survey Members of the Public Accounts and Crown Corporations Committees on an annual basis in order to measure our effectiveness in meeting their needs.

**14.13** We sent out a survey to all members of the Public Accounts and Crown Corporations Committees in July 2000. The response was encouraging. Committee members indicated that our Report was easy to read and understand, and helped them to do their job better. While some members expressed concern at the length of our full Report, all respondents appreciated the condensed report on highlights we issued together with volume 1. Most respondents also liked the issuance of our Report in two volumes.

**14.14** Committee members found the topics addressed in our Report were relevant and contributed to valuable discussion and debate. They also considered our recommendations practical and achievable. While Committee members found our briefing sessions on our Report useful, there was no consensus on whether our Office could be doing more to assist them in their work. However, all agreed that the Auditor General's Office contributes to improved public sector accountability, and provides good value for money for the taxpayers of New Brunswick.

**14.15** We will measure the extent to which the recommendations which appear in our annual Report are accepted and implemented. The disposition of all recommendations will be tracked for a period of four years.

**14.16** Chapter 9 of this Report provides an overview of the recommendations included in our 1997 and 1998 Reports, arising out of our broad scope audits. It details the departmental responses to our recommendations, and our assessment of the acceptance and implementation of those recommendations.

**14.17** In May 2000 we asked government departments to indicate the current status of recommendations included in our 1999 Report. We will be conducting follow-up work over the next year in order to assess the responses.

**14.18** We will measure the extent to which accounting and reporting recommendations made by the Public Sector Accounting Board of the CICA are accepted and implemented by the Province of New Brunswick.

**14.19** We are tracking this indicator as part of our annual audit of the financial statements of the Province. We are pleased with the progress made by the Province in recent years in implementing the CICA recommendations. However, one significant outstanding issue is that the Province still does not track and report its cumulative investment in tangible capital assets.

**14.20** The Province of New Brunswick audit will be completed by June 30<sup>th</sup> and all Crown agency and Trust Fund audits will be completed by September 30<sup>th</sup>.

**14.21** Our ability to achieve this objective is not totally within our control, because it really depends on when our audit clients close their books for the year and are ready for us to do our work. Notwithstanding this, we believe the indicator is important because it results in us encouraging our clients to close their books as quickly as possible. We support timely reporting of financial information. The indicator also places a discipline on our Office to complete the audit work by a specific date.

**14.22** The audit of the Province of New Brunswick was not completed by 30 June. In fact we did not release our auditor's report until 18 October. The target date was not met due to the financial statements not being ready for audit until 20 June. A lot of time was also spent during the late stages of the audit in discussing the format of the Statement of Revenue and Expenditure.

**14.23** We are the auditors of nineteen Crown agencies and six pension plans. We completed sixteen of the Crown agency audits and three of the pension plan audits by 30 September. For the three Crown agency audits that were not completed there were delays related to discussions on financial statement presentation. The three pension plans that were not completed were not ready for audit.

***Making effective use of resources***

**14.24 All financial and broad scope audits will be performed within the time allotted.**

**14.25** We establish detailed time budgets for each of our audits. During the audit, we monitor the time spent by staff members on individual sections of the work. At the end of each audit, we summarize the total time spent, compare it to the total budgeted hours and analyze major fluctuations. For our financial audits, we use the results of this analysis to help us prepare the budget for the following year's work.

**14.26** The audit of the Province of New Brunswick was completed within budget. And of the nineteen Crown agencies and pension plans that were completed by 30 September only three exceeded the budget by more than fifty hours. We are interested in examining all over-budget situations to see if there are lessons to be learned that will lead to improvements in the future. There were three different reasons for actual time being greater than budget: we had to do a lot of accounting work; we could have been more efficient in conducting our audit field work; and we spent a lot of time discussing the disclosure of a particular transaction. We are confident we can improve on the first two, but as for the third, we recognize that in any audit engagement some unanticipated issue may arise that will impact negatively on the budget.

**14.27** We undertook eight major value-for-money audits or special assignments during the past year that led to chapters in this Report. Six of these were over budget, one was under budget and one did not have a budget. The project that did not have a budget was when we assisted the

Crown Corporations Committee in its hearings with the regional hospital corporations. We have identified a number of reasons for the over-budget situations including: the complexity of the project being greater than anticipated; a change in the focus of the project subsequent to the budget being set; more time taken to complete the report writing phase of the project; and staff being assigned to this type of work for the first time. While we continue to use our experiences to become more efficient we do recognize the difficulty in setting a realistic budget for this type of work. Unlike our financial audit work which is basically the same year after year, the value-for-money work is usually one of a kind, and there may be very little experience to draw on.

**14.28 60% of all professional paid time in our Office will be spent directly on financial statement audits or broad scope audits.**

**14.29** A detailed analysis of staff time for 1999 indicates that 57.94% of the total paid time of all staff, with the exception of our three administrative support staff, was spent directly on audit work (including work on our annual Report). For the first six months of 2000, this number increased to 61.20%. Non-audit time includes statutory holidays, vacations, courses for accounting students and professional staff, sick leave and administrative duties not chargeable to a specific audit. We were disappointed not to reach our target in 1999, and are striving to improve in the current year. In particular, we would like to increase the percentage of time senior management spends directly on audit work.

**14.30 Of the total time spent directly on financial statement audits and broad scope audits, 30% will be spent on broad scope audits.**

**14.31** Our analysis indicates that, in 1999, we spent 41.18% of total audit time on broad scope audits. For the first six months of 2000, this number rose to 49.23%. This reflected a conscious and successful effort to reduce audit time on financial statement audits so that more time is available for broad scope audit projects.

***Maintaining professional standards***

**14.32 We will meet the standards required by the New Brunswick Institute of Chartered Accountants Mandatory Practice Review Committee.**

**14.33** The latest inspection of our Office files and procedures by the Institute was in 1996. The inspection concluded that we continue to meet the standards required by the Institute. No exceptions were noted. Our next inspection is scheduled for late 2000.

**Financial Information**

**14.34** Budget and actual expenditure for 1998-99 and 1999-2000 by primary classification is shown in Exhibit 14.2. The approved budget for the 2000-01 year is presented for comparative purposes.

**14.35** Staff costs continue to account for approximately 90% of our budget and were underspent by \$135,800 for the year ended 31 March 2000. Although we filled the two vacant positions we had at the start of the year, we lost four other staff members during the year. Only two of these positions had been filled by 31 March 2000. The cumulative effects of this turnover caused the underspending.

*Exhibit 14.2*

*Budget and actual expenditure (thousands of dollars)*

	2001	2000		1999	
	Budget	Budget	Actual	Budget	Actual
Wages and benefits	1,392.4	1,397.1	1,261.3	1,392.1	1,296.5
Other services	121.9	118.4	117.9	118.4	111.2
Materials and supplies	8.4	7.9	7.2	7.9	7.2
Property and equipment	34.2	22.1	42.5	22.1	36.0
	1,556.9	1,545.5	1,428.9	1,540.5	1,450.9

**14.36** Property and equipment was overspent by \$20,400. We used a portion of the savings in staff costs to support additional costs for computer software and hardware. As part of our ongoing computer strategy, we upgraded a number of our notebook and desktop computers to improve their speed and capacity. We also replaced two of our printers, and upgraded some of our audit software.

**14.37** Our legislation requires an annual audit of our accounts by a qualified auditor, appointed by the Speaker of the Legislative Assembly on the advice of the Board of Management. This audit is conducted by the Office of the Comptroller and their audit report is tabled before the Legislative Assembly.

## Staff Resources

**14.38** Our Office continues to provide experience and training to our employees. New employees must enrol in a professional accounting program, namely CA (Chartered Accountant), CMA (Certified Management Accountant) or CGA (Certified General Accountant). Before staff begin this professional training they must have, as a minimum, one university degree at the bachelor level.

**14.39** Staff turnover is an inevitable consequence of being a training office for professionals. During the past year, three staff left to take senior positions in government; one other staff member joined the private sector. Although we are sorry to see staff leave, we are pleased when their training and abilities are recognized by the government departments and Crown agencies we deal with. We consider our contribution of qualified staff to other government organizations to be a positive indicator for our Office.

**14.40** Our staff complement remained unchanged during the year at 25. Brent White CA, Paul Jewett CA and Phil Vessey CA are the

directors for our three audit teams. At 31 March 2000 there were fourteen professional staff with accounting designations. Our staff also included six students who hold a university degree which is a prerequisite for both enrolment in an accounting program and employment at our Office. The three remaining members of our staff provide administrative support services. Two positions were vacant. The following is a list of staff members at 31 March 2000:

Lorna Bailey <sup>(1)</sup>	Ken Robinson, CA
Cathy Connors Kennedy, CA	Yvonne Samson <sup>(2)</sup>
Alphonse Doyle <sup>(2)</sup>	Brian Soeler <sup>(2)</sup>
Eric Hopper, CA	Tammy Sterling <sup>(2)</sup>
Peggy Isnor, CA	Diane Swan <sup>(1)</sup>
Paul Jewett, CA	Al Thomas, CA
Cecil Jones, CA	Phil Vessey, CA
Kim Embleton <sup>(2)</sup>	Brent White, CA
Diedre Green, CA	Darlene Wield <sup>(1)</sup>
Laurie Haines, CA	Daryl Wilson, FCA
Greg Mignault, CMA	Tania Wood <sup>(2)</sup>
Bill Phemister, CA	

<sup>(1)</sup> Administrative support

<sup>(2)</sup> Student enrolled in a professional accounting program