

# Chapter 2

## Department of Justice and Consumer Affairs

### Pension Benefits Act

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# Department of Justice and Consumer Affairs Pension Benefits Act

## Background

### *Legislative history*

2.1 Pension regulatory legislation was first introduced in Canada in 1965 by the province of Ontario. In 1967, the *Pension Benefits Standards Act* (PBSA) was legislated by the federal government. In New Brunswick, the *Pension Plan Registration Act* became effective on 1 September 1973. This legislation was repealed with the introduction of the *Pension Benefits Act* (PBA, or the Act) on 31 December 1991.

2.2 In 2006, the Department of Justice and Consumer Affairs (the Department) assumed responsibility for the Act. The department which previously held that responsibility existed under several names including the Department of Training and Employment Development, the Department of Advanced Education and Labour, and the Department of Labour.

### *Jurisdiction*

2.3 Each province in Canada (except for Prince Edward Island) and the federal government have their respective pension legislation. Pension plans are registered with the jurisdiction wherein the plurality of the plans' members works. For example, an employer that is a pulp and paper company may have numerous operations across Canada. If the greatest concentration of employees works in Quebec, then the pension plan is registered with the Province of Quebec.

2.4 While pension plans are registered with only one jurisdiction, it is the legislation of the jurisdiction in which a pension plan member works that applies to him or her. In the example described above, if the Quebec-registered company employs workers at a mill in northern New Brunswick, then New Brunswick's legislation must be applied to those employees. Therefore, the pension plan must

apply the pension legislation of all the jurisdictions wherein its members work.

**2.5** The pension regulator from the jurisdiction of registration will supervise a pension plan using the legislation of all the jurisdictions in which members work. Using the example above, if the Quebec-registered company closed its operation in New Brunswick, the Quebec pension regulator would supervise the wind-up of that operation using New Brunswick's pension legislation. Reciprocal agreements between the pension jurisdictions have been established for this purpose.

**2.6** The federal PBSA applies to pension plans supervised by the Office of the Superintendent of Financial Institutions. These plans cover industries of a national or inter-provincial nature such as banking; air, rail, and sea transportation; and telecommunications.

### ***Public policy objective***

**2.7** An employer has the right to voluntarily choose to offer or discontinue a pension plan. The Supreme Court of Canada has stated that pension legislation attempts to maintain a fair and delicate balance between employer and employee interests.

**2.8** The public policy objective behind the *Pension Benefits Act* was described in a 1999 decision of New Brunswick's Labour and Employment Board:

*...the public policy under-girding the PBA is to facilitate and regulate the accumulation, administration, management and disbursement of retirement income so as to best achieve the social objective of enhanced financial security for workers upon their retirement from productive activity at the workplace....The PBA...provides a comprehensive statutory regime structured to further that public policy objective. It encourages and facilitates pension contributions by workers and employers, protects and preserves pension funds and contributions, and maximizes pension benefits, all to the benefit of workers once launched upon retirement.*

**2.9** Specific legislated objectives are not stated within the text of the Act.

### ***Mandate of the Office of the Superintendent of Pensions***

**2.10** The Minister of Justice and Consumer Affairs is responsible for the general administration of the Act. The Minister designates

persons to act on his/her behalf, including a Superintendent of Pensions.

**2.11** Information on the Office of the Superintendent of Pensions (the Office) can be found within the “pensions” service listed on the web site of the Department. This site describes the mandate of the Office as enforcing standards prescribed under the Act and investigating alleged violations thereof.

**2.12** We should also note the Act only governs private pension plans. While section 2 of the Act reads “This Act binds the Crown”, this section was never proclaimed. Therefore, plans sponsored by the provincial government are not governed by the Act.

### *Definition of a pension plan*

**2.13** The Act defines a “pension plan” as a plan to provide pensions for plan members under which the employer of the members is required to make contributions. The Act specifically excludes from the definition deferred profit sharing plans, retiring allowances, or registered retirement savings plans as defined by the *Income Tax Act* (Canada).

### **Overview of the audit Significance**

**2.14** We believe the Act, and its role in protecting the interests of pension plan members, is very significant to members of the Legislative Assembly and the general public. We considered the factors noted below in arriving at this conclusion.

### *Economic and social impact*

**2.15** According to the Bank of Canada, there are essentially three pillars that make up Canada’s pension system. The first is government income support through the Old Age Security and Guaranteed Income Supplement programs. The second pillar is public pensions; i.e. the Canada and Quebec Pension Plans. The third pillar is private pensions, consisting of employer-sponsored pension plans and tax-deferred retirement savings plans run by individuals.

**2.16** Failure of any employer-sponsored pension plan can have dramatic consequences for members of the plan, their families, and their communities. Therefore, it is important to gain some perspective on the number of workers in New Brunswick covered by pension plans.

Active members in  
New Brunswick

**2.17** Statistics on the number of employees covered by pension plans may be found in Statistics Canada’s annual publication *Pension Plans in Canada*. This report provides figures by jurisdiction of plan registration and by jurisdiction of employment.

**2.18** Active members are those making contributions to the pension plan. The Statistics Canada figures for the number of active members working in New Brunswick as at 31 December 2004, are summarized in exhibit 2.1.

*Exhibit 2.1*

*Pension plans with members working in New Brunswick, 31 December 2004*

<b>Jurisdiction</b>	<b>Pension plans</b>	<b>Active members in New Brunswick</b>	<b>%</b>
New Brunswick	325	37,028	28%
Other provinces	697	19,849	15%
Provinces	1,022	56,877	43%
Canada	106	11,542	9%
Total registered	1,128	68,419	52%
Unregistered (e.g. federal and provincial public service)	12	64,158	48%
Total registered and unregistered	1,140	132,577	100%

**2.19** New Brunswick had 325 plans registered on 31 December 2004, representing 37,028 active members who were working in New Brunswick. This represented 28% of workers covered by registered and unregistered pension plans.

**2.20** Pension plans that were registered in other provinces, but which had members employed in New Brunswick, accounted for another 697 plans with 19,849 members, or 15% of the total members covered by pensions. Of those totals, Ontario had 502 plans with 14,347 New Brunswick members, representing the largest concentration of plans registered outside New Brunswick.

**2.21** There were a total of 1,022 pension plans registered with provincial jurisdictions with 56,877 active New Brunswick members. While this represents a significant number of members, it also means the Act covers only 43% of the active New Brunswick members of pension plans. Federal legislation covers 9% of members while government-sponsored unregistered plans represent the remaining 48%.

**2.22** Statistics Canada reported in its December 2004 *Labour Force Survey* that there were 357,300 workers employed in New Brunswick. Dividing the total number of active members of

registered and unregistered pension plans (132,577) by this figure (357,300), the quotient indicates there are 37% of New Brunswick workers covered by an employer-sponsored pension plan. More specifically, only 16% of New Brunswick workers (56,877 of 357,300) are protected by the Act.

#### Recent plan registrations

**2.23** The number of plans registered in New Brunswick increased between the date last reported by Statistics Canada and the date we substantially completed our audit testing. This change is summarized in exhibit 2.2.

#### Exhibit 2.2

##### *Pension plan registrations from 2004 to 2006*

Date	Event	Pension Plans	Active Members in New
31 December 2004	Statistics Canada report	325	37,028
1 January 2005 to 29 August 2006	New registrations	35	728
29 August 2006	Audit substantially completed	360	37,756

**2.24** The number of plans registered in New Brunswick increased from 325 in 2004 to 360 in 2006, an increase of 11%. The number of active New Brunswick members increased from 37,028 in 2004 to 37,756 in 2006, an increase of 2%. The low increase in the number of members as compared to the number of plans registered is explained by many of these plans being “individual pension plans”. Most often sponsored by professionals and entrepreneurs, these plans typically have only one or two members.

#### Active and former members of New Brunswick registered plans

**2.25** In addition to active members, registered pension plans have former members. Former members have terminated employment. They are either receiving a pension or are entitled to receive a deferred pension at a future date. Former members are covered by the Act in the same manner as active members. Like active members, they are concerned should a pension plan experience financial difficulties.

**2.26** The Office records the number of former members from each registered plan. Building on the data presented in exhibit 2.2, but presented from the perspective of plans registered with

New Brunswick, the total counts of active and former members are presented in exhibit 2.3.

*Exhibit 2.3*

*Total member counts from plans registered with New Brunswick, 29 August 2006*

Status of members	Jurisdiction of work	Members	%
Active	New Brunswick	37,756	63%
Active	Other provinces	5,929	10%
Total active	All	43,685	73%
Total former	All	15,890	27%
Total active and former	All	59,575	100%

**2.27** The total number of active members of New Brunswick-registered plans is 43,685, including 37,756 working in New Brunswick and 5,929 working in other provinces. The number of former members of New Brunswick-registered plans totals 15,890. Thus, active members account for 73%, and former members account for 27%, of the total members of New Brunswick-registered plans. Former members are significant in number; however, they are not recognized in any reporting by the Department or by Statistics Canada.

**Financial magnitude**

**2.28** At the end of 2003, the Bank of Canada estimated the value of the investment pool of capital from employer-sponsored pension plans in Canada to be \$550 billion. From the documents filed with the Office, the value of pension plan assets of New Brunswick-registered plans at the end of 2005 was approximately \$4.1 billion. This represents a significant pool of capital, the investment of which is governed by the provisions of the Act.

**Risk**

**2.29** When we began our audit, we assessed the risk that non-compliance with the Act could occur and that this non-compliance might not be detected by the Office of the Superintendent of Pensions. There were several risk factors with indications of high risk. This level of risk warranted an audit by our Office.

**2.30** These factors are shown in exhibit 2.4.

Exhibit 2.4  
Audit risk assessment factors

Risk factors	Indications of high risk
Quality of management information and control systems	<ul style="list-style-type: none"> <li>• “Pensions System” proprietary database application was implemented in October 2000 but had never been audited.</li> <li>• Control systems included both automated and manual procedures. These systems had never been audited.</li> </ul>
Quality of external reporting	<ul style="list-style-type: none"> <li>• Internal management reporting appeared to be negligible.</li> <li>• External performance reporting was minimal.</li> </ul>
The nature and degree of change in the environment	<ul style="list-style-type: none"> <li>• Internationally, many defined-benefit pension plans are underfunded, a result of changing demographics of plan members, poor stock market returns in recent years, a lower interest rate environment, and restrictive income tax legislation respecting plan surpluses.</li> </ul>
The nature of transactions	<ul style="list-style-type: none"> <li>• Some pension information filed with the Office is complex in nature.</li> <li>• Assets of pension plans registered in New Brunswick total approximately \$4.1 billion.</li> </ul>
Allegations of problems in past performance	<ul style="list-style-type: none"> <li>• Certain members of the St. Anne-Nackawic Pulp Company Ltd. pension plans have taken legal action against the Province of New Brunswick. They allege the Province and the Superintendent of Pensions breached fiduciary duties owed to the plan members.</li> <li>• In November 2005, the New Brunswick Ombudsman reported, “What is amply clear is that the legislative safeguards that were put in place to protect pension beneficiaries failed the members of the St. Anne-Nackawic plans, in this case. In a legal dispute the Superintendent of Pensions may be able to throw off any responsibility on the basis of the clear onus placed upon plan administrators under the Act. My own view, however, is that a trier of fact would take a sterner view of the standard of care required of a public official charged with the security of pension plans within the province.”</li> </ul>

## Scope

**2.31** We limited the scope of our audit to the protections offered by the Act to active and former pension plan members and the nature of the operations of the Office.

**2.32** Our audit was not designed to provide any opinion or judgment regarding the bankruptcy of the St. Anne-Nackawic Pulp



Company Ltd. and the ensuing legal matters surrounding its pension plans.

**2.33** Our audit was performed in accordance with standards for assurance engagements established by the Canadian Institute of Chartered Accountants and, accordingly, included such tests and other procedures as we considered necessary in the circumstances.

## **Process**

**2.34** We developed four objectives for our audit. Within each of these objectives, we established two criteria, or standards, against which we audited the performance of the Office. Based on our audit findings, we formed conclusions respecting the criteria. Finally, we stated our opinions on whether the audit objectives had been met.

## **Results in brief**

**2.35** **Exhibit 2.5 summarizes our objectives, criteria, conclusions, and opinions.**

## **Communication of scope of protections**

**2.36** Our first audit objective was to determine whether the Office of the Superintendent of Pensions ensures the scope of the protections offered by the *Pension Benefits Act* is communicated to stakeholders.

**2.37** In our opinion, the Office has not ensured the scope of the protections offered by the Act is communicated to stakeholders.

**2.38** We reached our opinion based upon an evaluation of the two audit criteria described below.

## **Documentation of scope of protections**

**2.39** Our first criterion asserted an explanation of the scope of the protections offered by the *Pension Benefits Act* should be documented for the benefit of stakeholders.

**2.40** We concluded an explanation of the scope of protections offered by the Act has not been documented for the benefit of stakeholders.

**2.41** Our conclusion was based upon the audit procedures and findings described below.

## **Procedures**

**2.42** To identify the protections offered by the Act, we performed several procedures, including:

- analyzing the *Pension Benefits Act* and its associated regulations;
- reviewing external communications of the Office to pension stakeholders;

Exhibit 2.5  
Audit objectives, criteria, conclusions, and opinions



- reviewing departmental annual reports;
- reviewing decisions of the Labour and Employment Board; and
- reviewing decisions of the courts.

### ***Findings and recommendations***

#### Reference documents

**2.43** We grouped our findings and recommendations into the four areas described below.

**2.44** We found the *Pension Benefits Act* and the regulations to be the only reference documents describing the protections offered to pension plan members. We believe most pension plan members would have little knowledge of their benefits, rights and obligations under the Act. The Act and the regulations have not been compiled into everyday language for the benefit of the average pension plan member.

**2.45** Employers may turn to the Office as a source of information when they consider establishing a new pension plan. However, they typically consult with insurance companies or actuarial firms providing pension management services to ensure their pension plan is established in compliance with the Act.

### ***Recommendation***

**2.46** We recommended the Office create a document describing the scope of the protections offered by the *Pension Benefits Act*.

**2.47** The document should clarify the protections offered under the Act; the benefits, rights, and obligations of pension plan members; and the roles of principal stakeholders associated with their pension plan.

**2.48** When preparing such a document, the Office could use as a model the brochure *Your Pension Rights* published by the Financial Services Commission of Ontario (FSCO). The FSCO is the pension regulatory authority in Ontario.

**2.49** Pension plan administrators could be required to periodically inform members of the availability of such a document.

#### Duties of plan administrators and the Superintendent

**2.50** The Act prescribes the duties of the pension plan administrator and the Superintendent of Pensions.

**2.51** The administrator is the person responsible for running the pension plan. The administrator is usually the employer who established the plan, but can also be a board of trustees, a pension committee, an insurance company, or some other body established by law.

**2.52** The Act says that the administrator of the pension plan shall ensure the pension plan and its investment funds are administered in accordance with the Act and the regulations. Thus, the onus to comply with the Act and the regulations rests upon the plan administrator.

**2.53** We found that, in the majority of cases, the administrator and the sponsoring employer are the same entity. This presents a potential conflict of interest situation. On one hand, they must look after the employer's interests of profitability and shareholder value. On the other hand, they have a fiduciary duty to protect the interests of the plan members.

**2.54** The duties and related actions of the Superintendent of Pensions are summarized in exhibit 2.6.

*Exhibit 2.6  
Duties of the Superintendent of Pensions*

<b>Duties of the Superintendent</b>	<b>Related actions</b>
Supervising pension plans	<ul style="list-style-type: none"> <li>• Registering plans and amendments</li> <li>• Monitoring ongoing compliance</li> <li>• Approving special situations</li> </ul>
Enforcing standards	<ul style="list-style-type: none"> <li>• Investigating alleged violations of the Act and the regulations</li> <li>• Issuing orders to comply with the Act and the regulations</li> </ul>
Providing information	<ul style="list-style-type: none"> <li>• Communicating with administrators</li> <li>• Communicating with other Canadian pension supervising authorities</li> <li>• Reporting to federal agencies; i.e. Canada Revenue Agency and Statistics Canada</li> <li>• Representing the Office before the Labour and Employment Board</li> </ul>

Scope of protections

*Legislation*

**2.55** The protections extending from the duties listed above are often implied rather than explicitly stated in the legislation. In general terms, we have summarized the scope of protections provided by the Act as follows:

- ensuring minimum levels of pension benefits are offered by all pension plans;
- reducing the risk of non-compliance with the Act and the regulations;
- reducing the risk of plan funding deficiencies; and
- providing dispute resolution mechanisms.

*Departmental annual reports*

**2.56** With respect to the funding of pension plans, the 2004-05 annual report of the Department of Training and Employment Development said the Office was responsible for

*... registering private sector pension plans and amendments thereto in an effort to reduce the risk of plans being under-funded.*

**2.57** We found, however, that previous annual reports described the Office's responsibility in slightly different terms. From 1999-2000 through to 2003-2004, they described the Office's responsibility as follows:

*The Office ... reviews, registers, and monitors private sector pension plans and amendments to ensure that plans are sufficiently funded to pay the pensions intended for plan members.*

**2.58** This apparent change in interpretation, from *ensuring* sufficient funding to *reducing the risk* of under-funding, indicates to us that the responsible department felt it had previously overstated the level of protections offered by the Act with respect to the funding of private pension plans.

*Legal precedence*

**2.59** We looked for indications as to how the legislation should be applied or interpreted in practice. We found:

- The current Superintendent stated that she is bound by the provisions of the Act when resolving disputes or questions set before her.
- The Labour and Employment Board, in choosing to affirm, vacate, or refer for further investigation decisions of the Superintendent, wrote that,

*... in its interpretation of the PBA, the Board adopts the modern approach to statutory interpretation embraced by the Supreme Court of Canada and our own Court of Appeal – ... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, object of the Act and the intention of Parliament.*

- The New Brunswick Court of Queen's Bench has reviewed decisions of the Labour and Employment Board where matters

of law have been disputed; however, it has never decided a case regarding the scope of protections offered by the Act.

- Across Canada, we were also unable to find cases related to establishing the scope of protections provided by pension legislation.

**2.60** In short, there is little legal precedence available for interpreting the protections offered by the Act.

## **Communication to stakeholders**

**2.61** Our second criterion asserted the scope of the protections offered by the *Pension Benefits Act* should be communicated to stakeholders.

**2.62** We concluded the scope of the protections of the Act has not been communicated to stakeholders.

**2.63** Our conclusion was based upon the audit procedures and findings described below.

## **Procedures**

**2.64** To identify whether the scope of protections has been communicated to stakeholders, we performed several procedures, including:

- reviewing departmental annual reports;
- reviewing the Department's and the Office's public web site; and
- reviewing correspondence and orders issued by the Superintendent.

## **Findings and recommendations**

**2.65** We found that current public communication to stakeholders is very limited in scope. For example, we found that:

- the 2004-2005 annual report of the Department of Training and Employment Development provided only a four-point summary of the responsibilities of the Office plus a short table listing the number of plans and active members;
- the Office's web site includes a link to the Act and the regulations and a short "frequently asked questions" section, but no reference to protections of the Act for members; and
- the Superintendent's correspondence with plan administrators, including compliance orders, is confidential and not disclosed to the public.

**Recommendation**

**2.66** We recommended the Office communicate to stakeholders the scope of protections offered by the *Pension Benefits Act*.

**2.67** Various methods could be considered to disseminate this information to stakeholders. For example, the Office could use the web site of the FSCO as a model for external communications with pension stakeholders. This site includes current information useful to stakeholders, such as:

- pension rights brochure;
- periodic pension bulletins prepared by the FSCO; and
- administrative policies of the FSCO.

**Compliance with the Act**

**2.68** Our second audit objective was to determine whether the Office of the Superintendent of Pensions complies with the requirements of the *Pension Benefits Act* respecting the registering of pension plans and amendments thereto and the monitoring of plans' ongoing compliance with the Act.

**2.69** In our opinion, the Office partially complies with the requirements of the Act respecting the registration of plans and amendments thereto and the monitoring of plans' ongoing compliance with the Act.

**2.70** We reached our opinion based upon an evaluation of the two audit criteria described below.

**Systems, policies and procedures**

**2.71** Our first criterion asserted appropriate systems, policies, and procedures should guide the work of the Office of the Superintendent of Pensions.

**2.72** We concluded that, in addition to having no formal policies, the existing pension information system and operating procedures are insufficient to appropriately guide the work of the Office.

**2.73** Our conclusion was based upon the audit procedures and findings described below.

**Procedures**

**2.74** To identify the systems, policies, and procedures that should guide the work of the Office, we performed several procedures, including:

- documenting the processes within the proprietary database application used by the Office;
- reviewing the accuracy of the pension data;

- reviewing procedures and checklists; and
- making inquiries of staff.

### **Findings and recommendations**

**2.75** We grouped our findings and recommendations into three areas: systems, policies and procedures.

#### Systems

**2.76** The principal database application used by the Office is called the Pensions System. Our review of this system is found in the following three sections.

#### *Overview of the pensions system*

**2.77** An overview of the pensions system is presented in exhibit 2.7.

#### *Exhibit 2.7*

#### *Overview of the pensions system*

<b>Elements</b>	<b>Features</b>
Input	<ul style="list-style-type: none"> <li>• Required pension plan documents predetermined by the Office</li> <li>• Documents filed by plan administrators electronically imaged into the pensions system</li> <li>• Data selected from documents manually entered by Office staff</li> </ul>
Functions	<ul style="list-style-type: none"> <li>• Maintain electronic access to details for each pension plan</li> <li>• Maintain electronic access to details for each required filing; e.g. amendments, annual information return, triennial actuarial valuation reports</li> <li>• Track completion of processes by staff</li> </ul>
Output	<ul style="list-style-type: none"> <li>• Reminder letters for filing annual information returns</li> <li>• Data file of annual information return details for monthly transfer to Canada Revenue Agency</li> <li>• Data file of pension plan statistics for annual transfer to Statistics Canada</li> </ul>
Support	<ul style="list-style-type: none"> <li>• System designed and supported by Department of Post-Secondary Education, Training and Labour</li> </ul>

**2.78** We found the pensions system to be the application critical to the daily operations of the Office. It is used by all staff to capture the information required to supervise pension plans.

**2.79** We also found staff performs certain important actions outside the pensions system. For example, step by step verification that a filing complies with the Act is documented manually using compliance checklists. For actuarial valuation reports, staff uses a spreadsheet to document their review of the reports' compliance with the Act.



**2.80** At the time of implementation, a number of improvements were to be included in “Phase II” of the system’s development. These improvements included:

- management reporting;
- reminder letters for required filings, similar to that provided for annual information returns;
- recording financial details from actuarial valuation reports; and
- risk analysis of pension plans.

**2.81** These improvements have not been implemented.

**Recommendation**

**2.82** We recommended the Department arrange for the expansion of the capabilities of the pensions system to accommodate all of the Office’s operating needs.

**2.83** The Department should initiate a formal project to document its operating needs and evaluate the costs and benefits of addressing these needs through modifications to the pensions system.

**2.84** During our audit, a number of database queries were developed. Staff expressed their desire to use these queries until such time as the pensions system is upgraded.

**Accuracy of the pensions system data**

**2.85** We reviewed the accuracy of the pensions system data. There were a total of 585 records in the main table of the database, representing all pension plans processed since the implementation of the pensions system. We reviewed the most significant fields from those records with staff and identified inaccurate data. The fields reviewed, the number of records containing inaccurate data, and the percentage of database records containing inaccurate data are listed in exhibit 2.8.

**2.86** These data errors were not identified by the Office in their normal course of business. They were not identified because the pensions system does not provide a sufficient level of reporting for management purposes.

**2.87** Data containing these inaccuracies have been forwarded annually to Statistics Canada for its *Pension Plans in Canada* survey and publication. Thus, particular tables for New Brunswick’s pension plans, prepared using the above-noted database fields, were inaccurate.

Exhibit 2.8  
Pensions system records containing inaccurate data

Database field	Records containing inaccurate data	% of database records
Jurisdiction	3	1%
Status	88	15%
Benefits formula type	62	11%
Employer	23	4%
Organization type	67	11%
Actuary	52	9%
Trustee	16	3%
Funding instrument	15	3%

**2.88** As a result of our audit queries, these data have been corrected by staff.

#### System support

**2.89** Prior to 2006, the Office operated within the Department of Training and Employment Development (TED). Although system support for the pensions system was provided by this department, staff expressed concern that support was sporadic and enhancements to the system were difficult to obtain.

**2.90** We found the documentation of the system was only available at a high level. The system support analyst stated that detailed documentation of the programming logic was not available.

**2.91** We also noted the system's electronic user's manual was not accessible by staff.

**2.92** Following the transfer to the Department of Justice and Consumer Affairs, we were advised that a formal agreement was being drafted between the departments to support the ongoing operation of the pensions system.

#### Recommendation

**2.93** We recommended the Department ensure sufficient documentation is available for systems support staff and users of the pensions system.

**2.94** The Department of Justice and Consumer Affairs and the Department of Post-Secondary Education, Training, and Labour (formerly TED) should work together to ensure system documentation is current and made available for use by staff.

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Policies	<p><b>2.95</b> We found that no formal policies have been established by the Office. Rather, the Act and the regulations are used as reference documents by each staff member.</p>
Procedures	<p><b>2.96</b> We reviewed the automated and manual procedures associated with the pensions system.</p> <p><b>2.97</b> The pensions system is designed to ensure staff processes pension plan documentation in a complete, accurate, and consistent manner. The pensions system is supplemented by manual checklists detailing the compliance requirements of the legislation and providing a response area for completion by staff.</p> <p><b>2.98</b> We found that some staff did not properly complete their work assignments in the pensions system. We also found that compliance checklists are used inconsistently by staff and are not reviewed by a peer or supervisor.</p> <p><b>2.99</b> We found that some staff follow their own procedures, prepared during their initial training periods, because formal procedures are not documented. Documenting procedures would allow the Office to more effectively transfer knowledge between existing and new staff members.</p> <p><b>2.100</b> Overall, we found limited supervisory procedures in place to review the quality of the work performed by staff and ensure the legislated duties of the Office are fulfilled.</p>
<b>Recommendation</b>	<p><b>2.101</b> We recommended the Office develop a quality control strategy to ensure staff fulfills the legislated duties of the Office.</p> <p><b>2.102</b> We suggest a strategy of quality control would include:</p> <ul style="list-style-type: none"><li>• reviewing all procedures and checklists to ensure they completely address the requirements of the Act;</li><li>• preparing a policies and procedures manual complementing the pensions system; and</li><li>• reviewing staff work for consistency and compliance with the Act.</li></ul>
<b>Ensuring compliance</b>	<p><b>2.103</b> Our second criterion asserted the Office of the Superintendent of Pensions should ensure compliance with the requirements of the <i>Pension Benefits Act</i>.</p>

**2.104** We concluded the Office ensures compliance with many, but not all, requirements of the Act.

**2.105** Our conclusion was based upon the audit procedures and findings described below.

### ***Procedures***

**2.106** To identify how the Office ensures compliance with the requirements of the Act, we performed several procedures, including:

- examining documentation from a sample of pension plans;
- analyzing data from the pensions system;
- reviewing a sample of orders issued by the Superintendent; and
- inquiry of staff.

### ***Findings and recommendations***

**2.107** The pensions system contains activities, sub-activities, and data records that should enable the Superintendent to monitor whether plan administrators comply with the Act. We tested whether this monitoring is, in fact, occurring.

**2.108** We selected a sample of pension plans from several activities. We examined the documents filed with the Office, reviewed the data in the pensions system, and discussed the procedures performed to monitor compliance with the Act.

**2.109** From our testing, we can reasonably state that each plan, having a completed status, has been reviewed by staff for compliance with the Act.

**2.110** We cannot state that all plans are *in* compliance with the Act since, as part of our testing, we did not re-perform the monitoring procedures of the Office. Indeed, the Act itself says that “registration under this Act of a pension plan ...shall not be construed as proof that the plan ... complies with this Act and the regulations.” Rather, that burden of compliance is explicitly placed upon the administrator of the plan.

**2.111** While we observed that completed plans are reviewed for compliance with the Act, we also found numerous situations where administrators did not comply with the Act and the Office’s monitoring procedures did not resolve the non-compliance. These findings are described in the eight sections below.

General non-compliance with filing deadlines

**2.112** We found there to be general non-compliance regarding the deadlines within which administrators are required to file documents with the Office.

**2.113** We extracted data from the pensions system database and compared the dates documents were received by the Office with the dates they were required to be filed. Our calculations are based on all transaction records in the database. Exhibit 2.9 summarizes our findings in this area.

*Exhibit 2.9  
Non-compliance with filing deadlines*

Activity	Filing deadline	Average days overdue 2000 - 2006	Average days overdue 2005
Application for registration of pension plans	Within sixty days of plan establishment	226	149
Application for registration of amendments to pension plans	Within sixth days of amending the plan	Undetermined <sup>1</sup>	Undetermined <sup>1</sup>
Filing annual information returns	Within six months of plan year-end	24	Compliant
Filing triennial actuarial valuation reports for defined-benefit plans	Within nine months of report review date	114	114
Filing triennial cost certificates for defined-contribution plans	Within nine months of certificate review date	Compliant	Compliant
Filing windup report to pension plans	Within six months of effective date of wind-up	96	Compliant

<sup>1</sup> We were unable to determine the figures for pension plan amendments because the date the amendment should have been filed with the Office was not consistently captured in the database.

**2.114** The filing deadline for each activity is specified in the Act or the regulations. The number of days for the administrator to file the document with the Office was averaged for the six years from October 2000 to August 2006, the period of time for which data was available from the pensions system database. We also computed the average number of days for the year 2005 to determine if improvements were made in the most recent full calendar year versus the six-year average.

**2.115** Over the six-year average, these activities showed significant non-compliance by administrators in filing their documents on time.

**2.116** We found an improvement in 2005 as compared to the six-year average. Annual information returns and wind-up reports are

now filed within the deadlines. However, filing for registrations of pension plans and actuarial valuation reports is still not compliant with the filing deadlines.

**2.117** We also discovered that five defined-benefit plans have never filed their triennial actuarial valuation reports and 97 defined-contribution plans have never filed their triennial cost certificates. The Office did not monitor the database to ensure that all plans met their triennial filing requirements.

**2.118** Although provided for in the Act, we found the Office does not perform on-site inspections to investigate incidents of non-compliance.

**2.119** We found the Office has not demanded compliance with the filing deadlines nor assessed appropriate late filing penalties. The Act provides for late filing penalties of 20% of the filing fee plus interest. For example, fees to register a pension plan are \$5 per member, subject to a minimum of \$100 and a maximum of \$10,000. Fees to register an amendment are \$100 per amendment.

**2.120** Non-compliance with the Act is considered a punishable offence. However, the Superintendent indicated that the Office has not historically pursued offences under the Act because it would not be an effective use of resources.

### ***Recommendation***

**2.121** We recommended the Office implement a strategy to increase compliance by plan administrators in filing documents within the prescribed time limits.

**2.122** This strategy to increase compliance should include conducting on-site inspections of the offices of non-compliant administrators. The Office should assess late filing penalties plus interest on a consistent basis. Penalties could be increased to an onerous level for the non-compliant administrator. Finally, the Office could pursue offences under the Act on a timely basis. These actions should increase the level of respect given to the Act and the Office.

### Registration of pension plans

**2.123** We selected the registration of eleven pension plans for testing. From these samples, we found that staff works to ensure all required plan documents are filed. Staff also reviews all plan documents for compliance with the Act.

**2.124** We found that one of our sample registrations had been outstanding since the plan's establishment in 1990. The plan

administrator still has not provided all the required documents. Staff indicated the plan administrator was making regular contributions to the plan even though it was not officially registered with the Office. Notwithstanding these contributions, the Office did not impose the penalties provided in the Act to address this non-compliance.

**2.125** We found an additional ten plan registrations, effective 2004 or earlier, that remained incomplete. It appears that registration of a plan with the Canada Revenue Agency (CRA) under the *Income Tax Act* (Canada) effectively has a higher standing than registration under the Act. A plan can be registered with CRA and not be registered with the Office, and yet still make tax-deductible contributions and pay benefits to members.

### **Recommendation**

**2.126** We recommended the Office pursue the establishment of a protocol with the Canada Revenue Agency to address non-compliant registrations of pension plans.

**2.127** Such a protocol may include sharing documents and information filed with each jurisdiction. It may also include aligning the provincial and federal filing deadlines with respect to registration of plans.

### Registration of amendments to pension plans

**2.128** We selected the registration of eleven amendments to pension plans for testing. From these samples, we found that, in general, amendments are registered following a review of their compliance with the Act. Amendments are not registered if the pension plan registration process is not yet complete.

**2.129** We identified some concerns with delays in the registration of plan amendments. We noted examples where the administrator failed to apply for registration of the amendment within the prescribed deadlines. We also noted examples where the Office did not register the application on a timely basis.

**2.130** Since administrators are permitted to implement an amendment while awaiting registration by the Superintendent, the administrator could face a highly undesirable situation if the application for registration is rejected. Members may have already retired and started to receive pension benefits. To reverse the implementation of the amendment would be very difficult for the administrator and the employer.

**2.131** The risk of such a scenario occurring should be reduced by implementing our recommendation regarding a strategy to increase

Processing of annual information returns

compliance by plan administrators in filing documents within the prescribed time limits.

**2.132** We selected a sample of 64 annual information returns (AIRs) for testing. We found that:

- staff issues an advance notice advising administrators that their AIR is due within six months of their fiscal year end;
- monthly, staff submits a data file to CRA containing information on AIRs received that month. At CRA's instruction, AIR data received – even if incomplete or in error – is to be immediately forwarded to avoid late filing penalties from CRA;
- filing an AIR and submitting data to CRA is not dependent upon the registration of the plan being completed; and
- staff issues a late notice to plan administrators each month that AIRs are overdue.

**2.133** Late notices may be issued for many months for a particular pension plan. Staff has no formal guidance as to when other, stronger measures should be taken to resolve the non-compliance.

**Recommendation**

**2.134** We recommended the Office specify action to be taken with respect to the late filing of annual information returns.

**2.135** Such a policy should address how many late AIR notices will be issued prior to taking other action to determine the cause of non-filing. Additional queries or investigations could identify a problem at an earlier stage.

**2.136** Sixty-two of the 64 AIRs sampled were taken as part of our review of data accuracy. A large percentage of the records sampled (49 of 62) contained errors that had been made by the administrator in completing the AIR. The errors were not, however, noticed by Office staff. These errors included listing two members for a pension plan for one member, listing a nil count of former members when benefit payments were being paid from the plan, and listing nil pension fund asset values.

**2.137** We believe staff may process the relatively large volume of AIRs without giving adequate consideration to the full context of the pension plans.



**Recommendation**

## Review of actuarial valuation reports and cost certificates

**2.138** We recommended the Office review the completeness and accuracy of annual information returns filed by pension plan administrators.

**2.139** Staff could compare documents, such as actuarial valuation reports, already on file with the AIRs. If inaccuracies in the file documents are caught by staff, the data entered and the information supplied by the database will be more accurate and more valuable.

**2.140** Defined-benefit pension plans must provide an actuarial valuation report (AVR) at least every three years. This report, prepared by a professional actuary, determines the pension benefit obligations of the plan, values the pension fund assets, and computes the contributions that will be required from the employer and the employees. For defined-contribution pension plans, a cost certificate must be provided at least every three years. The cost certificate certifies that the contributions paid under the defined-contribution plan are sufficient to provide for the payment of all benefits under the plan.

**2.141** The standard required by the Act is for the Superintendent to be reasonably assured that the actuarial valuation reports are prepared in accordance with generally accepted actuarial principles.

**2.142** We selected ten actuarial valuation reports and two cost certificates for testing. We found that staff reviewed each report for compliance with the Act.

**2.143** Staff estimated it takes one week to review each AVR. We found the procedures employed in this review were inefficient in nature, as described below:

- The pensions system does not summarize and display key data from AVRs in the same manner as is done for registrations, amendments, annual information returns, and wind-ups. This makes managing the review of AVRs more difficult. This feature is one of the needs that should be addressed when expanding the capabilities of the pensions system.
- The pensions system was not designed to document the review of an AVR's compliance with the Act; therefore, a supplementary spreadsheet was created for this purpose. Our analysis of this spreadsheet revealed design deficiencies, including:

- a cumbersome presentation format;
- excessive data capture;
- insufficient referencing to the requirements of the Act and the regulations; and
- insufficient documentation of analysis and conclusions reached.

**Recommendation**

**2.144** We recommended the Office revise the procedures by which it obtains reasonable assurance that actuarial valuation reports are prepared in compliance with generally accepted actuarial principles.

**2.145** These revisions should be part of the previously recommended strategy on quality control.

**2.146** To improve the efficiency of the review process, the Office could require actuaries to report in a standard format. Both Canada and Ontario require actuaries to complete an *Actuarial Information Summary* form. This four-page form succinctly captures relevant data fields from the actuarial valuation reports. Using this form, the Office should be able to review the actuaries' work much more efficiently.

Review of statement of investment policies and goals

**2.147** The Act states that a plan administrator shall review the plan's statement of investment policies and goals (SIPG) at intervals of not more than three years. If no amendments to the SIPG have been made, notification of same shall be issued to the Superintendent. If amendments have been made, the administrator shall apply for registration of the amendments in accordance with the Act.

**2.148** The pensions system reported that only 46 SIPGs have been entered since 2000. In fact, more SIPGs than these were filed with the Office; however, they were incorrectly coded.

**2.149** We also found that staff had not completed the processing of 43 of the 46 SIPGs. In short, the Office has not monitored the requirement for administrators to file triennial reviews of SIPGs with the Office.

**Recommendation**

**2.150** We recommended the Office obtain the current statement of investment policies and goals of each pension plan on a triennial basis.

**2.151** The Office should review SIPGs concurrently with the actuarial valuation report and the audited financial statements of the

pension fund. The Office should track all SIPG reviews under one activity in the pensions system, enabling effective management of this duty.

Approval of pension plan wind-up

**2.152** An employer may choose to wind up a pension plan; alternatively, the Superintendent may order the wind-up of a pension plan for reasons including non-compliance with the Act or bankruptcy of the employer. Even though a pension plan is wound up, the pension fund – the legal entity actually holding the assets - continues to be subject to the Act until all assets have been distributed.

**2.153** The steps involved in a pension plan wind-up, and the roles of the plan administrator and the Superintendent, are outlined in exhibit 2.10.

*Exhibit 2.10  
Process to wind up a pension plan*

Step	Administrator’s role	Superintendent’s role
Notice of wind-up	Provide written notice of impending wind-up to plan members, union representatives, pension committee, and the Superintendent	Receive written notice of wind-up
Filing of wind-up report within six months of the effective date of wind-up	File a wind-up report with the Office setting out the assets and liabilities of the pension plan, the benefits to be provided to members, the methods of allocating and distributing the assets of the pension plan, and the priorities for payment of benefits. For defined-benefit pension plans, the wind-up report is prepared by an actuary in a format similar to the triennial actuarial valuation report.	Review and approve wind-up report
Payment of pension benefits	Disburse available resources to active and former members of the plan	None
Distribution of surplus pension assets	Distribute surplus assets proportionately to the members, unless the plan provides for payment to the employer	Approve any distribution of assets to the employer
Filing of Distribution of Assets report	File a report with the Office stating that all pension assets have been distributed	Review the Distribution of Assets report
Revocation of plan registration	None	Issue a letter revoking the registration of the plan

**2.154** We selected six wind-up reports for testing. We found that:

- staff reviews notices of wind-up;
- staff reviews and approves wind-up reports;
- staff does not use the wind-up compliance checklist;
- staff does not use the features of the pensions system to efficiently monitor the wind-up of plans through to final revocation of registration; and
- staff does not confirm with CRA that the plan registration is revoked at the federal level.

**2.155** Several years can often pass from the time of the wind-up of a plan until the last member's benefits are fully distributed by the administrator. Without active monitoring by the Office, these plans can be forgotten and their registrations never officially revoked.

**2.156** With another procedure, we found ten plans whose wind-ups pre-dated the implementation of the pensions system and whose registrations have never been revoked. These plans were overlooked by staff because they were not entered in the tracking module of the pensions system.

### **Recommendation**

**2.157** We recommended the Office monitor the wind-up of pension plans and properly revoke their registration.

**2.158** To monitor the wind-up through to revocation of registration, staff should use the pensions system to send reminders for, and to manage the review of, the *Distribution of Assets* report.

**2.159** Staff should follow up periodically with plan administrators to determine the progress of the plan wind-up. Finally, they should confirm revocation of the plan's registration with CRA.

Superintendent's decisions and orders

**2.160** The Act requires the Superintendent to take reasonable measures to ensure plans are administered in compliance with the Act and the regulations. Where the Superintendent does not believe this to be the case, he/she may issue an order to take appropriate action to comply with the Act. The order must set out the reasons for issuing the order. It must also state the provision of the Act or the regulation with which the administrator has not complied.

**2.161** We found decisions of the Superintendent are documented in a written letter to the administrator. The letter contains the reasoning for the decision and the legal interpretation of legislation, if required.

Orders are usually the last step in a process of resolution of a disputed matter. Telephone calls and written requests for compliance may be sent prior to issuing an order.

**2.162** We examined two orders. We found they complied with the Act both in form and content.

## **Effectiveness of administration of the Act**

**2.163** Our third audit objective was to determine whether the Office of the Superintendent of Pensions has established satisfactory procedures to measure and report on the effectiveness of its administration of the *Pension Benefits Act*.

**2.164** In our opinion, the Office has not established satisfactory procedures to measure and report on the effectiveness of its administration of the Act.

**2.165** We reached our opinion based upon an evaluation of the two audit criteria described below.

## **Performance management system**

**2.166** Our first criterion asserted an appropriate system should be employed to manage the performance of the Office of the Superintendent of Pensions.

**2.167** We concluded the Office has not employed an appropriate system to manage its performance.

**2.168** Our conclusion was based upon the audit procedures and findings described below.

## **Procedures**

**2.169** To determine whether the Office employs an appropriate performance management system, we performed several procedures, including:

- researching best practices in performance management;
- inquiring about the use of performance indicators; and
- reviewing internal and external performance reporting.

## **Findings and recommendations**

**2.170** An appropriate performance management system would include procedures to measure and evaluate the economy, efficiency, and effectiveness of operations. The Canadian Institute of Chartered Accountants defines these terms as follows:

- *Economy* refers to the acquisition of the appropriate quality and quantity of financial, human and physical resources at the appropriate times and at the lowest cost;

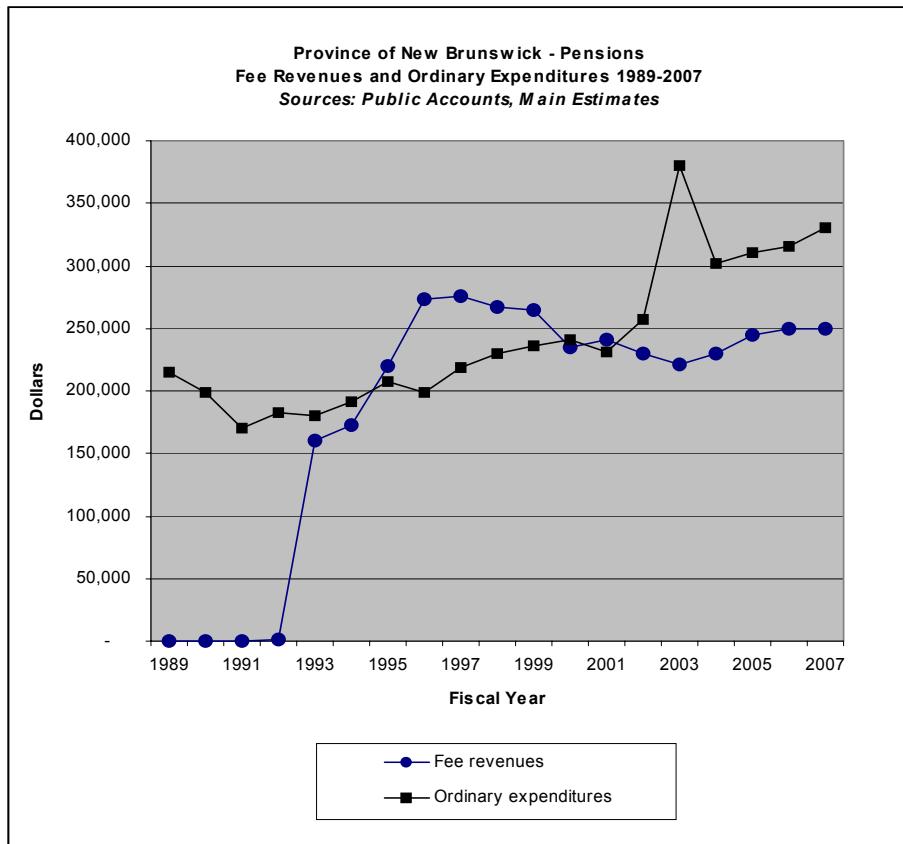
- *Efficiency* refers to the use of financial, human and physical resources such that output is maximized for any given set of resource inputs, or input is minimized for any given quantity and quality of output provided; and
- *Effectiveness* refers to the achievement of the objectives or other intended effects of programs, operations or activities.

**2.171** We found that the Office has not employed an appropriate performance management system. We grouped our findings and recommendations into the three areas described below.

Economy

**2.172** We found no evidence where the economy of the operations of the Office has been measured or evaluated. Therefore, we reviewed the financial resources consumed since 1989 in New Brunswick to supervise private pension plans. This information is presented in exhibit 2.11.

*Exhibit 2.11*  
*Fee revenues and ordinary expenditures, 1989 – 2007*



**2.173** Prior to the enactment of the *Pension Benefits Act* in fiscal 1991-92, no fee revenues were collected. However, operating expenditures were incurred to register pension plans under the predecessor legislation.

**2.174** The Act is silent as to whether operations are supposed to be self-sufficient; however, that status existed for a period of seven years from 1995 to 2001. In 2002 and all subsequent years, fees have been exceeded by ordinary expenditures of the Office. Thus, taxpayers are subsidizing the administration of private pension plans that benefit only a small percentage of New Brunswick workers.

**2.175** We noted that fee rates have not changed since they were originally introduced in 1991.

**2.176** In the current fiscal year, the Office received funding for six full-time positions. One position is vacant but its funding is used to pay for two temporary positions.

### ***Recommendation***

**2.177** We recommended the Office review its fee revenue structure and operating expenditures to determine whether it could return to operating on a self-sufficient basis.

**2.178** We suggest the Office analyze whether fees should be increased to reflect current operating costs or whether the Office should achieve its mandate with fewer resources, or both.

### **Efficiency**

**2.179** We found no evidence where the efficiency of the operations of the Office has been measured or evaluated. Therefore, we analyzed the nature of the work performed by staff and considered the relative demands placed upon the human resources of the Office by various types and sizes of pension plans.

### ***Plans by benefit type***

**2.180** We grouped the number of plans by benefit type. This analysis is summarized in exhibit 2.12.

#### ***Exhibit 2.12***

#### ***Pension plans by benefit type***

<b>Benefit type</b>	<b>Plans</b>	<b>%</b>
Defined-benefit	150	42%
Defined-contribution	203	56%
Combination	7	2%
<b>Total</b>	<b>360</b>	<b>100%</b>

**2.181** Given their complexity, defined-benefit plans require a greater amount of time to administer than defined-contribution plans. Therefore, although they comprise a lower percentage of the total number of plans, we would expect the Office to spend more time and focus more resources on these plans. We estimated that 65% of staff time is devoted to defined-benefit plans while 35% is devoted to defined-contribution plans.

*Plans by membership size*

**2.182** We also wanted to consider the number of members registered relative to the number of plans. Whether a plan has 1 or 1000 members, it requires the same process to register and supervise the plan. On a per member basis, it would be more efficient to register a plan with 1000 members as opposed to the pension plan with one member. We present the number of pension plans by membership size in exhibit 2.13.

*Exhibit 2.13*

*Pension plans by membership size*

Membership size	Pension plans registered with New Brunswick	Active members
0 <sup>1</sup>	14	-
1	65	65
2-9	59	319
10-49	114	2,658
50-99	40	2,782
100-499	47	10,486
500-999	14	9,958
1,000-4,999	6	11,906
5,000-9,999	1	5,511
Total	360	43,685

<sup>1</sup> Plans with a membership size of zero have only former members.

**2.183** Typically, plans established for one or two members are created to maximize the tax benefits for significant shareholders of a privately-held corporation. These plans are commonly referred to as individual pension plans.

**2.184** Exhibit 2.13 shows there are 65 pension plans with one active member. These plans, of which over 80% are defined-benefit, comprise 18% of all plans (65/360) but represent only 0.1% of active members. If we include plans with active memberships from one to



nine, these plans represent 34% of plans (124/360) but represent only 0.9% of active members.

**2.185** Considering that these plans have the same filing and supervision requirements as plans with hundreds or thousands of members, we see administering these plans as an inefficient use of the resources of the office. We found that other jurisdictions, such as Alberta, Manitoba and Quebec, have reduced their registration requirements or increased their registration fees for individual pension plans.

**Recommendation**

**2.186 We recommended the Office review its supervision requirements for pension plans with few members.**

**2.187** Reducing the registration requirements for individual pension plans would improve the efficiency of the Office's operations by focusing human resources on plans with greater numbers of members.

**Effectiveness**

**2.188** We found no evidence where the effectiveness of the operations of the Office has been measured or evaluated. Therefore, to obtain some indication of the Office's effectiveness in administering the Act, we investigated the following four operational areas.

**Service guarantees**

**2.189** Serving as a performance target, the Department of Training and Employment Development established "service guarantees" where its employees dealt with the public. For the Office of the Superintendent of Pensions, these service guarantees included registering pension plans, registering amendments, and approving wind-up reports within sixty days of receiving the required documents.

**2.190** We wanted to test whether the Office has met its public service guarantees. The pensions system provides numerous date fields with which the Office may monitor these service guarantees. We found, however, that staff had not populated the date fields in a consistent manner since the system was implemented. Therefore, it was not possible to accurately report whether service guarantees had been met. The Superintendent acknowledged that this monitoring has not been a priority for her administration because staff has been trying since 2005 to clear a backlog of pension plan and amendment registrations.

**2.191** We believe the service guarantee concept demonstrates it is important for the Office to supervise plans on a timely basis in order to provide the greatest value possible to pension plan stakeholders.

**Recommendation**

**2.192** We recommended the Office use the pensions system to monitor whether its public service guarantees are met.

**2.193** A strategy to meet service guarantee commitments should include the following points:

- establishing service guarantees for all activities;
- adopting a consistent approach to populating the date fields in the pensions system; and
- reducing the number of incomplete applications received from administrators by making application processes more user-friendly.

**2.194** Meeting the service guarantees would improve relations with plan administrators and lead to more efficient performance from staff.

**Strategic planning**

**2.195** Measuring the effectiveness of a government program requires a high-level evaluation of the objectives of that program. These objectives are usually identified by an organization in its strategic planning process.

**2.196** We reviewed the strategic planning process undertaken by the Department of Training and Employment Development in its document entitled *Strategic Framework for Action 2002-2012*. One of their objectives was to educate the people of New Brunswick with respect to labour-related legislation, policies and programs, including pensions. We found, however, that there was little involvement by the Office in this process.

**Recommendation**

**2.197** We recommended the Office conduct a strategic planning exercise.

**2.198** A strategic planning toolkit is available from the Executive Council Office to guide the Office in a strategic review of operations.

**Performance management strategy**

**2.199** Managing performance is a philosophy that must be implemented by the leadership of any organization.

**2.200** We found the Office has adopted some aspects of a performance management strategy. The Superintendent prepares an

annual work plan for each full-time staff member. These work plans identify key responsibility areas, objectives and performance standards for staff. Annual reviews evaluate performance against these work plans. We noted, however, that work plans and performance evaluations are not prepared for two temporary staff.

**2.201** The Superintendent does not regularly monitor the volume of activities outstanding in each staff member's to-do list provided by the pensions system. Also, the Superintendent has not used performance indicators to establish specific targets to improve staff productivity.

**2.202** Finally, we found no evidence of any internal reporting of performance to the executive levels of either of the departments that have been responsible for the Office.

***Recommendation***

**2.203 We recommended the Office implement a strategy to manage its performance.**

***Risk management***

**2.204** In recent years, several Canadian jurisdictions have adopted risk management practices with respect to pension plans. For example, Ontario, Quebec, and Alberta have implemented proactive strategies to assess the risk that plans might fail to fulfill their pension obligations. They use these risk assessments to focus supervisory efforts more appropriately. We found the Office has not adopted such practices.

***Recommendation***

**2.205 We recommended the Office implement supervisory procedures that reflect best practices adopted by other Canadian pension regulators.**

**2.206** Experience with initiatives such as managing pension plan risk and pension fund investment risk is well advanced in other Canadian jurisdictions and should be a valuable resource for the Office.

**Public reporting on effectiveness**

**2.207** Our second criterion asserted there should be public reporting on the effectiveness of the administration of the *Pension Benefits Act*.

**2.208** We concluded there is insufficient public reporting on the effectiveness of the Office's administration of the Act.

**2.209** Our conclusion was based upon the audit procedures and findings described below.

**Procedures**

**2.210** To determine the nature of current public reporting by the Office and the Department, we reviewed current external reporting media, including:

- correspondence to employers, administrators, and members;
- departmental annual reports; and
- the Office's web site.

**Findings and recommendations**

**2.211** We found no reporting on the effectiveness of the Office's administration of the Act.

**2.212** In the 2004-05 annual report of the Department of Training and Employment Development, there was a brief summary of the responsibilities of the Office and the number of plans and members registered in New Brunswick. On the current web site of the Department and the Office, there is no mention of performance reporting.

**2.213** We found other jurisdictions provide annual reporting on performance. In Ontario, the annual report of the FSCO includes the number of transactions processed, the number of investigations performed, and statistics from risk-based monitoring activities. In Nova Scotia, the Office's annual report, which is tabled in the Legislative Assembly, includes year-over-year statistics on plans registered, contribution amounts by employers and members, and membership statistics similar to those published by Statistics Canada.

**Recommendation**

**2.214** We recommended the Office report publicly on its effectiveness in administering the *Pension Benefits Act*.

**2.215** The Office could look to the other jurisdictions mentioned above for examples of their public reporting. Performance reports should include comparisons of performance targets with actual results.

**Addressing significant issues of private pension plans**

**2.216** Our fourth audit objective was to determine whether the Office of the Superintendent of Pensions plays an appropriate role in addressing significant issues faced by private pension plans.

**2.217** In our opinion, the Office plays an appropriate role in addressing significant issues faced by private pension plans.

**2.218** We reached our opinion based upon an evaluation of the two audit criteria described below.

**Participation in identifying and resolving pension issues**

**2.219** Our first criterion asserted the Office of the Superintendent of Pensions should participate in efforts to identify and resolve significant issues faced by private pension plans.

**2.220** We concluded that the Office participates in efforts to identify and resolve significant issues faced by private pension plans.

**2.221** Our conclusion was based upon the audit procedures and findings described below.

**Procedures**

**2.222** To determine the Office's participation in identifying and resolving pension plan issues, our audit procedures included:

- surveying current literature on private pension plan issues and proposals for their resolution;
- surveying best practices found in other jurisdictions; and
- inquiring of staff.

**Findings**

**2.223** We found significant pension plan funding issues exist internationally. A number of trends found in the current pension environment include the:

- decline in popularity with employers of defined-benefit pension plans;
- deficient funding of many defined-benefit pension plans;
- bankruptcy of corporations with unsecured pension obligations; and
- tightening of pension funding requirements under reformed United States pension legislation.

**2.224** The Office participates at the national level in identifying these issues through the Canadian Association of Pension Supervising Authorities (CAPSA). Representing all the pension jurisdictions in Canada, the association's mission is to facilitate an efficient and effective pension regulatory system in Canada. CAPSA seeks to resolve significant pension issues through efforts such as proposing funding principles and legislation that would "balance the protection of pension plan members' rights and benefits with the need to simplify the administrative requirements for multi-jurisdictional pension plans in Canada."

**Advising government**

**2.225** Our second criterion asserted the Office of the Superintendent of Pensions should advise government with respect to significant issues faced by private pension plans.

**2.226** We concluded the Office advises government with respect to significant issues faced by private pension plans.

**2.227** Our conclusion was based upon the audit procedures and findings described below.

***Procedures***

**2.228** To determine whether the Office advises government with respect to significant issues faced by private pension plans, we made inquiries of the Superintendent.

***Findings and recommendations***

**2.229** On an on-going basis, the Superintendent works with policy and planning staff of the Department to provide expert technical advice on the implications of proposed pension reforms.

**2.230** We found the Superintendent prepares Ministerial briefings for various purposes. In addition, the Superintendent prepares external correspondence regarding current pension issues for the Minister and the Premier.

**2.231** We noted that the government promised a policy review regarding pension benefits following the St. Anne-Nackawic bankruptcy. The Superintendent advised that she has recently provided some advice to government on pension legislation reform through a Memorandum to Executive Council.

***Recommendation***

**2.232** We recommended the Department, with the assistance of the Office, prepare a comprehensive analysis of proposals for pension reform to assist the government in its planned policy review of pension benefits.

**2.233** The Department should draw upon resources prepared by CAPSA and other pension regulators, actuarial firms, and representatives of plan sponsors and investment managers when preparing such an analysis.

**2.234** The Department should also consider any weaknesses in the protections currently provided by the Act. As stated in the background to this chapter, the Act is designed to maintain a balance between the interests of the employer and employee. However, we wish to highlight one scenario where we believe the Act may not adequately protect the interests of former plan members and many active plan members.

**2.235** This scenario involves the registration of plan amendments that have a negative impact upon the funding status of the pension

plan. If a funding deficiency is created as a result of a plan amendment, and if subsequent circumstances require the plan to be wound up before the funding deficiency is eliminated, former members will experience a reduction in their pension benefits.

**2.236** A common example reflecting this scenario involves the offering of early retirement packages. Early retirement packages immediately increase the pension obligations of the plan. It is possible that the increased pension obligations could move the plan from a surplus to a deficit funding position. The Act requires that such a deficit be funded over an “amortization period” of five or fifteen years, depending on the nature of the deficit. The employer makes special payments into the pension fund to gradually reduce the funding deficiency.

**2.237** This funding arrangement may work well as long as the employer continues to operate profitably. However, problems arise if the employer ceases operations during the amortization period and the pension plan must be wound up. In that situation, if the plan is still in a deficit position, the benefits of members will be reduced from those promised under the pension plan.

**2.238** Despite this risk of loss of benefits, the Act provides only limited protection with respect to registering plan amendments. The Superintendent may only refuse to register an amendment that is void or that would cause the plan to cease to comply with the Act and the regulations. An amendment is void if it purports to reduce the amount or commuted value of a pension benefit or deferred pension accrued under the plan. An amendment that moves a plan from a surplus to a deficit funding position does not constitute a void amendment.

**2.239** If the administrator of a pension plan applies for registration of an amendment that may adversely affect the pension benefits, rights, and obligations of members, the administrator must provide advance written notice to members inviting their comment to the administrator and the Superintendent. The Superintendent, in turn, must grant 45 days for members to comment prior to registering such an amendment. However, there is no additional authority provided for the Superintendent to deny the registration of such an amendment over that previously described. In essence, this provision simply provides a formal opportunity for members to ask the administrator to consider changing the amendment.

**2.240** In the end, the decision to amend a plan is a decision of the employer, regardless of the impact on the funding position of the plan. The former member of a plan, relying upon a pension earned during their working years, has no guarantee of receiving that pension should the scenario described above occur.

**2.241** We believe the Department should identify weaknesses in protections for all stakeholder groups. It should determine actions to be taken to address these weaknesses. Finally, it should review the Act as a whole to determine if it is achieving the desired balance of the interests of employers and employees. This work should be performed as part of the comprehensive analysis of proposals for pension reform previously recommended.

***Departmental response not received***

**2.242** Our final report on this audit was issued to the Department on 21 December 2006. Since we had already had extensive discussions of our findings with the Department, we requested a response to our recommendations by 15 January 2007, a shorter time frame than our usual 30-45 days. However, as of 9 February 2007, the completion date of this Report of the Auditor General, we had not received a response from the Department.