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# Chapter 1

## Highlights

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# Highlights

## Introductory comments

**1.1** In this Volume 2 of the 2006 Report, we are reporting on six projects; our audit of the *Pension Benefits Act*; our audit of governance at the New Brunswick Investment Management Corporation; our audit of the tracking system for wood harvested from private woodlots; our audit of the health levy on motor vehicle insurers; our review of the 9-1-1 system; and our review of New Brunswick's funding of Community Economic Development Agencies. We have also included in this volume our follow-up work on some of the recommendations we made in prior years and a document we provided to government about strengthening the role of the Auditor General.

**1.2** In this first chapter, we provide a summary that is intended to give the reader an overview of the key information contained in each chapter. In preparing this summary, one issue stood out, and that is that despite various exercises by government over the years to improve the efficiency of government services, there are still opportunities for improvement. We believe there are still opportunities to examine how government services are delivered and implement changes either to improve quality or reduce the cost of providing those services.

**1.3** During the course of our work, we found examples of missed deadlines, tasks that could be eliminated or made more efficient, incomplete data and missed revenue or cost savings. We identified that legislation in many of the areas we looked at should be reviewed.

**1.4** We also found highly dedicated civil servants and board members who are committed to serving the Province. However the government needs to give them the environment they need to provide the most value by making legislation efficient, by making expectations clear, and by eliminating unnecessary tasks.

**1.5** I want to acknowledge the cooperation that we received from government departments and agencies during the course of our work. The work of two of our audits included in this volume took us into the Department of Justice and Consumer affairs, where we are also

conducting another value-for-money audit to be reported on in the future. The Department has accommodated us despite the demands we have placed on them.

**1.6** I also want to acknowledge and thank the staff in the Office of the Auditor General. This volume is the result of their hard work and dedication.

## ***Pension Benefits Act***

**1.7** In chapter 2 of this volume, we report on our audit of the *Pension Benefits Act* which became the responsibility of the Department of Justice and Consumer Affairs in 2006.

**1.8** The scope of our audit was limited to the protections offered by the Act to active and former pension plan members and the nature of the operations of the Office of the Superintendent of Pensions.

**1.9** Pension plans in Canada have to be registered with the jurisdiction where most of the plans' members work. About 37% of New Brunswick workers are covered by an employer-sponsored pension plan, although, because the *Pension Benefits Act* does not apply to certain government-sponsored pension plans, only 16% of New Brunswick workers are members of pension plans that are subject to the *Pension Benefits Act*. Pension plans registered in New Brunswick include about 59,000 active and former members and held assets of approximately \$4.1 billion at the end of 2005.

**1.10** Pension benefits legislation can be complex; the regulator from the jurisdiction of registration must supervise a pension plan using the legislation of all the jurisdictions in which plan members work.

**1.11** Our interpretation of the *Pension Benefits Act* is that it offers protection by ensuring minimum levels of pension benefits are offered by all pension plans; by reducing the risk of plan funding deficiencies; and by providing dispute resolution mechanisms. The Act specifically includes a warning that registration of a pension plan is not to be construed as proof that the plan complies with the Act and the regulations.

**1.12** We noted that the responsibility of the Office of the Superintendent of Pensions was described in annual reports of the Department of Training and Employment Development as reviewing, registering and monitoring private sector pension plans and amendments "...to ensure that plans are sufficiently funded to pay the pensions intended for plan members." This was changed in the

2004-05 annual report which simply stated that 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." This change indicated to us that the Department felt it had previously overstated the protections offered by the Act to members of private pension plans.

**1.13** We concluded that the Office of the Superintendent of Pensions has not tried to ensure that stakeholders are aware of the scope of protections offered by the Act. We found that the Act and the regulations are the only documents that describe the protections and they are difficult for the average plan member to understand. We found that other jurisdictions in Canada have prepared plain language explanations of pension rights.

**1.14** We found that the Act places the onus of compliance on the plan administrator. We think that since in the majority of cases the administrator and the sponsoring employer are one in the same, this could put the administrator in a conflict of interest when executing their fiduciary responsibilities to plan members under the Act.

**1.15** We looked at the systems, policies and procedures used by the Office of the Superintendent of Pensions. Formal policies do not exist and the pension information system and operating procedures are not sufficient to appropriately guide the work of the Office.

**1.16** We found many errors in the data contained in the pension system including fields that are sent to Statistics Canada on an annual basis for its publications.

**1.17** We found that the Office does ensure compliance with many, but not all, requirements of the Act. Specifically we found general non-compliance with filing deadlines. For example, administrators must file applications for registration within 60 days of establishing a plan, however on average over a six year period, these applications were 226 days late. We also discovered that 5 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 has not demanded compliance with the deadlines, has not performed on-site inspections to investigate instances of non-compliance, and has not assessed appropriate late filing penalties.

**1.18** Compliance with deadlines is important. For example, administrators are permitted to implement a plan amendment while

waiting for the Superintendent to register the amendment. Late filing or late registration of an amendment could result in a highly undesirable situation if plan members have retired under a plan amendment, but the application is later rejected by the Superintendent.

**1.19** We found that pension plan fee revenue collected by the Office was sufficient to cover its operating costs for the period 1995 until 2001. Since that time, costs have exceeded fees, thus taxpayers are subsidizing the administration of private pension plans by about \$75,000 a year. Fee rates have not changed since they were originally introduced in 1991.

**1.20** Many recently registered plans have been individual pension plans. Plans established for one or two members are created to maximize the tax benefits for plan members. There are 65 plans registered with the Office of the Superintendent of Pensions that have only one plan member. Considering that these plans have the same supervision requirements as plans with many members, we see administering these plans as an inefficient use of the resources of the Office. We found that other jurisdictions have reduced their registration requirements or increased their registration fees for individual pension plans.

**1.21** We were pleased to find that the Office had established service guarantees for its work, however because of work backlog, the Office has not been monitoring its performance.

**1.22** We found that the Office plays an appropriate role in addressing significant issues faced by private pension plans. It participates in efforts to identify and resolve significant issues faced by private pension plans, and advises government of those issues.

**1.23** We identified one situation, which is explained in the next paragraph, where we believe the Act may not adequately protect the interests of former plan members and many active members; although such an assessment needs to be made within the framework of maintaining what the Supreme Court of Canada called a fair and delicate balance between employer and employee interests.

**1.24** The Act provides only limited protection to former members with respect to plan amendments. The Superintendent may only refuse to register an amendment that would reduce the amount or commuted value of a pension benefit or that would cause the plan to cease to comply with the Act. If a plan amendment moves a plan



## **New Brunswick Investment Management Corporation Governance**

from a surplus position to a deficit position, that would not be sufficient grounds for the Superintendent to refuse the amendment. 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.

**1.25** In chapter 3 we report on our audit of the New Brunswick Investment Management Corporation (NBIMC). NBIMC was created by legislation in 1994, and acts as trustee for the three legislated provincial pension funds: the Public Service Superannuation Fund; the Teachers' Pension Fund; and the Judges' Pension Fund. The investment assets held by NBIMC for those three funds are currently in excess of \$8 billion.

**1.26** Our audit objective was to assess whether current governance structures and processes established for NBIMC set a framework for effective governance.

**1.27** In 2006, NBIMC received \$328 million in contributions to the funds; paid out \$398 million; earned \$1,113 million in investment income; incurred \$9 million in corporate expenses, and had 36 staff.

**1.28** It is the Province that guarantees all future pension entitlements of current and former employees under the three legislated plans. There is a correlation between the level of investment returns earned by NBIMC and the amount of funding that must be provided by the Province, therefore all New Brunswickers have a stake in the success of NBIMC.

**1.29** The Province is the owner of NBIMC. NBIMC is the trustee of the pension fund assets, not the owner of the assets.

**1.30** The objects and purposes of NBIMC appear in section 4 of the NBIMC Act. They are: to act as trustee for the three funds; to provide investment counseling services and other services in respect of other funds specified in legislation or regulation; to promote the development of the financial services industry and capital markets in the Province; and to carry out such other activities or duties as may be authorized.

**1.31** When reviewing these objects and purposes, we made the following observations. NBIMC is directly involved in the investment of \$6.3 billion of pension fund assets and they have engaged third-party managers to invest \$1.7 billion of pension fund assets. NBIMC sets the investment policy for the third party managers to follow. NBIMC has not been asked by the Province to

provide services in respect of any of the other funds specified in legislation. We wonder if the creation of the NB Securities Commission means that the role of NBIMC in promoting the development of capital markets should be clarified.

**1.32** The NBIMC strategic plan expired at 31 March 2005 and had not been renewed at the time of our audit. The board of NBIMC was aware that the strategic plan needed to be renewed, however they indicated that had not happened because of uncertainty about the reappointment of board members. We believe, despite the concerns about board continuity, that a new strategic plan should have been developed. Uncertainty on the board does not excuse them from their responsibility to provide strategic leadership.

**1.33** The board of NBIMC does have by-laws and corporate policies that address key board structures and processes, as well as the roles and responsibilities of the board.

**1.34** The Minister of Finance has never provided NBIMC with a written explanation of the role of the Deputy Minister of Finance as a non-voting NBIMC board member, and that role is not documented in the NBIMC directors' manual. We found more than one board member confused about this non-voting role. Upon reviewing historical information we found evidence that the role was to ensure that the Minister of Finance was aware of any issues that might arise but not to act as formal communication between the Province and NBIMC. The role is non-voting to ensure there is not any conflict of interest between the role as an NBIMC board member and the role as Deputy Minister of Finance.

**1.35** The Chief Executive Officer (CEO) of NBIMC is a voting member of the NBIMC board. We believe that governance best practices discourage the appointment of a corporate CEO to the governing board of the corporation. We did find evidence that in-camera board sessions without the CEO present are held regularly.

**1.36** Some members of the board are also members of the pension plans for which NBIMC acts as trustee. We found that the roles and responsibilities of these board members as fiduciaries have been documented in the NBIMC directors' manual.

**1.37** NBIMC's committee structure is generally consistent with best practices, although we believe the board should also create a nominating committee.

**1.38** NBIMC does have a management succession plan in place.

**1.39** The Province is the guarantor of the pension entitlements, and the Minister of Finance is the governor of each of the three legislated pension plans. NBIMC's primary function is fiduciary. At present, the Minister of Finance does not provide any performance expectations to NBIMC. There is no letter of expectations, or other formal process for communicating performance expectations to NBIMC. Because the Minister of Finance does not formally communicate provincial expectations to NBIMC, the corporation uses other available sources of information in setting investment policies.

**1.40** One specific area where we feel the Province needs to clarify its expectations is the requirement under the NBIMC Act that the corporation has to "...have regard to investment opportunities in the Province" when developing and implementing "...statements of investment policies and guidelines...".

**1.41** We believe that a single letter of provincial expectations should be prepared to clarify roles, responsibilities and expectations and to allow for better performance evaluation.

**1.42** The process for making appointments to the board is not documented. Board members expressed concern about the way appointments are being made to the board of NBIMC, and about the fact that the board does not have input into the appointment process.

**1.43** The timeliness of board appointments at NBIMC has become a serious concern recently. During March 2006 four long-serving board members were replaced with four new members. The terms of five other members expired on 15 June 2006, although four of them were reappointed on 20 July 2006 for terms of eighteen months each. The appointment situation has caused uncertainty for both the board and corporate staff, causing risk that both governance and management effectiveness could be compromised.

**1.44** A serious situation was ongoing at the time of our audit field work. Between 15 June and 20 July 2006 the board did not have the membership needed to have a quorum. During that period it was unable to hold board meetings.

**1.45** Board members indicated that they would like to have a formal board succession plan to allow for transfer of corporate

memory and to lessen staff uncertainty around future corporate direction.

**1.46** NBIMC provides training to board members. We made some recommendations about improving the training and development plan.

**1.47** Reputation risk is taken very seriously at NBIMC. The corporation has a code of ethics and business conduct covering its directors and employees. We made some suggestions for items that should be included in that code.

**1.48** The NBIMC Act has not been subject to a comprehensive review since it was originally passed in 1994. We believe that the Act should be reviewed to assess whether it continues to be relevant, its stated purposes are still relevant and it provides an effective framework within which identified purposes can be achieved.

## **Department of Natural Resources Wood tracking system**

**1.49** In chapter 4 we report on our audit in the Department of Natural Resources of the tracking system for wood harvested from private woodlots in New Brunswick. Every primary forest product transported in New Brunswick must be tracked through a transportation certificate system. This is the case whether the products originated on Crown land, industrial freehold lands, or private woodlots. We limited the scope of our audit to the tracking system for wood harvested on private woodlots.

**1.50** 28% of wood harvested in New Brunswick comes from private woodlots. 21% of wood consumed by mills in the Province comes from private New Brunswick woodlots. Originally, the Department of Natural Resources hoped that the tracking system for private woodlot harvests would "...provide a more accurate determination of the harvest level" and "...provide a deterrent to wood theft."

**1.51** We noted two other benefits that have come from the tracking system for private woodlots. The system has assisted the forest products marketing boards in collecting levies on wood sales, and it has provided a method to document the source of supply as required under forest management certification standards.

**1.52** The Department needs to track wood harvested from private woodlots in order to help it manage the issue of source of supply of timber for wood processing.

**1.53** An inspection of trucks indicated that 98% of all shipments of primary forest products are documented, and 90% of the documentation is properly completed, although these inspections were not able to determine if the right form of documentation was being used. Also, the wood tracking system is capturing 95% of New Brunswick harvested wood sent to New Brunswick mills.

**1.54** When we compared private harvest volumes from industry sources to volumes captured by the wood tracking system, we found that out of 3.1 million cubic meters of roundwood harvested from private woodlots in 2003-2004, only 2.5 million were properly tracked. The remaining 600,000 cubic meters were unaccounted for and this was mostly wood exported from the Province. To determine the approximate amount of private wood exported we had to look at data from the Maine Forest Service, the largest importer of New Brunswick wood.

**1.55** So, the main area of incomplete harvest volumes is wood harvested from private woodlots that is being exported, which is 20% of the private woodlot harvest. The wood tracking system is only accounting for 25% of these exports.

**1.56** We noted that while transportation certificates are being completed for export shipments, truckers do not always remit the certificates and scale slips to the marketing boards as required. Furthermore, little action has been taken to enforce remittance. Without the scale slip, the precise volume of wood exported from the Province is not known.

**1.57** At this point, one might question why the wood tracking system is in place at all. It captures 95% of the in-Province market, but 100% is captured through industry reporting on the timber utilization survey. It captures 25% of the export market, but a more accurate number can be determined from the *Wood Processor Report* prepared by the State of Maine. If harvest volumes are available from those sources, they would seem to be a simpler way to determine the harvest level than a load tracking system. In fact, neither Nova Scotia nor Quebec require individual load tracking slips.

**1.58** With regard to the system's other stated intended benefit, to provide a deterrent to wood theft, we were unable to conclude whether rates of theft from private woodlots have decreased following the introduction of the transportation certificates. We were however able to conclude that the certificates have been used as a tool in the prosecution of wood theft.

**1.59** The tracking system has some weaknesses at the administrative level; the pre-printed tracking slips are not accounted for, the slips are not always capturing the correct identification number for the source property, and the Forest Products Commission is not fulfilling its responsibility to audit the wood tracking system. Having effective control procedures is important because the value of the information produced by the wood tracking system is dependent upon a complete accounting of the transportation certificates.

**1.60** Another significant weakness in the system is that the incomplete harvest volume data that the system collects is compared by the Department to an allowable annual cut number that was set in 1992 and is out of date. The reason it has not been updated is that the Department has not reached consensus with the marketing boards on new numbers. But monitoring sustainability is the Department's responsibility, so while they are waiting to agree on new allowable annual cut numbers, they should make their own estimate of a sustainable cut which would be a better benchmark than an estimate that is out of date.

**1.61** But the system does have value. One reason why the tracking slip system should be continued is that the marketplace is starting to demand that wood products be harvested from environmentally sustainable forests. For example, one mill in Maine requires the property identification number of the woodlot or the landowner's name at the time of delivery; this lets them prove the chain of custody of the forest products. The Province's system captures this information.

**1.62** Also, six of the marketing boards said that the tracking system had helped them to increase the collection of levies they impose on sales of private woodlot harvests. However, they felt the cost of administering the system exceeded the extra revenue.

**1.63** If the system is to be retained it should be improved so it works as designed.

**1.64** Reviewing the levies revealed two factors. First, if export volumes are not being reported to the marketing boards, levies are probably not being paid on those exports. The value of unpaid levies could be as high as \$1.1 million. \$438,000 of that estimate is for forest management levies which are supposed to go back into silviculture programs for the private woodlots, and \$644,000 is for administration levies.

## **Departments of Health and Justice and Consumer Affairs**

### **Health levy**

**1.65** The second factor is that some wood brokers argue that they should not have to pay the administration levy to the marketing boards that the brokers see as competitors.

**1.66** The department does have an enforcement program in place, using roadside and mill inspections, which has led to prosecutions for violations, although that program could be improved. For example, the wood tracking system in conjunction with enforcement procedures could be an effective tool in exposing wood theft if the roadside inspection program verified that the wood was harvested from the woodlot specified on the transportation certificate.

**1.67** In chapter 5 we report on our audit of the health levy in the Departments of Health and Justice and Consumer affairs. The health levy was first put in place in 1993. It is intended to recover certain specified costs incurred by the Province for the managing of personal injuries from motor vehicle accidents. It is charged to motor vehicle insurers in the Province based on the value of motor vehicle insurance premiums they bill.

**1.68** The health levy generates a significant amount of revenue for the Province. We wanted to find out what its purpose was, how it worked and what, if any, relationship it had to the Province's Insurance Premium Tax.

**1.69** Most health services are paid for from general revenue, but the cost of motor vehicle accidents has, for some time, been an exception.

**1.70** At one time, the approach was to recover the costs through the legal system. The Department of Health had to attach a legal claim for cost recovery to the legal claim being made by the person injured in the accident. In 1990, the Province recovered \$3.0 million this way, although it cost them 10% of that to do so.

**1.71** Now, in theory at least, the cost is levied on insurance companies. It is a cost to them of providing motor vehicle insurance, and would be one factor they consider when setting vehicle insurance premiums.

**1.72** But the health levy on insurance companies is not the same thing as Insurance Premium Tax on insurance companies. They are two different revenue sources for the Province.

**1.73** Both the departments of Health and Justice and Consumer Affairs are involved in the process of determining, charging and collecting the health levy. In the early 1990s, a consultant developed a complex model to put a value on the costs to the provincial system caused by motor vehicle accidents. Because of the uncertainty in the available data, many estimates had to be used. A method to estimate the health levy for future years was also established.

**1.74** We analyzed the way the Department of Health has set the health levy every year, and our best estimate is that the health levy doesn't collect enough to cover the health care costs of vehicle accidents. In fact, we believe the levy is only enough to cover 70 % of the public health care costs of vehicle accidents. The other 30 % is paid for by general revenue.

**1.75** This is a significant amount of money; the budgeted revenue from the health levy for the 2006-2007 year is \$16.9 million.

**1.76** However, we are not recommending that the Province fix its method of calculating the levy and charge more to the insurance companies. We believe that the method of determining the amount of the levy and the process for collecting the levy are both more complicated than is necessary. Furthermore, the levy is confusing to the public who may or may not know it exists, but who probably don't know the affect it has on their insurance premiums. In fact, it is not possible to know for sure the affect it has on any individual insurance premium billed by an insurance company.

**1.77** The Province should look for an easier, more transparent way to generate the same amount of revenue it is generating through the health levy, and replace the levy.

**1.78** However, if the government decides to keep the health levy, they should improve the process to simplify it. We have made recommendations about recalculating the costs, making changes to the legislation and completing reconciliations that would improve the administrative aspects of the health levy process.

## **Department of Public Safety**

### **9-1-1 service**

**1.79** In chapter 6 we report on our project in the Department of Public Safety on New Brunswick's Emergency 9-1-1 Service. Based on findings from our preliminary review of the service, we decided not to do an audit, however we did gather information about the service and identified some challenges faced by the service. One significant reason for our decision was that a comprehensive internal review of the 9-1-1 service and dispatch systems was completed in



October 2004, and we found evidence that the Department was actively implementing the improvements recommended by that review.

**1.80** The Department reports that approximately 150,000 calls are made annually to 9-1-1. 43% of these are non-emergency calls. 26% of the calls primarily require the police, 23% primarily require ambulance services, 4% primarily require fire services and 4% relate to poison control. There are six Public Safety Answering Points (PSAP) across the Province. 26% of the calls are in the Codiac region, 24% in Saint John, 21% in Fredericton, 16% in Bathurst, 7% in Edmundston and 6% in Miramichi. Approximately 34% of calls come from cellular phones.

**1.81** New Brunswickers pay for the 9-1-1 service via fees on their monthly telephone bills. The NB 9-1-1 emergency service charge is currently 29 cents a month for a landline and 25 to 50 cents a month for cell phones. This fee is used to fund telephone infrastructure costs and none of it is remitted to the Province. In addition, there is an “NB 9-1-1 Service Fund” that is provincially regulated. The purpose of the fee charged to build this fund is to finance the 9-1-1 service and the required improvements. The fee is 53 cents for each outgoing capable telephone line.

**1.82** As a result of its internal review, the Department had announced improvements to the 9-1-1 service that included developing and implementing standards for service delivery and training of staff in the PSAPs; developing quality assurance methods for the service; enhancing technology; educating the public on the proper use of 9-1-1; assigning call-taking responsibilities regionally to the six PSAPs and replacing RCMP J Division’s call taking responsibilities; and developing and implementing regional fire dispatch and improvements so that fire services can communicate with each other.

**1.83** When we reviewed the information generated during the internal review, we saw documentation indicating that a report would be prepared in November 2003, and we saw evidence of significant work towards producing a report. We also saw a draft report dated December 2003 that appeared almost complete. It was comprehensive, well written and organized. It contained comments from various stakeholders. It contained both challenges and recommendations. The Department informed us that a final report on the internal review was not prepared. Rather they took the

information, summarized the findings into five issues and proposed enhancements, and presented them to Executive Council.

**1.84** We feel that governance of the 9-1-1 system could be improved through the establishment of a cross-functional, cross-jurisdictional governance committee to provide strategic direction.

**1.85** During the course of our review, we observed many positive features in the NB 9-1-1 service. The service compares well to other Canadian jurisdictions; audits of 9-1-1 were conducted between 1998 and 2004; and the Department is actively enhancing the NB 9-1-1 service as a result of different reviews of the service.

**1.86** Some areas where we think improvements could be made include ensuring the Department has the legal authority to regionalize fire dispatch; establishing an enforcement policy to deal with situations when PSAPs do not comply with operating procedures; continuing the regular operational audits of the PSAPs; formalizing an audit plan for the new NB 9-1-1 Service Fund; and securing a legal agreement for the 9-1-1 infrastructure to replace the expired agreement.

## **Department of Business New Brunswick Community Economic Development Agencies**

**1.87** In chapter 7 we report on our project in the Department of Business New Brunswick (BNB) looking at Community Economic Development Agencies (CEDAs). Based on the information we gathered during our preliminary review of CEDAs we decided not to conduct an audit, however we did make some observations.

**1.88** CEDAs are not-for-profit corporations created to work with the regional business community in areas of strategic importance to the funding partners. There are fifteen CEDAs in New Brunswick. CEDAs do not provide funding to businesses, instead they provide a number of programs and services to assist organizations. CEDA boards range from 11 to 20 members, and staff complements range from 4 to 14.

**1.89** CEDAs receive core funding from the Atlantic Canada Opportunities Agency, Business New Brunswick, and participating municipalities. They also have other sources of revenue. While the core funding from municipalities varies significantly, from 2% to 62% of core funding in 2004/2005, the federal and provincial core funding to all CEDAs is provided in a 70 to 30 ratio. Our analysis shows that BNB provided 21% of the total core funding for all CEDAs, a total of \$1.2 million. The CEDAs also received an

additional \$3.7 million in provincial non-core funding from various departments during the fiscal year ended 31 March 2005.

**1.90** In preparing our analysis we identified that CEDAs do not follow a consistent financial reporting format, which made comparison difficult.

**1.91** CEDAs are accountable to their funding partners. A framework document established the guidelines and principles that govern the CEDA concept. The reporting requirements of CEDAs are set out in these guidelines. BNB annual funding to CEDAs is provided in two amounts. 50% of the funding is provided with the submission of the CEDAs workplan, and the other 50% is provided once a six-month progress report is submitted.

**1.92** We reviewed the six-month progress report submitted by three CEDAs and found that they identified planned actions, who was responsible for the planned actions, and the results at the mid-year point.

**1.93** All CEDAs prepare an annual report, although we identified some weaknesses in them, and we recommended that the Department work with its partners to establish a standard annual reporting format.

**1.94** We found that BNB had complete reporting documentation on file for only six of the fifteen CEDAs. We were able to obtain missing documents from the CEDAs themselves, indicating that it does exist.

**1.95** Part of the non-core provincial funding to CEDAs was provided from the Community Economic Development Fund at BNB. We found that the granting process was working as intended. We noted that the application process included a section to document the expected outcomes of the project, and recommended that this information should be compared to actual outcomes to assess the success of the project.

## **Strengthening the role of the Auditor General**

**1.96** In chapter 8 of this report, we provide some suggestions for strengthening the role of the Auditor General. We provided this analysis to government after the release of the government's *Response to the Final Report and Recommendations* of the Commission on Legislative Democracy, which referred to the government's intention to strengthen the authority of the Auditor General to examine important issues of public management.

**1.97** We recognize that a new government means that the position on the *Response to the Final Report and Recommendations* may change, however we believe our suggestions are still valid.

**1.98** While we have received acknowledgement from the government that these suggestions have been received, no further action has been initiated.

**1.99** In this chapter we discuss: having a legislative oversight committee for our work; playing a role in strengthening financial guidelines; providing input on improving governance practices; updating the *Auditor General Act*; external reviews when government changes; forming an audit committee; attendance at audit committee meetings of Crown corporations; accepting audit appointments; audit of grant payments; and accessing budget revenue for large or complex audits.

**1.100** The issue of accepting audit appointments was also addressed in chapter 1 of Volume 1 of the 2006 Report of the Auditor General under the heading “Reducing the other audits we do” where we said:

*One way to offset the increased audit effort would be to reduce the number of organizations audited. Some of the organizations that we audit are small, and the government has access to the information it needs to hold them accountable even without an audit.*

**1.101** We believe that some of the financial audits we are required by legislation to do are not adding any value, and those organizations should not be required to produce audited financial statements.

**1.102** We also state in this chapter that instituting changes to strengthen the authority of the Auditor General is only one way to enhance accountability. The government should also look at other ways to strengthen the management of the resources entrusted to the government. For example, the work done by CCAF-FCVI Inc. concerning Public Accounts Committees is a source of good information to improve the effectiveness of Public Accounts Committees. Also, strengthening the internal control and internal audit roles of government is at least as important as strengthening the role of the Auditor General.

## **Follow up on prior years’ recommendations**

**1.103** In chapter 9 we report on our follow-up of recommendations we made in previous years. In this Report we are tracking progress on recommendations we made in 2002, 2003 and 2004.

**1.104** To prepare this chapter, we request written updates on progress from the respective departments and agencies. We review these updates by meeting with appropriate officials. In some cases we request additional documentation to test the accuracy of the accounts we have been given.

**1.105** Departments and agencies had implemented 170 or 43 % of our 392 recommendations from 2002, 2003 and 2004. Of the 222 recommendations not yet fully implemented, 54 are from 2002.

**1.106** In our 2005 Report, we said that the failure of the Province to award tenders for cellular service plans and long distance on a timely basis meant the Province had paid hundreds of thousands of dollars in unnecessary charges. Now that awards have been made, although contracts have not been signed, we are able to estimate that delaying the awards cost the Province at least \$2 million in savings on the cellular phone portion of the telecommunications contract. It is also possible that savings in the other components of the telecommunications contract were foregone. We have not done any work to verify whether the Province achieved the lowest possible rates in either the cellular phone component or the full telecom services package.

**1.107** In 2002 we made 40 recommendations to the Department of Transportation as a result of our audit of the Vehicle Management Agency (VMA). The Department chose not to implement some of our recommendations that were intended to enhance the value provided by VMA. Instead of implementing our recommendation that VMA comply with the Board of Management policy requiring VMA to report the cost per kilometer of operating the government fleet and comparative costs of alternate means of providing transportation, the Department had the Board of Management revise the policy, removing the requirement for cost comparisons. The Department also rejected another recommendation we made about revisiting its balanced scorecard to ensure it includes established industry benchmarks for its performance indicators.

**1.108** We found this reluctance to make, and publicly report on, these cost comparisons surprising, especially since the Department was able to provide us with a spreadsheet that showed by their calculation that in about 90% of the cases, the average VMA cost of central repairs was cheaper than the private sector. We did not audit the information in this spreadsheet and so we cannot conclude on whether the Department's assessment is accurate. However, if it is accurate we would think the Department would want to report those

types of results publicly. We continue to believe it is important for government to assess and report publicly on the cost efficiency of the VMA.

A handwritten signature in black ink, appearing to read "Michael Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Ferguson, CA  
Auditor General

# 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.

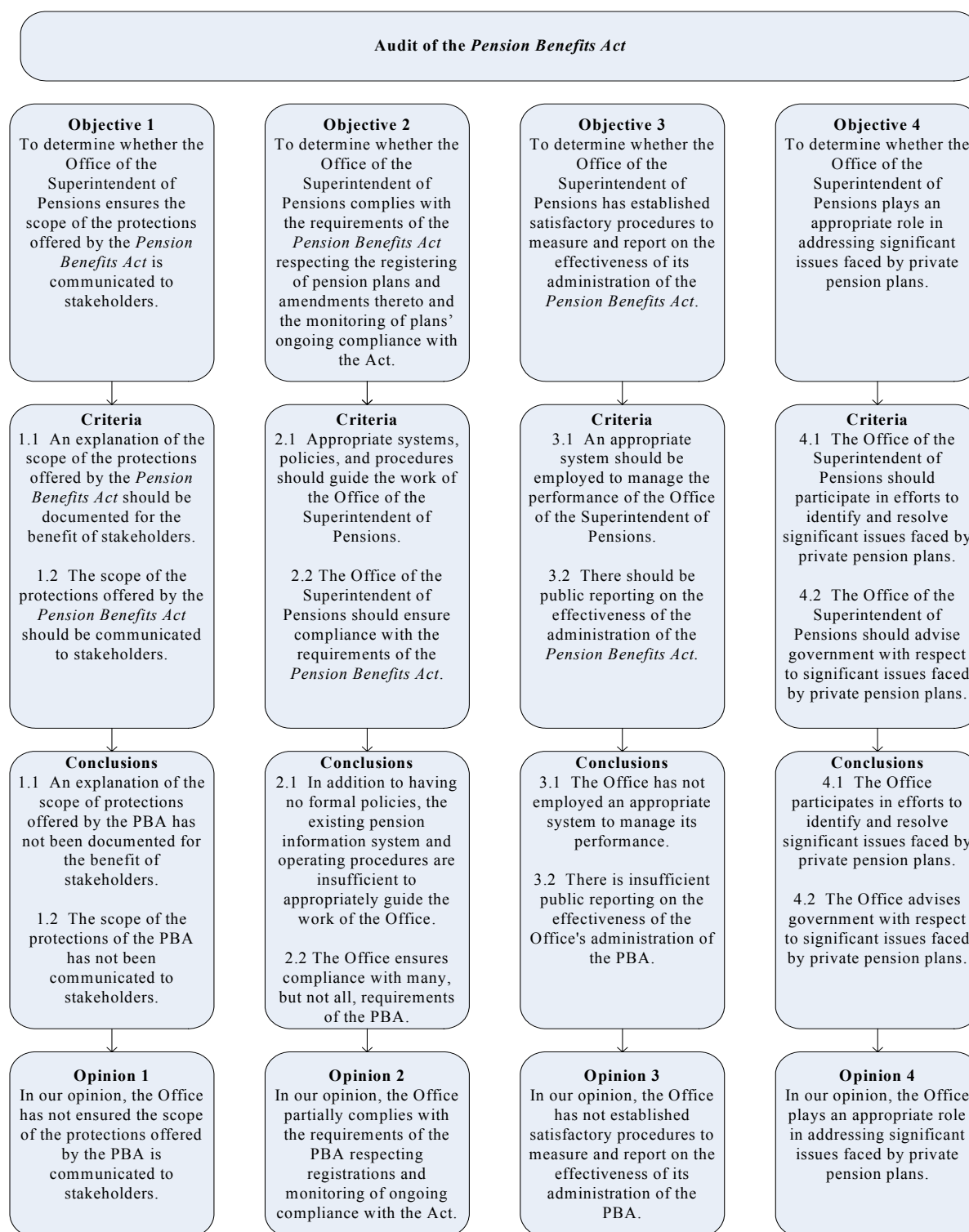
**2.41** Our conclusion was based upon the audit procedures and findings described below.

## 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***

#### **Systems**

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

**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.



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>
Recommendation	<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>
Ensuring compliance	<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

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

Processing of annual  
information returns

**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.

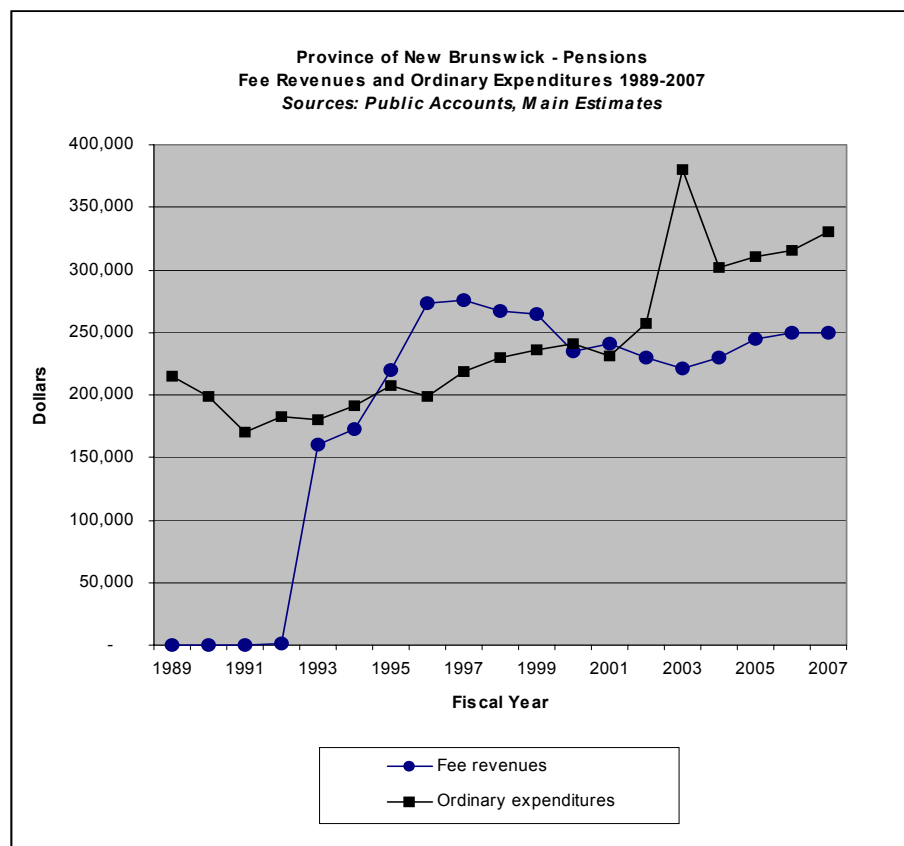
**2.171** We found that the Office has not employed an appropriate performance management system. We grouped our findings and recommendations into the three areas described below.

### 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*

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

**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.

# Chapter 3

## New Brunswick Investment Management Corporation Governance

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# New Brunswick Investment Management Corporation Governance

## Introduction

**3.1** The New Brunswick Investment Management Corporation (NBIMC) acts as trustee for the three legislated provincial pension funds which have a growing pool of investment assets, currently in excess of \$8 billion. Those three funds are the Public Service Pension Fund, the Teachers' Pension Fund and the Judges' Pension Fund. NBIMC reports that as at 31 March 2006, they employed 36 staff.

Year end 31 March	Assets held in trust 31 March (\$ millions)	Investment income (\$ millions)	Contributions (\$ millions)	Payments including NBIMC fees (\$ millions)	Corporate expenses (\$ millions)	Number of staff
2006	8,100	1,113	328	398	9.05	36
2005	7,056	552	314	375	8.85	34
2004	6,565	1,322	303	349	9.04	32
2003	5,289	(403)	186	330	7.46	32
2002	5,835	195	167	299	6.57	31

**3.2** The provincial Office of Human Resources administers payments to pensioners. And most importantly, it is the Province that guarantees all future pension entitlements of current and former employees under the three legislated plans.

## Background

**3.3** In the early 1990s, the Province's three legislated pension plans had large unfunded liabilities. At that time, the Province set the goal of having all legislated provincial pension plans fully funded by the year 2018. A fully funded position means that there are sufficient assets in a plan to cover all payments that must be made to current and future pensioners.



**3.4** Since this funding shortfall was the responsibility of the Province, it chose to implement measures to reduce the shortfall. This included the introduction of equity investments to diversify the investment portfolio. Additional equity investment expertise was required to earn the potentially higher investment returns from equity investments while managing the higher risk associated with those investments.

**3.5** In 1994, the Legislative Assembly passed the *New Brunswick Investment Management Corporation Act* to create an organization that would manage the pension assets of the three legislated plans for the Province. The primary purpose for creating NBIMC was to create a pool of investment expertise in the Province that would facilitate the achievement of the provincial goal of fully funding legislated provincial pension plans.

***Importance of effective governance***

**3.6** NBIMC is governed by a board of directors currently composed of twelve members. Because NBIMC was established under provincial legislation (*NBIMC Act*), we consider the Province to be the de-facto owner of the organization. The Province is represented in that regard by the Minister of Finance. While the Province is the owner of the organization, NBIMC is the trustee of the pension fund assets, not the owner of the assets.

**3.7** There is a correlation between the level of investment returns earned by NBIMC and the amount of funding that must be provided by the Province and current pension fund contributors. Consequently the Province, and therefore New Brunswickers, has a significant stake in the success of NBIMC.

**3.8** Ultimately Crown agency governance is about performance and accountability. It is now widely recognized that effective governance can have a very positive effect on the performance of an organization and in ensuring that management and the board are accountable for that performance. And for that reason, it is clear that it is in the best interests of the Province for the governance of NBIMC to be effective.

**3.9** Governance can be defined as the process and structure used to direct the business and affairs of a corporation with the objective of achieving the corporate mission. The process and structure define the division of roles and responsibilities between the shareholder(s), the board and management. They also establish mechanisms for achieving accountability between management, the board of directors, and the shareholder(s).

## Scope

**3.10** Our objective for this audit was:

*To assess whether current governance structures and processes established for NBIMC set a framework for effective governance.*

**3.11** In completing this work, we interviewed eight of the twelve NBIMC board members, including all three ex-officio members, one newly appointed member and four experienced board members. We reviewed documentation including legislation, bylaws, board minutes, business plans, and various other documents. We also reviewed recently-published governance literature, and findings from our previous governance audits, in order to identify best practices.

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

**3.13** Our examination of governance at NBIMC is the first part of a planned three part audit of that organization. The other two parts of the audit will address NBIMC operations and investment performance.

## Results in brief

**3.14** There are many areas that can be looked at in examining corporate governance at a Crown agency. We chose seven areas we felt could have the most impact on the effectiveness of governance at NBIMC. Those areas are detailed in column one of the table that follows. Column one also shows the audit criteria, or statements of principle, for each of these areas. These criteria were developed by our Office and reviewed with senior representatives of NBIMC.

**3.15** The criteria established the framework for our audit. And it is against these criteria that we evaluated the state of governance of NBIMC. Our findings for each criterion are summarized in the second column of the table and discussed in more detail in the seven sections that follow.

Audit Area and Criterion	Summary of Findings
<b>Purposes of NBIMC</b> - The purposes of NBIMC should be clearly documented by legislation.	<p>The “objects and purposes” of NBIMC are documented in the NBIMC Act.</p> <p>The intent of the “objects and purposes” of NBIMC, as documented in the NBIMC Act, is not always clear.</p>

<b>Audit Area and Criterion</b>	<b>Summary of Findings</b>
<b>NBIMC mandate, mission and objectives</b> - The mandate, mission and measurable objectives of NBIMC should be clearly documented by NBIMC's board and agreed to by Executive Council or a committee thereof.	<p>The NBIMC strategic plan is out of date as it covers only the period up to 31 March 2005.</p> <p>A mandate, mission and measurable objectives for NBIMC are documented in the expired 2002-2005 strategic plan.</p> <p>The 2002-2005 strategic plan was not agreed to by the Executive Council or one of its committees.</p>
<b>Relative roles and responsibilities of key players in the governance of NBIMC</b> - The relative roles and responsibilities of the NBIMC board of directors and committees, the management of NBIMC and government should be clearly documented and agreed upon by appropriate parties.	<p>The roles and responsibilities have not been agreed upon by appropriate parties.</p> <p>The board has established three permanent committees: an Audit Committee, a Human Resource Committee and a Governance Committee. Each of the Committees has documented terms of reference that have been approved by the board.</p> <p>There has been no direct communication of provincial performance expectations to NBIMC. In the absence of this, NBIMC uses other available sources of information in setting its investment policy.</p>
<b>The board appointment process</b> - The appointment process should provide sufficient information to those responsible for selecting candidates for appointment to the NBIMC board to allow them to choose candidates with the characteristics, skills and abilities that will best contribute to board effectiveness. The process should be clearly documented and followed consistently.	<p>No formal appointment process has been documented or is followed by the Lieutenant-Governor in Council (LGIC). Appointments to the board of NBIMC are made on an ad hoc basis.</p> <p>No input is sought from the board as to characteristics, skills and abilities that are required of members of the NBIMC board, nor is the board asked to recommend qualified candidates to the LGIC.</p>
<b>Board succession planning</b> - The NBIMC board should have a succession plan that recommends to government the orderly turnover of directors.	<p>There is no board succession plan in place.</p> <p>There have recently been significant delays in appointing and reappointing board members, leading to concerns about the ongoing ability of the board to proactively govern NBIMC and to maintain an appropriate level of continuity at the board table.</p>
<b>Board training and development</b> - The NBIMC board should get sufficient, appropriate training and guidance to understand and be able to apply current best practices of governance.	<p>While training and development opportunities provided to the board have been somewhat ad hoc, they have covered most important areas.</p> <p>There is no formal board training and development plan in place.</p>
<b>Board code of conduct and ethics</b> - NBIMC's board should have an appropriate documented Code of Conduct and Ethics.	<p>The board is subject to a Code of Ethics that appears to cover all important areas.</p> <p>There is a process in place to handle potential conflict of interest situations.</p>
<b>Other observations and findings</b>	<p>To the best of our knowledge, the original premises under which NBIMC was established have never been revisited.</p> <p>The NBIMC Act has not been the subject of a comprehensive review since it was originally passed into law in 1994.</p>

## Purposes of the New Brunswick Investment Management Corporation

### *Act as trustee*

**3.16** It is important that the purposes for which a Crown agency was created be clearly documented. This allows government, the board of directors, and management to have a common understanding of the purposes for which the organization was established, and to focus on fulfilling those purposes.

**3.17** The objects and purposes of the New Brunswick Investment Management Corporation appear in section 4 of the NBIMC Act. They are discussed under the four headings that follow in this section of the chapter.

**3.18** Section 4 (a) of the *New Brunswick Investment Management Corporation Act* states that the first object and purpose of the Corporation is:

*... to act as trustee for the funds referred to in subsection 14(1), ...*

**3.19** Section 14(1) of the Act indicates that the Corporation is to act as trustee for the Public Service Superannuation Fund, the Teachers' Pension Fund and the Judges' Superannuation Fund. This is NBIMC's primary function.

**3.20** At 31 March 2006, the Corporation, as part of this trustee function, was directly involved in the investment of \$6.3 billion of the pension plan assets, covering all asset classes where the organization feels it has sufficient expertise. Remaining fund assets totalling \$1.7 billion were invested through third-party managers who are engaged and monitored by NBIMC. NBIMC sets the investment policy that these third-party managers are required to follow.

### *Act as investment counsellor*

**3.21** Section 4 (b) of the *New Brunswick Investment Management Corporation Act* states that the second object and purpose of the Corporation is:

*... to provide investment counselling services and other services in respect of the funds referred to in section 15,*

**3.22** Section 15 of the Act indicates that the Corporation is to provide investment counselling services and other services (i.e. management and administration) to the Minister of Finance or the related trustee for the following funds as directed by the Minister or fund trustee:

- Sinking funds for the Province required by the *Provincial Loans Act*

- Viscount Bennett Trust Fund
- E. Belle Lynds Scholarship Fund
- Mental Health Trust Fund
- Group Insurance Trust Fund
- Sport Development Trust Fund
- Arts Development Trust Fund
- Environmental Trust Fund
- Any other funds as designated by regulation

**3.23** Investment decisions relating to the funds listed under Section 15 are made by staff in the Department of Finance. NBIMC has not been asked by the Province to get involved with these funds.

***Promote development of provincial financial services industry/capital markets***

**3.24** Section 4 (c) of the *New Brunswick Investment Management Corporation Act* states that the third object and purpose of the Corporation is:

*... to promote the development of the financial services industry and capital markets in the Province, ...*

**3.25** In June, 2004, the *Securities Act* was assented to. Section 2 of that Act identifies its purposes including:

*...(b) to foster fair and efficient capital markets and confidence in capital markets.*

**3.26** Because of the creation of the N.B. Securities Commission, we wonder if NBIMC should still have a role in promoting the development of capital markets in the Province. We feel that the Province, through a letter of expectations as recommended later in this chapter, should provide clarification of NBIMC's role under section 4(c) of the Act.

***Carry out other authorized activities***

**3.27** Section 4 (d) of the *New Brunswick Investment Management Corporation Act* states that the fourth and final object and purpose of the Corporation is:

*... to carry out such other activities or duties as may be authorized or required by this Act or the Lieutenant-Governor in Council may direct.*

**3.28** To date, neither the Lieutenant-Governor in Council nor the Minister of Finance have provided further clarification on the meaning or intent of this or other subsections of the Act. Potential improvements in communication of provincial expectations are

discussed in more detail in the roles and responsibilities section of this chapter.

### ***Recommendation***

**3.29** In the roles and responsibilities section of this chapter, we made a recommendation that the pension plan governor should clearly document government expectations of the Corporation with regards to section 4 of the Act in a letter of expectations.

## **Mandate, mission and objectives of the New Brunswick Investment Management Corporation**

**3.30** Typically, the mandate, mission and objectives of an organization are documented and renewed periodically through corporate strategic planning. The NBIMC strategic plan expired at 31 March 2005 and has not yet been renewed. The strategic plan covered the period from 2002 to 2005 and documents NBIMC's most recent interpretation of the mandate, mission, and strategic goals of the Corporation. Re-examining the mandate, mission and objectives of NBIMC and having them agreed to by the Minister of Finance (on behalf of the government) and the board would yield three major benefits:

- it would provide the Province, the board, and NBIMC management and staff with a common understanding of the purpose of NBIMC;
- it would provide NBIMC management and staff with a clear indication as to what initiatives and activities they should be undertaking; and
- it would provide a basis for corporate planning and the evaluation of corporate performance.

Corporate mandate	<ul style="list-style-type: none"> <li>• Trustee and investment services for the Teachers' Pension Plan, the Public Service Superannuation Plan, and the Judges' Superannuation Plan.</li> <li>• Investment services for other funds at the request of the Minister of Finance.</li> <li>• Investment services for other third party funds which may be undertaken on a commercial fee basis.</li> <li>• Consideration of local investment opportunities based in the Province and the region.</li> <li>• Responsibility to support and encourage the financial services industry.</li> </ul>
Corporate mission	<ul style="list-style-type: none"> <li>• To meet client investment objectives with a low expense ratio.</li> </ul>

Corporate strategic goals	<ul style="list-style-type: none"> <li>• The goal for returns from asset mix policy is to meet the minimum long-term real return assumption set by the Sponsor's funding plan for the pension plans of 4.0 percent.</li> <li>• The goal for active management is to add 42 basis points (.42%) over benchmark returns net of Corporation costs over rolling four year periods.</li> <li>• To be prepared to market investment services to new external clients in the region by the end of the strategic plan period.</li> <li>• The Corporation will undertake broad based measures which engage all employees in an ongoing effort to improve corporate effectiveness. These measures will include leadership, communication, feedback, recognition and support for innovation as priorities.</li> <li>• The Corporation will maintain a reputation of honesty and integrity, of competence, of openness, and of being a good citizen in the community.</li> <li>• The Corporation will maintain its effectiveness in using technology.</li> <li>• Develop and maintain the highest standards of financial accounting, compliance and performance measurement to meet client needs.</li> </ul>
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**3.31** The board is aware that the strategic plan needs to be renewed. Board members indicated that the strategic plan had not been brought up to date due to uncertainty surrounding the reappointment of board members. Issues surrounding NBIMC board appointments and continuity are discussed later in this chapter.

**3.32** A critical role of any board of directors is to ensure that an up-to-date strategic framework is in place for the organization they govern. We believe, despite the board members' concerns about board continuity, that a strategic plan should have been developed on a timely basis for NBIMC covering the period from 1 April 2005 forward. Uncertainty on the part of board members about their status on the board does not excuse them from their responsibility to provide corporate strategic leadership.

### ***Strategic plan***

**3.33** The NBIMC strategic plan covering 2002 to 2005 was approved by the board. NBIMC is responsible to develop and implement its strategic plan, however, we believe that the Province, as owner of NBIMC, should formally agree with that strategic plan.

**3.34** The strategic plan could be requested by the Minister of Finance pursuant to Section 27(4) of the Act that states:

*The Corporation shall provide to the Minister such information in respect of the business and affairs of the Corporation as the Minister may request from time to time.*

**3.35** The requirement for the Corporation to provide the strategic plan to the Minister of Finance could be included in terms of the letter of expectations, as discussed in the next section of this chapter. The Minister could then convey the plan to the Executive Council.

#### **Recommendation**

**3.36** We recommended NBIMC prepare an updated strategic plan and provide it to the Minister of Finance.

**3.37** We further recommended the Minister of Finance provide NBIMC's updated strategic plan to the Executive Council or one of the Executive Council's committees for formal review.

#### **NBIMC response**

**3.38** *The Board had recognized that it needed to review, and possibly modify, its strategic plan. It felt however that the existing strategy provided a proper framework in which to continue to develop an annual business plan and operating budget, and that it would be more appropriate to review the strategic plan after the appointment of a full slate of Directors with current terms of service.*

**3.39** *Now that this situation has been addressed, the Board and management have begun a strategic planning exercise which is expected to be completed prior to the end of the current fiscal year (March 31, 2007). As part of this exercise the Board plans to provide a copy to the Minister of Finance for review and input.*

### **Roles and responsibilities**

**3.40** In order for governance to be effective, it is very important that the roles and responsibilities of key players be clearly documented, and understood and agreed upon by appropriate parties.

#### **Roles and responsibilities of the board**

**3.41** Section 10 of the Act states:

*The Board shall administer the affairs of the Corporation on a commercial basis and all decisions and actions of the Board are to be based on sound business practice.*

**3.42** Board members feel that they represent two key stakeholders, the guarantor of the three plans (i.e. the Province who is also the owner of NBIMC) and the beneficiaries of the pension plans, in fulfilling their roles and responsibilities.



### **Roles and responsibilities of ex-officio and group-specific board members**

**3.43** Best governance practices would dictate that among its key roles and responsibilities the board of NBIMC must ensure that the Corporation meets the performance expectations of the Province. The board is also responsible for discharging its accountability obligations to the Province in relation to corporate performance. Further, the board should also be responsible for ensuring that management is held accountable for its performance, and that there is an appropriate strategic framework in place.

**3.44** The board does have by-laws and corporate policies that address key board structures and processes, as well as the roles and responsibilities of the board.

**3.45** Under the current NBIMC Act, five of the twelve members of the NBIMC board are either ex-officio or selected from specific groups.

**3.46** The board of NBIMC includes three ex-officio members. Section 6 of the Act states:

*The board of directors of the Corporation shall consist of the following members:*

*(a) the President of the Corporation;*

*(b) the Deputy Minister of Finance, who shall be a non-voting member;*

*(c) the Vice-President of Finance of the New Brunswick Power Holding Corporation; ...*

**3.47** In addition, section 6(d) requires the appointment of two members as follows.

*... (ii) one of whom shall be a member of the public service superannuation plan in respect of which the Corporation acts a trustee of the pension fund referred to in section 27 of the Public Service Superannuation Act,*

*(iii) one of whom shall be a member of the teachers' pension plan in respect of which the Corporation acts as trustee of the Teachers' Pension Fund referred to in section 26 of the Teachers' Pension Act, ...*

**3.48** We believe that the reason the Act, when originally written, required the appointment of board members from specific stakeholder

groups, including some ex-officio members, was to ensure stakeholder representation and stakeholder acceptance of the new corporation.

***Deputy Minister of Finance –  
ex-officio board member***

**3.49** The role of the Deputy Minister of the Department of Finance, who is a non-voting member of the board, is not documented in the NBIMC directors' manual. His role as a non-voting member of the board is to maintain an understanding of the operations of the organization, and to report to the Province on any NBIMC corporate decisions he feels may have an impact on the Province. This is necessary because of the risk the Province has assumed as the guarantor of the three legislated pension plans. The role is not to be a conduit for formal communication between the Province and NBIMC, but rather to ensure that the Minister of Finance is kept current on all matters relating to NBIMC.

**3.50** The 14 December 1994 edition of Hansard reports the then Minister of Finance, the Hon. Mr. Maher saying:

*I should point out that, by legislation, the Deputy Minister of Finance will be a nonvoting member, and there is a reason for him or her to be nonvoting. If they are at a meeting when decisions are made that they are not happy about, they can then come back to the minister and to Cabinet to advise them of that, so that if there is a problem we can address it very quickly.*

**3.51** The Deputy Minister of Finance was included on the board in order to ensure that the Minister was aware of any issues that might arise. The appointment was made non-voting to ensure there is not any conflict of interest between the Deputy's role as an NBIMC board member and his regular responsibilities to the Minister of Finance.

**3.52** However, because the Minister of Finance has never provided NBIMC with a written explanation of the role of the Deputy Minister of Finance as a non-voting member, the role is not documented in NBIMC's directors' manual. Therefore we found more than one board member confused about this non-voting role. They indicated that they felt that the Deputy Minister of Finance is the formal conduit for communication between the NBIMC board and the Province.

**3.53** We feel that this lack of common understanding of the role of the Deputy Minister of Finance in the governance of NBIMC needs

to be resolved. The Minister of Finance should provide NBIMC with a written explanation of the role of the Deputy Minister of Finance as a non-voting member of NBIMC's board. The NBIMC directors' manual should include a brief history of the corporation including a description of the role of the Deputy Minister of Finance.

***Vice President of Finance of  
NB Power – ex-officio board  
member***

**3.54** When NBIMC was established, board members were selected from various stakeholder groups. This included the Vice President of Finance of New Brunswick Power Holding Corporation because that organization pays significant employer contributions into the Public Service Superannuation Fund. Board members felt that the expertise provided by having a financial person on the board was of value.

***President of NBIMC – ex-  
officio board member***

**3.55** The President of NBIMC, along with his roles as the Chief Executive Officer (CEO) and Chief Investment Officer (CIO) of NBIMC, is also an ex-officio voting member of the board.

**3.56** In his book, *On Board Leadership*, governance expert John Carver makes the following observations in the chapter, *Should Your CEO Be a Board Member?*

*Yet having the CEO be a member of the very board that instructs and assesses him or her is by its very nature a conflict of interest. That conflict may cause only a small problem or can be a major impediment to the integrity of governance. But having the CEO on the board must eventually damage governance in some way. ...So, should the CEO be on the board? Certainly not.*

**3.57** As is obvious from John Carver's comments, governance best practices discourage the appointment of a corporate President/CEO to his or her corporate board. As we stated in our 2003 Report, we believe that CEOs with voting rights at the board table are essentially being asked to be both managers and directors which puts them in a conflict of interest situation.

**3.58** We believe that in the long term, the best solution is for the President of NBIMC to no longer be a member of the NBIMC board. In the meantime the board needs to carefully manage the President's status as a board member through the continued use of in-camera meetings.

**3.59** We were told by board members of the NBIMC board that, in fact, in-camera meetings without the President present are held regularly. They feel that this potential conflict is being managed and

in their opinion has not created a problem in the past. Our review of the minutes of the board and its committees confirmed that in-camera sessions were regularly held. However, in our opinion, the risk of a conflict of interest from having the President of NBIMC as a voting member of the board remains.

**NBIMC response**

**3.60** *We find that the view on the inappropriateness of the President participating as a voting member of its Board is questionable. For example, the Canadian Coalition of Good Governance and Pension Investment Association of Canada, two national investor based organizations of which NBIMC is a member, identify only governance concerns with Chief Executive Officers acting in the role of Chairperson. This is clearly not the case at NBIMC.*

**3.61** *We also note that due to the lay nature of most Board members, a number of Directors feel that it is important to have the President act as a voting member and be a part of the record with respect to decisions. We are pleased to note your findings with respect to how any potential conflicts are handled by in-camera sessions, the President removing them self from related decisions where appropriate, and Board controlled meeting agendas.*

**Section 6(d)(ii) and (iii) board members**

**3.62** Board members who are also members of the Teachers' Pension Plan and the Public Service Superannuation Plan can also be in a conflict situation relating to their dual roles as board members and members of their respective pension plans. The interests of individual pension plan members may, on occasion, be in conflict with NBIMC's trustee role of protecting the guarantee of the sponsor of the three pension plans. While we were told by board members that this has not been a problem to date, all board members need to clearly understand that their primary duty is to make decisions that are in the best interest of NBIMC, not another organization or stakeholder group.

**3.63** In addition to the one board member that must be selected from the members of the *Public Service Superannuation Act* pension plan, the three ex-officio board members are also members of that pension plan.

**NBIMC response**

**3.64** *The NBIMC directors' manual clearly points out that "Although two members of the Board of Directors are members of the two large pension plans it is entirely a fiduciary not a representative Board. In other words no director, properly performing their*

*responsibility, represents any other interest except their fiduciary obligation to the pension funds.”*

### **Roles and responsibilities of board committees**

**3.65** The board has established three permanent committees: an Audit Committee, a Human Resource Committee and a Governance Committee. Committees have no power to pass resolutions on their own, but rather may simply recommend certain actions to the full board for approval. Each of the committees has documented terms of reference that have been approved by the board of directors. The NBIMC committee structure is generally consistent with best practices, although we would recommend adding a board nominating committee. This recommendation is discussed in more detail later in this chapter.

### **Roles and responsibilities of the President**

**3.66** Section 12(2) of the Act states,

*The President is, subject to the direction of the Board, charged with the general direction, supervision and control of the business of the Corporation, and may exercise such other powers as may be conferred on the President by the by-laws of the Corporation.*

**3.67** During our interviews, some concern was expressed that the incumbent President of NBIMC is filling two senior executive roles. He is the Chief Executive Officer (CEO) as well as the Chief Investment Officer (CIO) for the Corporation. At present, departure of the President would mean that two key executive positions would become vacant. However, a management succession plan has been developed for NBIMC that reduces the associated risks.

### **Roles and responsibilities of the Province**

**3.68** The Province is the de facto owner of NBIMC and the guarantor for the three plans for which NBIMC acts as trustee.

**3.69** Further, the NBIMC Act specifies certain key roles and responsibilities assigned to the Province as follows:

- The Lieutenant-Governor in Council (LGIC) makes all appointments to the board with the exception of ex-officio board members. The LGIC may also remove the members it appoints.
- The LGIC designates a Chair and Vice-Chair of the board from among those it has appointed.
- The LGIC appoints the President of NBIMC. The LGIC may also remove the President for cause.

- The LGIC approves NBIMC bylaws.
- The LGIC may authorize or require NBIMC to carry out additional activities or duties not specified in the Act as it sees fit.
- The Board of Management receives, but does not approve, an annual proposed budget from the NBIMC board of directors.
- The Minister of Finance receives the annual report from NBIMC and tables it in the Legislative Assembly.
- The Minister of Finance may request information from NBIMC in respect of its business and affairs as he or she sees fit.

**3.70** Further, recent amendments to the *Provincial Court Judges' Pension Act*, the *Public Service Superannuation Act*, and the *Teachers' Pension Act* in each case identified a “plan governor” who is the person who has the overall responsibility for the respective legislated pension plans. The Minister of Finance is the plan governor for the Provincial Court Judges' Pension Plan while the Chair of the Board of Management (also the Minister of Finance) is the plan governor for the Public Service Superannuation Plan and the Teachers' Pension Plan.

**3.71** This is the extent to which the roles and responsibilities of the Province in connection with NBIMC have been documented. However, we identified some areas where further clarification of the nature and extent of the Province's involvement with NBIMC is needed.

***Lack of clearly  
communicated provincial  
performance expectations***

**3.72** An important part of the Province's role as de facto owner and guarantor is to communicate its general expectations for the Corporation to both NBIMC and the governors of the three pension plans. We feel that this responsibility rests with the Minister of Finance as the owner's representative and would include an expectation that the Corporation will obtain more detailed written direction from each of the three pension plan governors.

**3.73** However, the Minister of Finance not only serves as the owner's representative, but also as the governor of all three of the legislated pension plans. Given the dual role held by the Minister of Finance, in practice we would now expect communication of provincial expectations for NBIMC to flow from the Minister of Finance directly to NBIMC.

**3.74** As covered earlier in this chapter, NBIMC's primary function is fiduciary (i.e. to act as trustee for the three pension funds). In order to meet this fiduciary duty, NBIMC develops and maintains a corporate investment policy which drives the investment decisions it makes.

**3.75** Investment returns are very much a function of how much risk is taken in investing. All other things being equal, higher risk implies higher returns. However it also implies that the potential for loss is much greater. Therefore, the Province, as pension plan guarantor, must carefully consider the trade off between investment returns and risk in determining its goals.

**3.76** It is the role of the pension plan governor of the three pension plans (i.e. the Minister of Finance in each case) to provide such information to NBIMC as provincial investment goals, a provincial funding policy, its tolerance for risk, its cash needs, and expected cash contributions. All this information must be available for consideration by NBIMC in establishing appropriate investment policies for each legislated pension plan.

**3.77** We expected that NBIMC would set its investment policies based on direct input from the Minister of Finance. However, at present, the Minister of Finance does not direct any activities of, nor does he provide any performance expectations to, NBIMC. There is no letter of expectations, or other formal process for communicating performance expectations to NBIMC on behalf of the owner. The only expectations provided to NBIMC are those included in the NBIMC Act.

**3.78** Because the Minister of Finance does not formally communicate provincial expectations to NBIMC, the Corporation uses other available sources of information in setting investment policies. These sources of information include actuarial reports and discussions with the private-sector actuary who is responsible for evaluating the three legislated pension plans. In the circumstances, we feel that NBIMC is using all means available to it to ensure that the investment policies are appropriate. However, the current situation increases the risk that NBIMC's interpretation will not correspond with that of the Province.

**3.79** If clear provincial performance expectations were provided, then NBIMC could be held to account for its success in meeting those expectations. And questions about the performance expectations

themselves could then be directed towards the Province as policy-maker, rather than NBIMC.

**3.80** Opportunities for the government to hold NBIMC accountable for performance exist. For example, NBIMC presents its budget annually to the Board of Management, presents quarterly information to government, tables its annual report with the Minister of Finance, and appears before the Crown Corporations Committee of the Legislature. This accountability process would be more valuable if the Province's expectations of NBIMC's performance were documented.

**3.81** One specific area that we feel the Province needs to clarify for NBIMC is its expectations of the Corporation concerning section 17(5) of the Act which states:

*In the development and implementation of the statements of investment policies and guidelines, the Corporation shall have regard to investment opportunities in the Province.*

**3.82** In order to address this section of the Act, the Corporation has included as part of the investment policies of the three pension plans, a clause that allows up to two percent of assets to be invested in New Brunswick and Atlantic Regions instruments that would not meet the investment criteria of other asset portfolios. We were unable to find any direction from the Province compelling NBIMC to address section 17(5) in this way.

**3.83** In fact, the way in which NBIMC has chosen to address section 17(5) may conflict with its section 4(a) purpose of acting as trustee for the three legislated pension plans. Furthermore, since this clause deals with investments that did not meet the regular investment criteria, we expect that extra effort is involved with identifying, acquiring, and holding these investments. We would also expect that the return on these investments would justify the extra effort. We have been told by the board that longer time lines are required to assess the success of private investments.

***NBIMC response***

**3.84** *All investments made by NBIMC are made on a commercial basis with risk adjusted return expectations that are commensurate with our duties as Trustee. In many cases these investments are also being made alongside other commercially based investors.*



***Letter of expectations***

**3.85** We believe that a single reference document should be prepared on an annual basis for NBIMC that clearly summarizes provincial expectations. Such a document would:

- further clarify and enhance the interpretation of the NBIMC Act;
- clarify the roles and responsibilities of the Minister of Finance and other key governance players;
- ensure that corporate investment policies and plans are aligned with the expectations and needs of the owner and the pension plan governor;
- allow expectations to be adjusted regularly in keeping with changes in provincial policy and priorities; and
- allow both the board of NBIMC and the Province to better evaluate corporate performance by establishing agreed upon targets against which to measure results.

**3.86** Other jurisdictions have made use of a shareholder's letter of expectations as a way of documenting government expectations for a Crown agency. For example, the letter of expectations used by the Province of British Columbia clearly identifies:

- specific direction government has given to the corporation;
- corporation accountabilities in responding to government's performance expectations;
- shareholder responsibilities establishing that the shareholder is responsible for the legislative, regulatory and public policy in which the Crown operates; further it mandates specific shareholder actions required to meet these responsibilities and support achievement of government's performance expectations; and
- areas of shared accountability, specifically communications and reporting.

**3.87** The concept of letters of expectation is discussed further in our 2005 Report, chapter 6 on NB Power Governance.

**3.88** The 2006 document *Government Response to the Final Report of the Commission on Legislative Democracy* spoke to this area as well. Page fourteen of that report recognized the need to ensure that

there is clear understanding between the Crown agency boards and government. Although it was prepared by the previous government, we feel that there is merit in continuing with the plans laid out in this document.

**3.89** An NBIMC letter of expectations, along with addressing specific needs of the individual pension plans, would provide the government's interpretation of the intent of the Legislative Assembly in drafting the *New Brunswick Investment Management Corporation Act*. As such, we believe that the Minister of Finance could table the NBIMC letter of expectations annually at the Legislative Assembly to allow members to review it to ensure that it mirrors the intent of the NBIMC Act.

### ***Recommendations***

**3.90** We recommended NBIMC document the roles of the ex-officio board members.

**3.91** We recommended the Minister of Finance develop, and update annually, a letter of expectations that, as a minimum:

- identifies the Minister of Finance as the official provincial representative who speaks on behalf of the owner and as pension plan governor for the three legislated pension plans in formal communications with NBIMC;
- provides clearly defined provincial performance expectations including targets that the Minister of Finance will use in evaluating corporate performance;
- provides a clear indication to the NBIMC board of directors as to when it needs to consult with the Minister of Finance for direction prior to making a decision;
- documents and where necessary clarifies the intended purposes of the organization as stated in section 4 of the NBIMC Act;
- documents provincial expectations for NBIMC relating to Section 17(5) of the NBIMC Act;
- documents clearly-stated mandates, missions and measurable objectives for NBIMC as developed by the Corporation and agreed upon by the Province;
- establishes the performance reporting the Province needs from NBIMC to evaluate corporate performance;

- clearly explains the role of the board in the appointment process and how board input into that process is to be provided to the Province; [*Note – The board appointment process is discussed in the next two sections of this chapter.*]
- assigns responsibility for the development and application of a board succession plan; and
- clarifies other aspects of the relationship between the Province and NBIMC as considered necessary (e.g. relative roles and responsibilities of major players in the governance of NBIMC.)

**3.92** We recommended the letter of expectations be signed by the Minister of Finance, both in his role as owner representative and as pension plan governor, and the chair of the NBIMC board of directors to signify their understanding and agreement.

**3.93** We recommended NBIMC should either:

- adjust the investment policies of the three pension plans to conform with provincial expectations with regard to Section 17(5) of the NBIMC Act; or, in the absence of direction from the Province,
- eliminate the requirement in their current investment policy that up to two percent of assets they administer be invested within New Brunswick, and make future decisions to invest within New Brunswick on the same basis as other investment decisions.

#### **NBIMC response**

**3.94** *While we support and encourage enhanced communication between ourselves and the pension plan governor, we feel it is important to point out that as an independent body that has fiduciary obligations solely to the funds under management, it should be the responsibility of our Board to ultimately set policies and performance expectations for the Corporation. It is our understanding that for this very reason the British Columbia Investment Management Corporation, a similar peer organization, is exempted from the Shareholder's Letter of Expectations process in British Columbia.*

#### **Board appointment process**

**3.95** The board of NBIMC is currently composed of twelve members appointed in accordance with section 6 of the NBIMC Act. Board members include:

- the President of NBIMC;

- the Deputy Minister of Finance, who is a non-voting member;
- the Vice-President of Finance of the New Brunswick Power Holding Corporation;
- the dean of a faculty of business administration at a New Brunswick university or similar person who is appointed by the Lieutenant-Governor in Council (LGIC);
- a member of the public service superannuation plan who is appointed by the LGIC;
- a member of the teachers' pension plan who is appointed by the LGIC;
- three non-pension plan members who have knowledge, experience and expertise relevant to the business and affairs of the Corporation who are appointed by the LGIC; and
- three other persons who are appointed by the LGIC.

***Best practices***

**3.96** Organizations like the CPP Investment Board, the Conference Board of Canada, the Treasury Board of Canada, and our own NB Power have recognized the importance of appointing the right people to boards of directors in the ultimate effectiveness of the governance they provide.

**3.97** For example, according to the CPP Investment Board website, the appointment process for the CPP Investment Board works as follows:

*Directors are appointed by the federal finance minister ... with the assistance of a nominating committee, for a term of three years. The chair of the nominating committee is federally appointed, and each participating provincial government appoints one representative.*

*The nominating committee recommends candidates for appointment and re-appointment to the federal finance minister. In turn, the federal finance minister makes the appointments in consultation with the provincial finance ministers.*

*The nomination process is designed to ensure that only those with expertise in investment, business and finance are appointed to the board.*

**3.98** In our 2005 Report, chapter 6, which dealt with the governance of NB Power, we noted that the process for appointing members to the board of that Crown agency had been changed to include some best practices such as the use of a skills matrix and the hiring of a recruiting agency to identify potential candidates.

#### ***NBIMC process***

**3.99** By contrast, when we reviewed the appointment process at NBIMC, we did not find a documented appointment process, nor was there any documentation supporting recent appointments made to the NBIMC board.

**3.100** Board members expressed concern about the way appointments are being made to the board of NBIMC. They felt that unless the appointment process is improved the continued quality of board members is at risk.

**3.101** In particular, board members were concerned that the information considered by the Province in appointing candidates to the board of NBIMC has never included input from the board itself. NBIMC board members felt that, in fact, they were in the best position to be able to provide useful information to the LGIC with regards to skills and abilities required by board members, and also to suggest potential candidates.

**3.102** In general, board members indicated that they feel there should be an appointment process similar to that adopted by NB Power. In other words, after due diligence the board should forward the names of qualified individuals to the Minister of Finance, with the LGIC having the final discretion as to who is appointed. Board members indicated that a unilateral past attempt by the board to provide the names of candidates to the Minister of Finance was not acknowledged, nor acted upon.

#### ***Provincial proposal***

**3.103** In our 2005 Report, we recommended that the Executive Council Office develop a global appointment process to be followed when appointing directors to the boards of all provincial Crown agencies. We further recommended that this policy should be based on the process used by NB Power as described above. In the 2006 document, *Government Response to the Final Report of the Commission on Legislative Democracy*, the following planned actions to address identified deficiencies in the provincial appointment process for the boards of Crown agencies were announced.

*A new ABC Appointments Unit will be established to coordinate the appointments process. It will develop*

*specific procedures to guide the development of ABC position profiles, recruitment strategies, review of applications and assistance with board governance.*

*A specific appointments process to key ABCs, such as Crown agencies, will be established to ensure merit-based appointments aimed at appointing qualified, competent individuals. This will include:*

- Developing board profiles*
- Preparing position descriptions setting out skills required and qualifications as well as any compensation*
- Advertising of vacancies and position descriptions*
- Identification and reviewing of potential candidates*
- Preparation of shortlist for review by Lieutenant-Governor in Council.*

**3.104** The report went on to indicate that the ABC Appointments Unit would be created during 2006. And in fact the former Premier, on 21 June 2006, announced that the Province would name a new ABC Appointments Unit this year, although given the recent change in government the status of this initiative is unclear at the present time.

**3.105** In general, we are pleased with the appointment process to be used by the ABC Appointments Unit to the extent that it is described in the *Government Response* document. However, we feel that the appointment process identified could be improved by obtaining appropriate, timely input from Crown agency boards relating to the first, second and fourth bullet points above.

**3.106** The board of NBIMC could delegate the preparation of this input to a new board nominating committee, or by adding a nominating role to the terms of reference of an existing committee. We also believe that, as in the CPP Investment Board example given above, the nominating committee should focus primarily on skills and abilities in identifying potential candidates for the board.

**3.107** The role of the board in the appointment process, through its nominating committee, should be clearly documented and agreed to in the letter of expectations as previously recommended. Further, the letter of expectations should clearly document the process by which

board input into the appointment process is to be communicated to the Province.

### **Recommendations**

**3.108 We recommended the Executive Council Office ensure that any new appointments process for Crown agency boards includes obtaining appropriate, timely input from those boards.**

**3.109 We recommended the board of NBIMC should form a nominating committee. Responsibilities of a nominating committee could include, but not be limited to:**

- **developing board profiles;**
- **documenting required skills and abilities of potential board candidates;**
- **developing position descriptions; and**
- **identifying potential candidates for appointment to the board.**

**3.110** In the roles and responsibilities section of this chapter we also made a recommendation that the role of the board in the appointment process, through its nominating committee, and the process by which board input into the appointment process is to be communicated to the Province should be clearly documented and agreed to in a letter of expectations.

### **Board succession planning**

**3.111** In order to ensure effective governance, a board needs orderly turnover. Orderly turnover helps ensure that the board retains corporate memory while continuing to renew itself by adding new members.

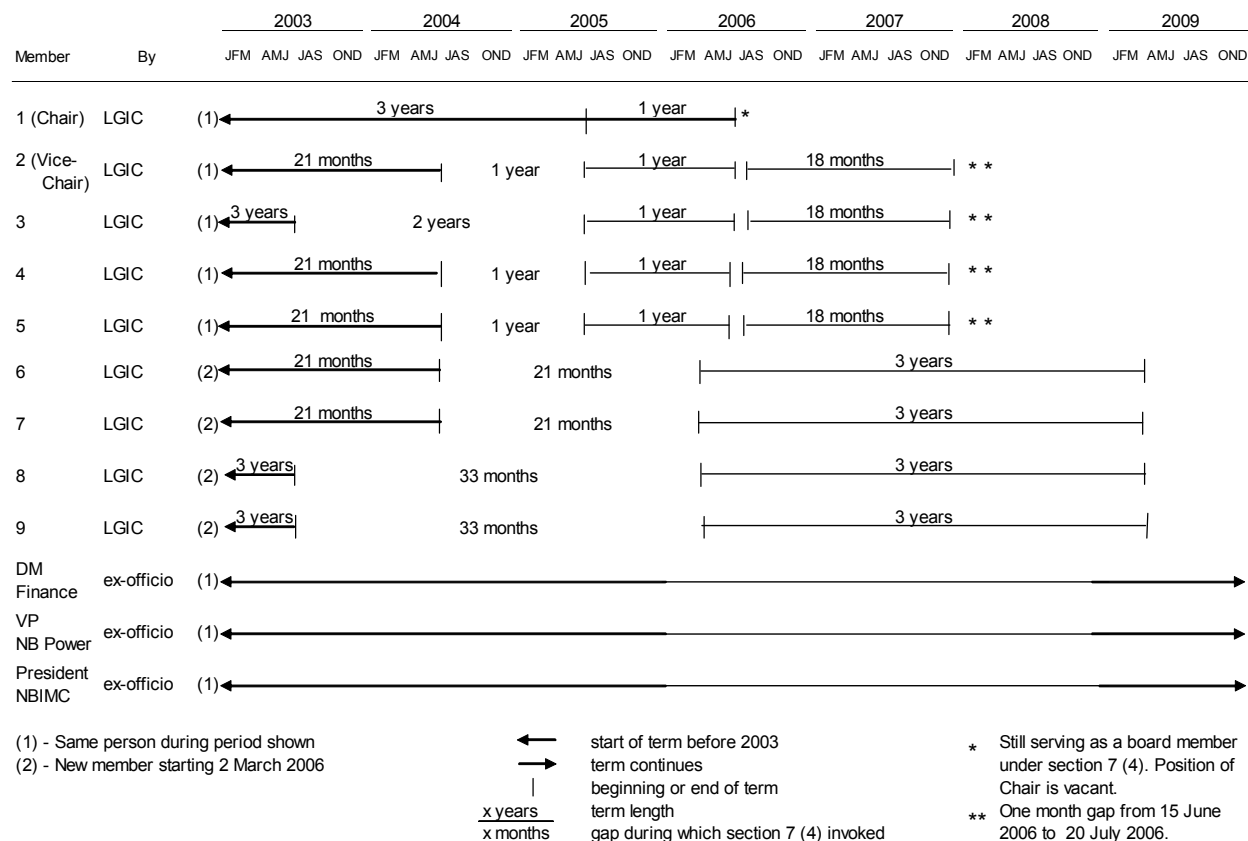
**3.112** In our 2003 Report, chapter 6, on Crown agency governance, we made the following comment with regards to the timeliness and continuity of board appointments among New Brunswick Crown agencies:

*On a positive note, we found four Crown agency boards for which appointments were completely up-to-date and for which expiry dates had been adequately staggered to ensure continuity at the board table.*

**3.113** One of those four Crown agencies was NBIMC. Unfortunately, the board appointment situation deteriorated significantly in the period after our 2003 Report, including the period of our audit field work. Subsequent to our field work, the board appointment situation has improved. Exhibit 3.1 shows board member appointments and their terms since 2003.

## Exhibit 3.1

## NBIMC Board member terms



### Timeliness of LGIC appointments

**3.114** The timeliness of LGIC board appointments at NBIMC has become a serious concern recently. As can be seen from the table, the LGIC made eight appointments to the board of NBIMC during the first seven months of 2006, and an additional new appointment or reappointment was needed as of 31 August 2006. In particular, during March 2006 four long-serving members were replaced by four new members. The terms of the other five members expired on 15 June 2006. On 20 July 2006, four of these members including the Vice-Chair were reappointed for terms of eighteen months each.

**3.115** The table also shows that for eight of the nine LGIC appointments to the board there were periods ranging from one year to thirty-three months during which board members continued on past the end of their appointment terms. The Act does allow for board members to serve past the expiry date of their term.



**3.116** Section 7(4) states, ...*a member of the Board appointed under paragraph 6(d) [i.e. by LGIC] remains in office until the member resigns, is re-appointed or replaced.*

**3.117** However, the heavy reliance on this section of the Act in the past few years has caused uncertainty for both the board and corporate staff, thereby creating a risk that both governance and management effectiveness will be compromised. And in fact, the board indicated that this uncertainty has led the board to defer the completion of certain key initiatives including development of an updated strategic plan, and development of a board training and development plan. Board members we spoke to indicated that until the uncertainty around their appointments was eliminated, they were just trying to maintain the status quo.

***Board quorum between  
15 June and 20 July 2006***

**3.118** A serious situation was ongoing at the time of our audit field work as a result of delays in LGIC appointments to the board of NBIMC. As mentioned in the previous section, five members of the board whose terms expired on 15 June 2006 were not reappointed on a timely basis. These members included the Chair and Vice-Chair of the board.

**3.119** As noted above, under the Act members of the board continue to serve under their old appointment until they are reappointed or replaced. However, their appointments as corporate officers (i.e. as Chair and Vice-Chair) do not continue.

**3.120** Further, section 11 of the Act states:

*Five voting members of the Board, of whom one is either the Chairperson or the Vice-Chairperson, constitute a quorum.*

**3.121** Consequently, between 15 June and 20 July 2006 (i.e. the reappointment date of the Vice-Chair) the board of NBIMC did not have a quorum. During that period it was unable to hold board meetings and therefore was unable to govern NBIMC.

**3.122** For obvious reasons, board members we talked to expressed serious concerns about this situation. They also indicated that while the situation was ongoing, the board and staff were provided with no information about the status of pending LGIC board appointments by the Province. Future board appointments need to be made on a timely basis in order to avoid similar situations.

**3.123** We would also note that while the Vice-Chair of the board has been re-appointed, the position of Chair remained vacant as of 31 August 2006. Therefore the Vice-Chair was acting as the Chair of the board without backup. This increases the risk that the board may again be without a quorum at some point in the future.

#### ***Board succession plan***

**3.124** There is currently no formal succession plan for board members at NBIMC. A formal succession plan should ensure that:

- appointments and reappointments to the board are made on a timely basis; and
- board members' terms are staggered sufficiently to ensure that there is always a mix of new and more experienced members on the board, thereby ensuring an orderly transfer of corporate memory at the board table. We would suggest that all appointments be for terms of three years and that those appointments be staggered such that one third of appointment terms expire each year.

**3.125** Section 7(1) of the NBIMC Act specifies that LGIC appointments to the board shall be for a term "not exceeding three years." This allows for staggered appointment terms for directors. As well this section states that members "are eligible for reappointment." However, while the Act is structured in such a way as to permit orderly turnover, the lack of a formal board succession plan creates the risk that orderly turnover will not happen, thereby risking a reduction in governance effectiveness.

#### ***Continuity of board membership***

**3.126** The uncertainty surrounding board appointments that existed from the middle of 2003 until the middle of 2006 caused confusion, although the appointments of 20 July 2006 do improve the situation. This highlights the need for board input into the appointment process and a formal succession plan.

#### ***Exhibit 3.2***

#### ***Status of Current LGIC Appointments***

<b>Expiry Date of Current Term</b>	<b>Number of Board Members</b>	<b>Combined Years of Experience at 31 August 2006</b>
Expired	1	4.0
31 December 2007	4	26.8
2 March 2009	4	1.6

**3.127** The fact that the NBIMC Act specifies that there are to be three ex-officio members of the board may ensure a certain level of

corporate memory will remain on the board, provided that those individuals retain their positions within the public sector. This, while not a formal succession plan, does somewhat mitigate the continuity problems created by the ad hoc nature of LGIC appointments and appointment terms over the past few years. However, it may also give ex-officio members of the board more influence over board decision-making than the nine LGIC-appointed members if continuity is not maintained among those members.

**3.128** Board members indicated that they would like to have formal board succession planning to allow for transfer of corporate memory, and to lessen staff uncertainty around future corporate direction. They also indicated that maximum terms for members should be considered. However, the cooperation of the government would be necessary to implement board succession planning at NBIMC.

### *Recommendations*

**3.129** We recommended the Minister of Finance, in his role as the owner's representative, direct NBIMC to establish a board succession plan and provide it to the Province as input to the appointment process.

**3.130** In the roles and responsibilities section of this chapter, we also made a recommendation that responsibility for the development and application of this succession plan should be assigned as part of a letter of expectations.

## **Board training and development**

**3.131** As part of our audit work, we identified a number of best practices in the area of board training and development. These best practices come from documents prepared by such organizations as the Treasury Board of Canada, the Board Resourcing and Development Office - Office of the Premier of British Columbia, and the Conference Board of Canada.

**3.132** Key best practices include:

- there should be a mandatory comprehensive orientation program for all new directors soon after they join a board;
- there should be an ongoing professional training and development program for directors including certain mandatory training requirements;
- there should be an annual general training session for all members of the board. This session should include coverage of applicable new laws, regulations, changes in the risk environment

and government policy, as well as a refresher on the contents of the governance manual and the strategic plan; and

- there should be annual evaluations of the performance of the board, committees, chairs, and individual board members as a means of identifying future training and development needs.

**3.133** Further, there are four specific areas in which we feel board members must develop and maintain a working knowledge in order to be effective contributors to the governance of NBIMC:

- pension fund governance best practices;
- investment industry terminology and practices;
- pension industry terminology and practices; and
- corporate operations (i.e. knowledge of business operations, risks faced by the corporation, and applicable laws and regulations).

**3.134** We compared current practices at NBIMC with these best practices and made the following observations.

- Training and development opportunities are provided to directors on an “as requested” or ad hoc basis. Attendance is not mandatory for any training courses.
- There is no formal training and development plan for directors. However, a travel and education budget is established annually and board members are encouraged to participate in educational opportunities. Management does provide board members with information on relevant training sessions when they arise.
- All new members of the board are provided with orientation sessions which focus heavily on providing information on corporate operations, and also deals with pension investment concepts. However, attendance at orientation sessions is not mandatory.
- Board governance training has been an area of focus for the board of NBIMC. All directors who served on the board up to 15 June 2006 had received at least one general governance training course. Some directors had also been provided with specific pension and investment industry training.
- There is currently no annual general training session for all members of the board. However, we noted that the 3 February 2005 minutes of the Audit Committee stated, “should schedule a yearly educational session for members of the Committee.” Such

a session had not yet been presented by the time we completed our audit work.

- To date there have been no evaluations of the performance of the board, board committees, or individual board members, although the board has discussed having such evaluations done in the near future.

#### ***Recommendations***

**3.135** We recommended the board of NBIMC develop and maintain a board training and development plan that includes a program of mandatory training for directors.

**3.136** The mandatory training program should seek to ensure that all board members develop and maintain sufficient knowledge about pension fund governance, the investment industry, the pension industry, and corporate operations to be able to effectively contribute to board deliberations. The corporate operations component should include annual updates on new legislation, regulations, changes in the risk environment and government policy, and the contents of the governance manual and the strategic plan.

#### ***NBIMC response***

**3.137** *While we agree that Board education is an important part of effective governance, we respectfully point out that some flexibility is required. After completion of the basic orientation sessions, training needs tend to be specific to current issues that arise in the investment industry, and on the level of director experience. The Board is planning to include at least one training session per annum to its calendar.*

#### ***Recommendation***

**3.138** We recommended there be annual performance evaluations of the board of NBIMC.

#### ***NBIMC response***

**3.139** *The NBIMC Governance Committee has included a self evaluation process within its terms of reference and intends to begin the process in calendar 2007.*

#### **Code of conduct and ethics**

**3.140** Board members we interviewed discussed the critical importance to NBIMC of maintaining an excellent reputation with its stakeholders and in the investment community. Based upon their comments, it appears that reputation risk is taken very seriously at NBIMC. This area is addressed in the Act as well as in the by-laws and the code of conduct developed for the Corporation. Board members also indicated that in practice no significant problems have

occurred at the board level in the areas of conflict of interest or by way of unethical behaviour.

**3.141** Section 21 of the *New Brunswick Investment Management Corporation Act* states:

*The Corporation shall make by-laws establishing the policy of the Corporation in respect of situations considered by the Corporation to constitute a conflict of interest or a potential conflict of interest pertaining to the members of the Board and the employees of the Corporation including, without limiting the generality of the foregoing, the circumstances that constitute a conflict of interest or potential conflict of interest, the disclosure of the conflict of interest and the manner in which it is to be dealt with.*

**3.142** NBIMC Corporate By-Law Number Six addresses conflict of interest for directors and officers, as well as employees. The by-law requires disclosure of real and potential conflicts.

**3.143** During our review, we were pleased to note that on 20 May 2004 the board approved updating its corporate *Code of Ethics and Business Conduct Covering Directors and Employees*. The preamble to the Code of Ethics explains well why it is needed:

*The basic responsibility of all employees and directors is to act in the best interest of NBIMC in directing its affairs, and to do so within applicable laws, regulations, and codes. NBIMC's directors, officers, and employees have a relationship of trust with our stakeholders. It is imperative that there is no perceived violation of that trust, whether warranted or not, in the management of our business. ...*

**3.144** We compared the contents of the NBIMC Code of Ethics with that in place for the Canada Pension Plan. The NBIMC Code covered many important areas.

**3.145** However, we do have a few suggestions for items that should be documented in the Code when it is next reviewed and updated:

- there should be a list of actions that may not be taken including an explanation of the consequences should such actions be taken;
- there should be a requirement to notify the Chair in advance of any changes in a board member's employment status, other board appointments accepted, and other pertinent changes;

- the code should state the circumstances in which a conflict of interest is serious enough to warrant resignation from the board or to disqualify a candidate from being appointed to the board;
- the code should state that a director in a conflict of interest situation cannot participate in related discussions; and
- the code should state that failure to comply with the code should result in sanctions which could include removal from the board and possible civil or criminal prosecution.

## Other observations and findings

### *Revisiting the role of NBIMC*

**3.146** This section of the chapter addresses general issues that were identified during the course of our audit work.

**3.147** The Province made two key choices at the time NBIMC was established that, to the best of our knowledge, have never been revisited.

- The Province chose to have NBIMC made trustee for the three legislated provincial pension funds (i.e. the Public Service Superannuation Fund, the Teachers' Pension Fund, and the Judges' Superannuation Fund), but not any other provincial pension plans or provincial trust funds. For example, although NBIMC is widely seen as having expertise in the investment industry, the Department of Finance acts as Trustee for non-legislated provincially-guaranteed pension plans with total assets in excess of \$300 million.
- The Province chose to allow NBIMC to invest pension assets for which they are the trustee directly rather than having the organization simply engage and oversee a number of competing private sector investment managers who would handle all direct investing activity.

**3.148** Further, as previously discussed, section 4(b) of the NBIMC Act directs NBIMC to provide investment counselling and associated services for certain provincial trust funds if requested to do so by the Minister of Finance or a fund trustee. However, NBIMC is not currently being asked to provide such services. It is unclear to us why such a request has not been made.

**3.149** Overall, we found no clear rationale as to why the Province has multiple organizations involved as trustees, and in providing investment counselling and other related services to provincial pension plans and trust funds. We feel that, if there are no

compelling reasons to the contrary, a consolidation of these services would improve the efficiency and effectiveness of their delivery.

***Recommendation***

**3.150** We recommended the Province revisit the roles of the NBIMC and the Department of Finance in the administration of provincial funds with the goal of rationalizing roles such as trusteeship, investment counselling services, and investment of assets.

***Reviewing and updating the NBIMC Act***

**3.151** The NBIMC Act has not been the subject of a comprehensive review since it was originally passed into law in 1994. In this chapter, we have identified a number of areas where we feel amendments to the Act should be considered:

- section 4(c) of the Act that directs NBIMC to promote the development of the financial services industry and capital markets;
- section 6(a) of the Act that makes the President of NBIMC an ex-officio member of the board of NBIMC;
- section 6(b) of the Act that makes the Deputy Minister of Finance of the Province of New Brunswick an ex-officio member of the board of NBIMC;
- section 6(c) of the Act that makes the Vice-President of Finance of the NB Power Holding Corporation an ex-officio member of the board of NBIMC;
- section 6(d)(ii) of the Act that requires the appointment of a member of the public service superannuation plan to the board of NBIMC; and
- section 6(d)(iii) of the Act that requires the appointment of a member of the teachers' pension plan to the board of NBIMC.

**3.152** The list above is not exhaustive, as we did not do a complete review of the Act as part of our audit work. However, it does provide sufficient evidence to suggest that the entire NBIMC Act should be subject to a thorough review. This review should ensure that the Act continues to be relevant, that its stated purposes are still valid, and that it provides an effective framework within which those purposes can be achieved.

**3.153** We would suggest that the review of the NBIMC Act be coordinated by the NBIMC board and carried out by the board



governance committee. Further, recommendations resulting from the review should be communicated through the Minister of Finance to the Legislative Assembly.

***Recommendation***

**3.154** We recommended the board, through its board governance committee, complete a review of the *New Brunswick Investment Management Corporation Act* as soon as possible. This review should ensure that the Act continues to be relevant, that its stated purposes are still valid, and that it provides an effective framework within which identified purposes can be achieved. We believe that such a review is needed since the Act is now twelve years old, and in some areas, as we have discussed, its intent is no longer clear. Findings and recommendations resulting from the review should be communicated through the Minister of Finance to the Legislative Assembly.

# Chapter 4

## Department of Natural Resources

### Tracking System for Wood

### Harvested from Private Woodlots

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# Department of Natural Resources

## Tracking System for Wood Harvested from Private Woodlots

### **Background**

#### **Ministerial responsibilities toward private forest lands**

**4.1** The mission of the Department of Natural Resources (DNR) is to manage the natural resources of the Province in the best interest of its citizens. The services provided by DNR are most often associated with Crown lands and forests.

**4.2** In addition to Crown lands and forests, the Minister of Natural Resources (the Minister) also has responsibilities with respect to privately-owned forest lands. Under the *Crown Lands and Forests Act*, the Minister "shall encourage the management of private forest lands as the primary source of timber for wood processing facilities in the Province...and may initiate programs for such purposes." The Act also says that the Minister "shall ensure private woodlots are a source of wood supply consistent with the principles of proportional supply and sustained yield."

**4.3** In the *Report of the Auditor General of New Brunswick, 2000*, this Office discussed how the Minister fulfilled his responsibilities toward private forest lands. We noted there was conflict between the "primary source" and "proportional supply" provisions of the legislation. As a result, the Department was not able to articulate a clear mandate for itself with regards to private forest lands in the Province.

**4.4** During that audit, forestry stakeholders indicated a significant volume of wood was being harvested from private forest lands and not reported to the Minister. As a result, we made a number of recommendations respecting the provision of information on harvest volumes taken from private woodlots in New Brunswick. These recommendations included:

- developing objective and timely information on annual allowable cut (AAC) volumes;
- establishing the means of accurately tracking actual harvest volumes through a uniform provincial system;
- actively monitoring exported wood volumes; and
- monitoring AAC and actual harvest levels to ensure long-term sustainability of the private wood supply.

**4.5** In the years 2002 through 2004, we followed up on DNR's actions taken in response to our recommendations. DNR indicated that a new wood tracking system was implemented. Data from this system, combined with a wood supply analysis, would allow DNR and the private woodlot sector to determine whether private forest lands are harvested at a sustainable rate.

**4.6** This new wood tracking system is the subject of this report chapter.

## **New Brunswick Forest Products Commission**

**4.7** Most of the Minister's responsibilities toward privately-owned forest lands are administered by the New Brunswick Forest Products Commission (the Commission). Created under the *Forest Products Act*, the Commission reports to the Minister and is made up of representatives from government, private wood producers, and the forestry industry. An organization chart showing the relationships between the significant stakeholders in the private wood forestry sector is presented in Appendix A at the end of this chapter.

**4.8** The Commission acts as a regulatory body overseeing the operations of the seven New Brunswick forest products marketing boards (the boards). It also has powers to investigate and adjudicate any disputed matters in the marketing relationships between private woodlot owners and other forestry industry stakeholders.

**4.9** The annual operating budget of the Commission is provided by DNR. In 2004-05, this budget was approximately \$200,000.

## **Forest Products Marketing Boards**

**4.10** Under the powers of the *Farm Products Marketing Act*, and subsequently the *Natural Products Act*, seven forest products marketing boards were created in New Brunswick. These boards provide marketing and forest management services to private woodlot owners and wood producers. A map of the regulated areas of the boards is presented in Appendix B.

**4.11** Operating revenues for the boards come from a levy charged on private wood sold from their regulated area. Annual administrative levies in 2004-05 totalled \$2.8 million. The boards do not receive operating subsidies from DNR.

**4.12** Forest management levies are also assessed on private wood sold from the boards' regulated areas. These funds support silviculture activities on private woodlots. Forest management levies totalled \$1.7 million in 2004-05. In addition, DNR provides public funding to support private silviculture. In 2004-05, \$7.2 million was accessible by the boards for approved silviculture projects.

**4.13** The Province of Quebec is the only other province that has a marketing board structure similar to that of New Brunswick.

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

**4.14** Proclaimed April 2002, the *Transportation of Primary Forest Products Act* (the Act) established a province-wide system to track the transportation of "primary forest products" on public highways in New Brunswick. According to the *Forest Products Act*, primary forest products are defined as "any unmanufactured product of forest trees of hardwood or softwood species except coniferous trees cut for sale as Christmas trees and products from the sap of maple trees."

## ***Transportation certificates***

**4.15** Under the provisions of the Act, the transportation of *all* primary forest products must be tracked, regardless of the source of supply. Transportation certificates (TCs) are used to capture information on each load of primary forest products transported within the Province. Different types of TCs are used depending on the source of the wood:

- For wood harvested on Crown land, a tracking system has been in place since 1993. Crown land licensees print pre-numbered TCs to identify each load of Crown wood. DNR demands a detailed accounting of every TC issued in each fiscal year. In 2004-05, there were just over 200,000 Crown TCs used. DNR audits the Crown TCs and assesses penalties for non-compliance. The TCs serve as the basis for the payment of timber royalties by the licensees to the Province.

- For other harvesting on Crown land, specially-designated TCs are issued by DNR for First Nations' harvest agreements and Crown harvest permits.
- For wood harvested on large "industrial freehold" tracts of land, forestry companies prepare their own TCs. These TCs track harvesting from the freehold land as well as wood transfers from holding yards to processing destinations.
- For wood harvested on private woodlots, including firewood of four feet in length and over, TCs are supplied by the boards. Approximately 150,000 private woodlot TCs were issued by the boards in 2004-05. These TCs are pre-numbered and bound in books of 25. A sample TC for private woodlots is shown in Appendix C. For small loads where the vehicle weight is less than 2,500 kilograms, a hand-written TC is acceptable.
- For wood harvested from Indian Reserve lands and for wood imported into New Brunswick, DNR supplies specially-designated TCs.
- For wood harvested from federal lands such as Canadian Forces Base Gagetown, federal departments supply specially-designated TCs.

#### ***Stakeholder functions in the wood tracking system***

**4.16** The private wood sector stakeholders all perform important functions in the wood tracking system for private woodlots. These functions are summarized in exhibit 4.1.

#### **Neighbouring jurisdictions**

**4.17** We compared the New Brunswick wood tracking system with those found in neighbouring provinces and the State of Maine. We found that no jurisdiction other than New Brunswick employs a common private woodlot TC identifying the source woodlot. The features of the other systems are summarized in exhibit 4.2.

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

**4.18** We believe the wood tracking system, and its role in private wood supply management, is very significant to the members of the Legislative Assembly and the general public.

#### ***Wood supply – a public policy issue***

**4.19** Wood supply is currently a significant public policy issue in the Province. The issue involves both the quantity and sources of the wood supply. We documented a large number of studies, publications, and public events that have debated this issue and its impact upon the economy of the Province. A digest of these studies

and their comments on Crown and private wood supply is presented in Appendix D.

*Exhibit 4.1*  
*Stakeholder functions*

Stakeholder	Function in the wood tracking system for private woodlots
Woodlot owner	<ul style="list-style-type: none"> <li>• Provide parcel identification number (PID) to wood harvesting contractor</li> </ul>
Wood harvesting contractor	<ul style="list-style-type: none"> <li>• Provide source of supply and product specifications to trucker</li> </ul>
Trucker	<ul style="list-style-type: none"> <li>• Obtain TC books from local marketing board</li> <li>• Complete top portions of TC prior to entering public highway</li> <li>• Deliver completed TC to receiver of wood</li> <li>• For exported shipments, remit TC and scale slip to marketing boards</li> <li>• Remit TC books by fiscal year-end to marketing board</li> </ul>
Mills, buyers, and brokers receiving wood and offloading in New Brunswick	<ul style="list-style-type: none"> <li>• Complete bottom portion of TC indicating receipt of wood and volume</li> <li>• Remit TC and scale slip to marketing board</li> </ul>
Mills, buyers, and brokers receiving wood and offloading outside New Brunswick	<ul style="list-style-type: none"> <li>• Provide scale slip to trucker</li> </ul>
Forest products marketing boards	<ul style="list-style-type: none"> <li>• Administer TC system</li> <li>• Provide TC books to truckers</li> <li>• Provide harvest volume information to New Brunswick Forest Products Commission</li> </ul>
New Brunswick Federation of Woodlot Owners	<ul style="list-style-type: none"> <li>• Contract for printing of TC books</li> <li>• Supply TC books to marketing boards as needed</li> </ul>
New Brunswick Forest Products Commission	<ul style="list-style-type: none"> <li>• Collect harvest volume information from marketing boards</li> <li>• Report harvest volumes to DNR</li> <li>• Provide regulatory oversight to marketing board activities</li> </ul>
Department of Natural Resources (DNR)	<ul style="list-style-type: none"> <li>• Monitor wood harvesting levels</li> <li>• Provide enforcement activities to promote compliance with TC legislation</li> <li>• Provide annual funding of \$25,000 to Federation to print TC books</li> <li>• Provided system start-up funding of \$150,000 to Federation</li> </ul>

**4.20** With respect to the *quantity* of the wood supply, one of the most significant of these studies was the *Jaakko Pöyry* report of December 2002. This study focused primarily on Crown wood supply issues, but also made comments with respect to private wood supply. The report commented that softwood harvests from private lands were above estimated sustainable levels. The authors also believed there was a need for increased silviculture investments on private lands.

**4.21** With respect to the *source* of the wood supply, a number of studies may be cited. We already referred to the Minister's responsibilities toward private forest lands. These responsibilities include the conflicting principles of "primary source of supply" and "proportional supply" for private wood. The Government's election platform of 2003 stated that it would "ensure private woodlots

are ..... considered as a primary source of supply for the forest industry.” The September 2004 report of the *Select Committee on Wood Supply of the Legislative Assembly of New Brunswick* recommended that the Government of New Brunswick support the ongoing negotiations on primary source of supply between industry and woodlot producers. Industry and woodlot owners are staking opposite positions with respect to this issue, with industry opposing a return to the policy of primary source of supply from private woodlots.

*Exhibit 4.2*

*Other jurisdictions' wood tracking systems for private woodlots*

Jurisdiction	System and date of introduction	Features
Nova Scotia	Registry of Buyers, 1998	<ul style="list-style-type: none"> <li>Harvested, imported, and exported volumes reported by wood buyers to Department of Natural Resources</li> <li>No standard provincial transportation certificate</li> <li>No identification of source woodlot</li> </ul>
Prince Edward Island	Load ticket system, 1996	<ul style="list-style-type: none"> <li>Commercial softwood exports identified</li> <li>\$2/cord levy collected by provincial government for private woodlot silviculture</li> <li>No identification of source woodlot</li> </ul>
Quebec	None	<ul style="list-style-type: none"> <li><i>Transportation Act</i> requires all commodities be identified on bill of lading</li> <li>Crown wood harvest volume is identified</li> <li>No compilation of private wood harvest volumes</li> </ul>
Maine	Trip ticket system, 1998	<ul style="list-style-type: none"> <li>Trip ticket required for all roundwood transported</li> <li>Similar content to TC, plus “Harvest Notification Number” for Maine harvest sites</li> <li>Not pre-printed by government; company-supplied</li> </ul>

***Comprehensive analysis of wood supply***

**4.22** It is important for policy makers to have a complete picture of the wood supply in New Brunswick.

**4.23** To demonstrate the relative sizes of the various sources of supply, we prepared exhibit 4.3.

**4.24** The first column of figures shows the total provincial harvest of softwood and hardwood combined. This column includes wood that is exported for sale outside the Province. The second column shows the total consumption of wood by provincial mills. This column includes wood that is imported into the Province to meet the demand of New Brunswick mills, while excluding exported wood. Under both calculations, we see that private wood is a significant portion of the provincial wood supply.



## Exhibit 4.3

## New Brunswick wood supply sources

New Brunswick Wood Supply		
Source	Provincial Harvest	Consumption by NB mills
Crown land	45 %	42 %
Industrial freehold	27 %	22 %
Private woodlots	28 %	21 %
Imported wood	-	15 %
Total	100 %	100 %

**4.25** To calculate the figures presented above, we prepared a comprehensive analysis of the New Brunswick wood supply. We used data provided by the forestry industry *independently* of the wood tracking system. Our comprehensive analysis is presented in Appendix E.

**4.26** Most of the data in our comprehensive analysis came from DNR's *2003-04 Timber Utilization Survey* (TUS). This publication reports consumption data voluntarily provided by New Brunswick mills.

**4.27** Many private woodlot owners sell wood *directly* to Maine and other U.S. mills, however. These export volumes are not included in the TUS. In an effort to construct a more complete picture of the private wood export volumes, we requested and received relevant *import* data from the Maine Forest Service. This data was extracted from Maine's *2003 Wood Processor Report*.

**4.28** Wood is also sold directly to Nova Scotia, Quebec and other provinces. According to the Nova Scotia Registry of Buyers Report for 2004, imports from New Brunswick were minimal. Exports to Quebec would be more substantial; however, DNR advised us that Quebec does not produce a report similar to DNR's TUS. Therefore, we were unable to add these exports to our analysis.

**4.29** We calculated a private wood export value of approximately 600,000 cubic metres of softwood and hardwood combined, and a total private harvest of approximately 3.1 million cubic metres.

**4.30** We caution the reader that our figures are approximations. The TUS figures are prepared on a fiscal-year basis ending March 31 while the Maine Forest Service figures are prepared on a calendar-year basis.

**Benefits of the wood tracking system and TCs**

**4.31** DNR noted two main reasons for introducing the tracking system for wood harvested from private woodlots. These reasons were:

- to provide a more accurate determination of the harvest level from private woodlots; and
- to provide a deterrent to wood theft.

**4.32** We noted that two additional benefits have evolved from the implementation of the TCs:

- to assist marketing boards in collecting levies on wood sales; and
- to document the source of supply as required under forest management certification standards.

**Risk**

**4.33** When we began our audit, we assessed the risk of errors occurring in the wood tracking system, and of those errors not being detected, as high. We made this assessment based on several risk factors. These risk factors are shown in exhibit 4.4.

*Exhibit 4.4*

*Audit risk assessment factors*

<b>Risk Factors</b>	<b>Implications for risk</b>
Many stakeholders	<ul style="list-style-type: none"> <li>• Specific duties assigned, but none comprehensive</li> <li>• No short-term financial incentive to comply for key stakeholders such as truckers, contractors, and mills</li> </ul>
Decentralized responsibilities	<ul style="list-style-type: none"> <li>• Marketing boards administer the system, relying upon data supplied by third parties</li> <li>• Commission responsible to oversee and audit the system</li> <li>• DNR responsible to monitor and enforce the system</li> </ul>
Diversified systems in marketing boards	<ul style="list-style-type: none"> <li>• Varying levels of sophistication</li> <li>• Little integration with other systems such as sales, delivery scheduling, and accounting</li> </ul>
Personnel not exclusively assigned	<ul style="list-style-type: none"> <li>• Limited staff in marketing boards</li> <li>• Commission staff have no expertise in auditing or investigating</li> <li>• DNR conservation officers have approximately 25 provincial acts to administer</li> </ul>
2003 DNR internal evaluation found numerous weaknesses	<ul style="list-style-type: none"> <li>• TC information incomplete or inaccurate</li> <li>• More monitoring of accuracy required by boards</li> <li>• Increased enforcement efforts required by DNR</li> <li>• Mixed compliance levels with TC requirements from New Brunswick mills</li> <li>• Larger exporting brokers reluctant to remit TCs and harvest volume information to boards.</li> </ul>

**Scope**

**4.34** We limited the scope of our audit to the tracking system for wood harvested on private woodlots. We excluded Crown, industrial

freehold, import, and federal lands TCs and tracking systems from the scope of our audit.

**4.35** The responsibilities of the Department of Natural Resources were the focus of our audit and recommendations. However, we gathered significant audit evidence from DNR, the Commission, and the seven boards. We also made inquiries of other parties, including the Department of Public Safety – Commercial Vehicle Enforcement, the New Brunswick Federation of Woodlot Owners (the Federation), the New Brunswick Forest Products Association, several mills, one trucking company, the Maine Forest Service, the Royal Canadian Mounted Police, and one financial institution.

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

**4.37** 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.

## Results in brief

### Accounting for transportation certificates

**4.38** Exhibits 4.5 and 4.6 summarize our objectives, criteria, conclusions, and opinions.

**4.39** Our first audit criterion dealt with physically accounting for the transportation certificates issued by the boards:

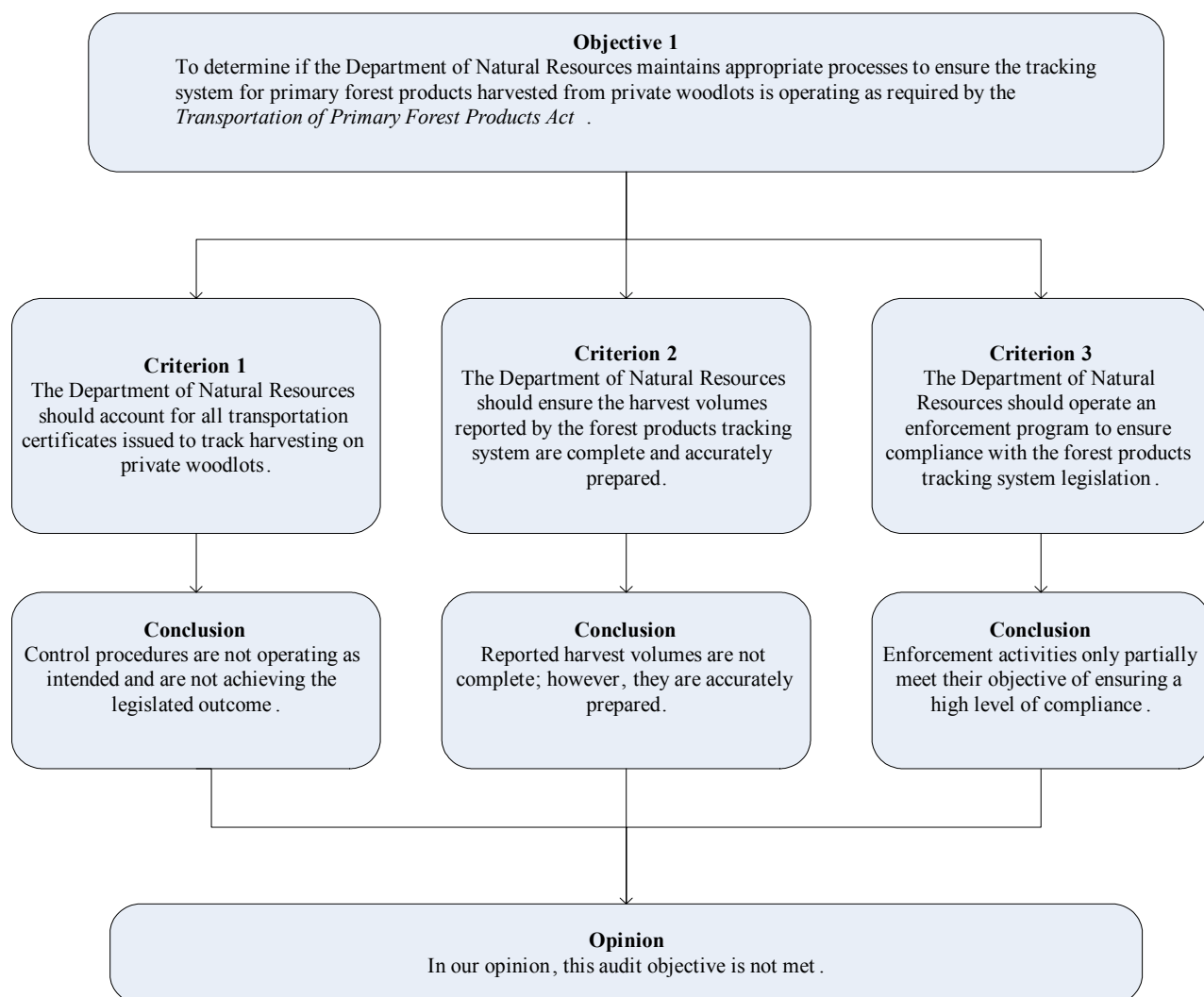
*The Department of Natural Resources should account for all transportation certificates issued to track harvesting on private woodlots.*

**4.40** Within this criterion, we investigated one issue.

**4.41** We found that control procedures designed to account for all TCs issued by the boards were not fully followed by the boards and the Commission. Based on this evidence, we conclude that this criterion is not met.

**4.42** We make one recommendation to address this weakness.

Exhibit 4.5  
Audit objective 1



## Control procedures designed by DNR

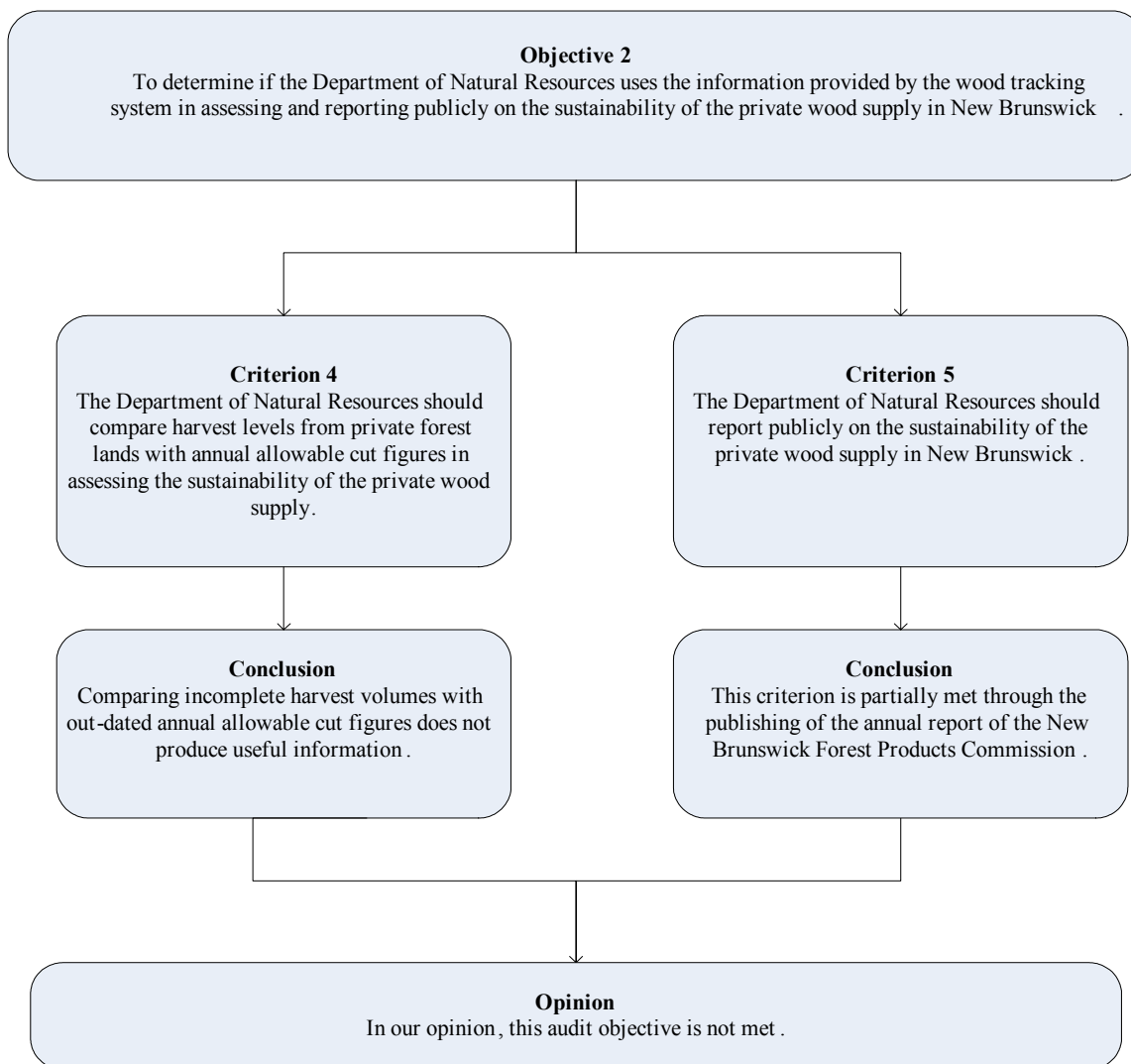
### Description

**4.43** DNR designed control procedures to ensure it would receive a complete accounting of TCs issued by the boards. Having effective control procedures is important because the value of the information produced by the wood tracking system is dependent upon a complete accounting of TCs. Close monitoring by DNR should promote greater accountability from the boards for the TCs issued.

**4.44** Under the *General Regulation - Transportation of Primary Forest Products Act*, any person who has issued a book of TCs is required to annually account for all such TCs in a report to the Minister. The Department's policy is for this accounting to be

prepared by the boards and forwarded to the Commission. The Commission is required to compile the figures from the seven boards and report the provincial summary to the Minister.

*Exhibit 4.6*  
*Audit objective 2*



**4.45** Our audit procedures were designed to determine if control procedures at the boards and at the Commission are operating as intended and achieving the legislated outcome.

#### ***Audit procedures and findings***

**4.46** Our audit procedures consisted of inquiry of personnel at the Federation, the boards and the Commission. We also reviewed relevant reports and documentation.

**4.47** We first looked at how the books of TCs are printed and distributed. We found that the Federation contracts for the printing of the TC books. They ship the books to the boards as needed. The Federation exercises no further control over the books once they are issued.

**4.48** We found that the boards exercised good control over the physical receipt, issuance, return, and storage of TC books.

**4.49** We then asked the Commission to provide us with the annual TC listing report from each board for the three fiscal years the wood tracking system has been in existence. We found that only one board had reported in the years 2002-03 and 2003-04 and that those reports were not in the requested format.

**4.50** For 2004-05, six of seven boards provided the required TC reports to the Commission. The TC reports identified the total number of TCs issued, with this figure being broken down by the number of TCs used, unused, cancelled, voided and missing. The Commission advised, however, that the higher level of compliance in 2004-05 was a direct result of this audit having been initiated.

**4.51** Since the accounting of TCs issued has been incomplete for the past three fiscal years, the Commission has never provided a summary TC report to the Minister.

**4.52** From this evidence, we see that the control procedures to account for TCs issued have not been fully followed by the boards and the Commission.

#### ***Recommendation***

**4.53** We recommended the Department ensure it receives from the New Brunswick Forest Products Commission an annual accounting of transportation certificates issued by the forest products marketing boards.

**4.54** We suggested the Department direct the Commission to include this information in the Commission's annual report.

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

**4.55** *The New Brunswick Forest Products Commission had difficulty collecting this information from the respective boards in the first years of the program however this information is available for 2006 and will be available in future years. System upgrades are currently underway at the Commission as well as the marketing boards that will allow timely reporting of transportation certificate usage. The Commission will forward an annual report to DNR, Forest Management Branch.*

**Conclusion****Completeness and accuracy of reported harvest volumes**

**4.56** Control procedures are not operating as intended and are not achieving the legislated outcome.

**4.57** Our second criterion dealt with the harvest volumes reported by the wood tracking system:

*The Department of Natural Resources should ensure the harvest volumes reported by the forest products tracking system are complete and accurately prepared.*

**4.58** Within this criterion, we identified six issues for investigation.

**4.59** In summary, we found:

- a high level of compliance with respect to completion of TCs;
- frequent untimely remittance of TC books to boards following year-end;
- failure by truckers to remit to boards TCs and scale slips for wood offloaded out-of-Province;
- absence of volume data in the boards' databases when the scale slip was not provided;
- inclusion of nil values in harvest volume reporting when the volume data is absent;
- under-utilization by boards of TC data to increase the collection of wood levies;
- reasonable degrees of processing and reporting accuracy by boards' wood tracking systems; and
- failure of the Commission to audit the wood tracking system as required.

**4.60** Based on this evidence, we conclude that this criterion is partially met.

**4.61** We make four recommendations to address these weaknesses.

**4.62** We also make the following positive observations:

- The Federation is developing a new management information system for use by all the boards; and
- The Commission is developing a new management information system to improve its reporting capabilities.

## Wood harvested and processed in New Brunswick

### *Description*

**4.63** Wood harvested from New Brunswick private woodlots may be processed within the Province or exported to other provinces or countries. Our first issue within this criterion dealt with private wood harvested and processed *within* New Brunswick. Our comprehensive analysis shows approximately 95% of softwood (1.8 of 1.9 million cubic metres) and 58% of hardwood (0.7 of 1.2 million cubic metres) harvested from private woodlots is processed within New Brunswick.

**4.64** Private woodlot owners have the option to market their primary forest products through their local board or directly to a contractor, buyer, broker, or mill. These arrangements are commonly referred to as "board sales" and "direct sales", respectively. Regardless of the marketing arrangement, the Act requires all shipments of primary forest products to be tracked with TCs. The TC is initially completed by the trucker and provided to the receiver of wood. The receiver of wood must then sign the TC and remit it and the related scale bill to the appropriate board.

**4.65** We wanted to determine if the wood tracking system is completely capturing private wood harvesting and consumption within New Brunswick.

### *Audit procedures and findings*

Boards' impressions of levels of compliance

**4.66** Our first audit procedure was to inquire of staff from the boards as to their impression of levels of compliance demonstrated by other stakeholders in the system.

**4.67** Board staff believed that most of the larger domestic mills have purchasing policies requiring suppliers to provide a TC for all deliveries. In the course of our examination, we noted three examples of mills with such written purchasing policies.

**4.68** On the other hand, board staff indicated that some smaller mills and firewood operations are less compliant with the wood tracking system requirements.

Roadside inspection audit

**4.69** With our second audit procedure, we wanted to objectively gather evidence about the level of compliance with the system. Therefore, we asked DNR to organize a Province-wide roadside inspection audit. For reference purposes, a map showing DNR's



division of the Province into four administrative regions is provided in Appendix F. This surprise audit occurred over two days in October 2005. Our staff observed this inspection audit at two locations. The findings of the audit are summarized in exhibit 4.7.

**4.70** Of the 61 TCs inspected, 38% were TCs issued by boards for private wood shipments. The balance of the inspections confirmed the active use of other types of TCs by the industry. We noted, however, that it is not possible to verify at the time of inspection whether the appropriate type of TC has been used for a particular shipment.

**4.71** We observed a high level of accuracy with completion of TCs. Overall, 90% of TCs were completed correctly while 10% contained errors or omissions. Three of the six TCs with errors were board TCs while three were industrial transfer TCs. Thus, 87% (20 of 23) of board TCs were accurately completed. Only one of the loads inspected did not have a completed TC, and that was for a load of firewood.

*Exhibit 4.7*

*Summary of roadside inspection audit*

<b>Summary of Roadside Inspection Audit</b>							
<b>Performed by DNR enforcement staff, October 19 and 20, 2005</b>							
<b>DNR Region</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Total</b>	<b>%</b>	
<b>Office location</b>	<b>Bathurst</b>	<b>Miramichi</b>	<b>Island View</b>	<b>Edmundston</b>			
<b>Transportation Certificate Type</b>							
Marketing Board	5	9	9	-	23	38%	
Industrial Transfer	4	-	9	4	17	28%	
Import	1	-	3	3	7	11%	
Crown License	2	7	1	-	10	16%	
Crown Permit	-	-	3	-	3	5%	
None	1	-	-	-	1	2%	
	13	16	25	7	61	100%	
<b>Accuracy</b>							
Correctly completed	11	15	24	5	55	90%	
Errors or omissions	2	1	1	2	6	10%	
	13	16	25	7	61	100%	
<b>Destination</b>							
New Brunswick	13	16	15	4	48	79%	
Export	-	-	10	3	13	21%	
	13	16	25	7	61	100%	

**4.72** The TCs also represented loads destined for both provincial and export destinations. We observed high rates of compliance for export shipments with only one of 13 TCs containing an omission.

**4.73** We caution the reader that these samples and results were not intended to be statistically representative of the forest industry's daily wood delivery activity.

#### Industry reporting vs. wood tracking system

**4.74** With our third audit procedure, we wanted to compare the harvest volumes reported by the forestry industry with those supplied by the wood tracking system. As previously stated, the figures in our comprehensive analysis (Appendix E) were compiled from DNR's *Timber Utilization Survey* and the Maine Forest Service's *Wood Processor Report*. These reports relied upon figures reported by industry to the respective governments. Therefore, we compared the harvest volumes from our comprehensive analysis with harvest volumes from the wood tracking system reported by the Commission in its 2003-04 annual report. This data is presented in exhibit 4.8.

#### Exhibit 4.8

#### Comparison of harvest volumes from independent sources

##### Comparison of Industry-Reported and Wood Tracking System Volumes For the fiscal year 2003-04

Private Woodlot Harvest Volumes	Industrial Roundwood (millions m <sup>3</sup> )			
	Industry-reported	Wood Tracking System	Understatement	% Understatement
<b>Combined softwood &amp; hardwood</b>				
NB harvest consumed by NB Mills	2,517	2,379	0,138	5%
NB harvest exported	0,641	0,161	0.480	75%
NB harvest	3,158	2.540	0,618	20%

**4.75** Overall, the total New Brunswick private woodlot harvest volumes reported by the wood tracking system are understated by 20%. However, with respect to the harvest consumed by provincial mills, the wood tracking system volumes are understated by only 5%.

#### Conclusion

**4.76** We concluded that the TC system is substantially capturing private wood harvested and consumed within New Brunswick.

#### Wood exported from NB

#### Description

**4.77** Our second issue dealt with private wood harvested in New Brunswick and exported for sale *outside* the Province. The requirement to track all primary forest product shipments with a TC applies equally to provincial and export deliveries.

**4.78** Crown wood requires approval of the provincial Cabinet before it can be exported for sale. Unlike Crown wood, however, there are no restrictions on private wood being exported for sale. From the exhibit above, we can compute that 20% (0.641 of 3.158 million cubic metres) of the private wood harvest is exported.

**4.79** The exhibit also demonstrated that the export volumes reported by the wood tracking system are understated by 75%. In its 2003-04 annual report, the Commission acknowledged reported TC volume data was incomplete due to weaknesses in tracking direct sales and export sales. Therefore, we wanted to perform additional audit work to confirm this apparent weakness in the wood tracking system.

**4.80** Remittance requirements for TCs and scale bills do not apply to receivers of wood outside the Province. Enforcement of New Brunswick legislation in other jurisdictions is only possible under bi-lateral agreements. Under regulation, therefore, the *vehicle operator* offloading out-of-Province is required to remit the TC and the scale bill. This differs from the domestic delivery where the *receiver* of the wood remits the TC and scale bill to the board. We wanted to learn whether truckers are complying with these remittance requirements.

**4.81** In all cases, truckers are required to return books of TCs to the boards once they have been completed, or following the end of the fiscal year. This control procedure allows the boards to confirm that all TCs issued are fully accounted for and maximum harvest volumes are identified. We wanted to determine if truckers are respecting this procedure.

**4.82** Finally, given there is a trip ticket system for wood deliveries in Maine, we were also interested in learning whether New Brunswick's TCs serve any purpose for the mills in that jurisdiction.

### ***Audit procedures and findings***

#### Roadside inspection audit

**4.83** With our first audit procedure, we wanted to assess the level of compliance in completing TCs for wood exported from the Province. Our roadside inspection audit, as previously noted, found a high level of compliance with export shipments. All 13 shipments inspected had some form of TC completed, with omission of data noted on only one of the 13 TCs.

#### Procedures at mills in Maine

**4.84** We also inquired of two pulp mills in Maine as to their procedures upon receiving New Brunswick wood. They indicated that they accept the New Brunswick TC as part of the trucker's

shipping documentation. One of those mills agreed to review their files for three separate delivery dates in the summer of 2005. They reported that 90% of New Brunswick deliveries (190 of 209) included a TC with the supporting documentation. American mills, however, do not sign the TC indicating receipt of goods nor complete the volume field on the TC. However, they always provide a scale slip to the trucker.

Remittance of TCs and scale slips by truckers

**4.85** With our next audit procedure, we inquired of the boards whether truckers make the required remittances to the boards. The boards stated that truckers are not remitting TCs and scale slips as required. We noted there is no direct financial incentive for truckers to remit TC documentation. In fact, truckers may incur an administrative cost to provide a copy of the scale slip to the board. Nevertheless, truckers need to be reminded about their remittance obligations under legislation and regulation.

**4.86** We investigated the impact of truckers not returning TCs and scale slips to the boards. Without the scale slip, the precise volume of wood delivered is not known. In these circumstances, six boards leave the volume field blank in their databases. One board enters an estimated harvest volume when the scale slip volume is not available. They feel an estimated volume is more representative than a nil value. In the end, including nil volumes for known TC deliveries results in a significant understatement of reported harvest volumes.

**4.87** Volume information *may* become available from other supporting documentation if the wood levy fixed by the board is paid on these export shipments. Discussion of levies appears later in this chapter.

**4.88** We also found that little action has been taken by the boards or by DNR to enforce the regular, timely remittance of the documents.

Remittance of completed TC books by truckers

**4.89** We also inquired about the remittance by truckers of fully completed TC books. We were advised that TC books are frequently not remitted by truckers for months after the board's fiscal year-end. These outstanding TCs can, in fact, remain unprocessed by the time of the boards' reporting deadline to the Commission. If any of these TCs were actually used, these wood volumes would not be included in the boards' harvest volume reporting to the Commission.

**4.90** When boards originally raised concerns about this matter with DNR, the Department provided the boards with a communication

protocol to follow in collecting the TC books. Failure to remit is a punishable offence under the Act. As the last step in the protocol, DNR enforcement staff may demand remittance by the trucker or issue a charge for failure to remit. This protocol has been used infrequently by the boards. If it were used regularly, more truckers would return TCs on a timely basis.

**Analysis and recommendation**

**4.91** We believe the failure to remit TCs, scale slips, and completed TC books, and the hesitancy to enforce these remittances, represent material weaknesses in the control procedures, resulting in incomplete harvest volumes being reported by the boards.

**Recommendation**

**4.92** We recommended the Department review and enforce the transportation certificate remittance requirements for exported wood.

**4.93** We suggested the Department review the regulations and consider alternatives that may offer the same end result. For example, truckers could complete the volume field on the TC based on the scale slip they received from the mill. This way, they would not have to obtain a photocopy of the scale slip and would only have to remit the first copy of the TC to the boards.

**4.94** If no change is made to the regulation, DNR could arrange a communication strategy advising truckers of their remittance requirements. DNR could also reintroduce to the boards its protocol for collecting outstanding transportation certificate books. Finally, DNR could begin charging truckers for violation of the Act.

**4.95** Prior to preparing their annual harvest volumes, boards could follow up on all TCs with a nil volume field and try to determine the actual volumes. As a last resort, entering estimated volumes would be a better alternative than leaving the volumes as nil.

**Departmental response**

**4.96** *Currently, when primary forest products are exported, the vehicle operator is required to remit the transportation certificate and related scale bill to the respective board. DNR has not actively enforced this legal requirement without cooperation from the boards in identifying offenders. DNR will develop a protocol with boards to identify those vehicle operators not in compliance. This will allow DNR to efficiently direct enforcement effort towards those exporters failing to report.*

**Incidents of non-compliance with TC legislation**

**4.97** In the course of our work, two boards alleged that certain export brokers refuse to comply with TC legislation. We looked for evidence of such incidents and found that:

- DNR noted in its 2003 internal review reluctance by export brokers to remit TC and volume information; and
- The Commission received one request from a board in 2004 to investigate non-compliance with the wood tracking system. Using its powers in inquiry under the *Natural Products Act*, the Commission gathered evidence of non-compliance by one wood contractor. In accordance with legislation, this information was provided to the board, allowing it to invoice the wood contractor for unpaid levies.

**4.98** Our other audit testing did not uncover additional examples of intentional non-compliance. Nevertheless, if such incidents persist, provincial legislation provides a mechanism for their investigation by the Commission.

**Product certification in American markets**

**4.99** As our final audit procedure, we looked to determine whether the TC provides any benefit to the mills in Maine. We found that, in October 2005, one of the Maine mills began requiring the truckers to provide the woodlot parcel identifier number (PID) or landowner's name at the time of delivery. This requirement is part of the mill's "chain of custody" product certification standards. The growing demand in the marketplace for wood products to be harvested from environmentally sustainable forests introduces a new motivation for the TC to be accurately completed for all shipments.

**Conclusions**

**4.100** Based on the audit evidence presented above, we made several conclusions:

- reported export harvest volumes are significantly understated;
- truckers offloading out-of-Province are not complying with requirements to remit TCs and scale slips to the boards;
- truckers frequently do not remit TC books on a timely basis; and
- New Brunswick TCs may have a valuable role to play in new marketplace certification requirements.

## Collection of wood levies by marketing boards

### *Description*

**4.101** Our third issue addressed whether boards use TCs as a tool in the collection of wood levies.

**4.102** The *Natural Products Act* entitles boards to collect levies on wood products sold *within* the Province. These levies apply to all wood sales from the boards' regulated areas, including both board and direct sales. An "administration levy" supports marketing and operating activities of the boards. A "forest management levy" provides funds for private woodlot forest management and silviculture activities. Federal legislation, authorizing boards to collect similar levies for wood sold *outside* the Province, establishes a level playing field for all wood producers.

**4.103** Under the legislation and regulation, the boards fix, impose, and collect levies from persons within the Province marketing primary forest products. In practice, the receiver of the regulated product forwards the money payable for levies to the boards.

**4.104** The levies are considered debts owed to the boards. The *Natural Products Act* entitles the boards to challenge cases of non-payment of levies in a court of competent jurisdiction.

**4.105** Orders issued by the boards to impose these levies infer that *any* marketer in the supply chain could be held liable to pay the levies. The orders require the levies to be remitted within 15 days of the month-end in which the product was received. The remitter indicates in writing the quantity, species, and form of the product purchased, and the private woodlot where the product was produced. The remitter is also required to provide a copy of the scale slip or other written evidence of the purchase and sale transaction.

**4.106** Levies represent a significant amount of funds provided by the forest industry to the boards. For 2004-05, administration levies collected by the seven boards totalled \$2.8 million. Forest management levies are collected by six of the seven boards and totalled \$1.7 million. One board has chosen not to impose forest management levies on their producers.

**4.107** We expected that good management practice would see the boards following up on all known sales of primary forest products to ensure that levies were paid. A high level of TC compliance should lead to greater collection of levies, and thus serve the financial interests of the boards and their members.

***Audit procedures and findings***

Correlation between TCs and levy collections

**4.108** Our purpose in investigating this issue was to determine if boards use the features of the wood tracking system as a management tool to effectively increase collection of levies. We also wanted to assess the extent of non-payment of levies by industry stakeholders.

**4.109** We inquired whether the boards drew any correlation between the introduction of the TCs and an increase in the collection of levies. Operating staff from six boards indicated they saw a positive correlation, particularly with direct sales. Several managers, however, argued that the increase in levy revenues was not sufficient to cover the corresponding increase in administrative costs. On average, boards employ one employee to administer the TCs at an annual cost of at least \$30,000. We were unable to gather data allowing us to objectively compare incremental levy revenues and incremental administrative costs for the boards.

Cross-referencing source documents

**4.110** We also inquired about the efforts made by boards to cross-reference TCs, scale slips, sales invoices, and levies documentation. We found these efforts depended upon the sophistication of their information systems and the availability of staff resources. Operating staff from four boards reported cross-referencing these sources of information. Only one board, however, has an integrated information system which automates the cross-referencing function. Overall, we found a lower level of cross-referencing of the data sources than we expected.

Compliance with payment of levies

**4.111** We inquired about the level of compliance with payment of the wood levies. Operating staff at one board indicated problems with small New Brunswick mills not paying the required levies. Three boards indicated they experience problems with some mills failing to submit sufficient supporting documentation to permit cross-referencing with TCs and scale slips. In addition, four boards told us that non-payment of levies is common with exported wood. They indicated that some brokers argue that it is unfair to pay an administration levy to a board that is, effectively, their competitor.

**4.112** To address this situation, one board has reduced the administration levy for one broker in an effort to increase payment of the forest management levy. Under the legislation and regulation, boards are permitted to classify marketers of forest products into groups and fix levies at different rates for different groups. It appears, however, that this board has not consistently applied their levy reduction for all brokers.



**4.113** While examples of non-payment of levies are known to the boards, there have been few legal initiatives to claim payment of levies. A court challenge is usually cost prohibitive for a board.

***Recommendation***

**4.114** We recommended the Department encourage the forest products marketing boards to adopt a consistent position respecting the payment of administration levies by wood exporters.

**4.115** To implement this recommendation, the Department would need to understand the arguments of brokers and the boards, evaluate the current level of compliance, and consider the costs and benefits of trying to achieve a higher level of compliance.

***Departmental response***

**4.116** *The New Brunswick Forest Products Marketing Boards by Regulation are delegated the power under the Natural Products Act to classify persons into groups, fix charges and fees payable by the members of the different groups in different amounts. This is a decision made by each individual board at the direction of their members as agreed to at their annual meetings, not a decision made by government. For export wood, the remittance of such levies is deducted from the producer and it is the responsibility of the exporter to remit same to each board as the levies are the source of revenue for the board's administration and silviculture programs.*

**Estimated unpaid levies**

**4.117** With our next audit procedure, we estimated the potential levies unpaid to the boards. We used our previous comparison of the provincial harvest volumes taken from our comprehensive analysis with the TC volumes reported by the Commission. This showed an understatement of harvest volumes of 618,000 cubic metres. We assumed no levies would have been paid on these volumes. We converted the understated volumes from cubic metres to cords and applied an average administration levy rate of \$2.00 per cord and an average forest management levy rate of \$1.36 per cord. This calculation estimated the administration levy understatement at \$644,000 and the forest management levy understatement at \$438,000 for a total of \$1,082,000. Our calculations are presented in Appendix G.

**4.118** These figures are estimates; however, they indicate there may be a significant amount of levies that are unpaid. Therefore, boards should pursue the collection of levies to which they are entitled under legislation.

**Conclusions**

**4.119** We concluded that boards are not using the wood tracking system as a primary management tool for increasing collection of wood levies.

**4.120** We also conclude that a significant amount of wood levies are not paid to the boards.

**Marketing boards' wood tracking systems****Description**

**4.121** Our fourth issue addressed whether the wood tracking system employed at each board accurately processes and reports on the TC data.

**4.122** There is no consistency in the wood tracking systems employed by the boards. There are seven distinct systems of varying degrees of sophistication, each system having been acquired independently by its board. This inconsistency is significant because the Commission and DNR must rely upon the volumes reported by these systems, yet their accuracy and integrity has not been audited nor tested by any independent party.

**4.123** We expected that board staff would perform a basic level of internal verification of the processing accuracy of their respective wood tracking systems.

**4.124** Our audit procedures were designed to independently test the integrity of these systems and to identify actions taken by the boards to verify their systems.

**Audit procedures and findings**

**4.125** We randomly selected a number of TCs from 2004-05 at each board. We reviewed the accuracy of the completed fields on each TC. We reviewed the accuracy of the data entry by board staff into their wood tracking system. We then verified the accuracy of summation, conversion, and reporting processes within each board's system.

**Completion of TC fields**

**4.126** We sampled a total of 41 TCs from the seven boards. We found that:

- with respect to the accuracy of the completed fields on the original TCs, the source property's PID was frequently wrong;
- the volume field was completed by most New Brunswick receivers or was available from the attached scale bill; and
- the volume field was not completed on export TCs and the scale bill was usually not remitted by truckers.

Data entry	<p><b>4.127</b> With respect to the accuracy of the data entry into the boards' systems, we found data was entered in a reasonably accurate manner by board staff. For improved accuracy, some systems can match PIDs against a provincial list of properties.</p>
Summation, conversion and reporting	<p><b>4.128</b> With respect to the accuracy of summation, conversion to common measurements, and reporting of volumes, our tests of boards' database queries showed complete and accurate results. At most boards, volume reports are produced from database queries without manual intervention.</p> <p><b>4.129</b> Two boards convert their units of measure to the provincial standard of cubic metres when reporting volumes to the Commission. Conversions we tested appeared reasonable, with the exception of one error discovered at one board. However, the conversion factors did not appear to be taken from standard conversion tables available from DNR. This introduces some risk of inaccuracy in the converted volume figures. Conversion factors are also published in the TUS. We suggest that DNR review the published conversion factors to be sure boards are accessing current and complete conversion factors.</p>
Other tests of system integrity	<p><b>4.130</b> We thought that, as a test of the integrity of their systems, board managers might periodically produce reports showing harvest volumes by parcel of land or by landowner. This analysis might improve the accuracy of the entered data by ensuring the reasonableness of total harvest volumes being reported. However, no boards reported performing this type of analysis.</p> <p><b>4.131</b> We also asked whether the TUS might serve as an independent source of harvest volumes against which the boards' reported volumes might be compared. Managers felt the TUS was supplied too late by DNR to be of much use in this type of comparison.</p>
New management information system	<p><b>4.132</b> We observed that the New Brunswick Federation of Woodlot Owners has initiated a project to develop a new and comprehensive management information system for use by the boards. All boards indicated at least qualified support for this project.</p> <p><b>4.133</b> The project is driven by an effort to certify the forestry operations of private woodlot owners. It will include features for forest management activities and scheduling of deliveries. It will also have features to cross-reference sales, TC, and levy documents and to provide the required harvest volume reporting.</p>

**4.134** At the time we made these observations, we found that no discussion had been held between the Federation and the Commission regarding future reporting requirements. Since the Commission is also developing a new information system, there would be value in the two project managers working in a complementary fashion to ensure maximum value is received from these development efforts.

#### Analysis

**4.135** Overall, we found reasonable degrees of processing accuracy in boards' systems. Inaccurate PIDs are not significant to date for volume reporting purposes; however, certification requirements will likely demand greater accuracy and reporting by PID.

#### Conclusions

**4.136** We concluded that the boards' individual wood tracking systems exhibit a reasonable degree of processing and reporting accuracy. We concluded that staff of the boards makes reasonable efforts to ensure TC data is entered accurately.

#### Forest Products Commission's reporting process

**4.137** Our fifth issue dealt with the harvest volumes reporting process at the Commission. We wanted to determine whether harvest volume information is accurately compiled and reported by the Commission.

#### Description

**4.138** Boards provide their harvest volume reporting to the Commission in printed form. The boards and the Commission do not share data electronically. As a result, Commission staff must perform manual calculations in the reporting process. Conversion or compilation errors would have a direct impact on final harvest volume reporting.

**4.139** Under regulation and Ministerial direction, the boards are required to report to the Commission monthly and annually. They report volumes by product and species for each receiver of wood. In addition, they are supposed to report volumes categorized as those delivered within New Brunswick and those exported.

**4.140** We expected that final harvest volume reports compiled by the Commission would be reviewed with boards to confirm the reasonableness of the figures.

**4.141** Our purposes in auditing this issue were to determine if the boards' reporting to the Commission complies with regulation and to determine the nature of the work performed by the Commission in the reporting process.

**Audit procedures and findings**

## Monthly reporting

**4.142** We first reviewed the Commission's process of preparing monthly and annual harvest volume reports.

**4.143** Monthly harvest volume reporting by the boards to the Commission reflects volumes taken from TCs processed by the board in each month. Each month's report can cover shipments from many months, depending on when the TCs are remitted to the board. We found the monthly volume reports frequently are not submitted to the Commission on a timely basis. Also, they are not reported in a consistent format and the boards do not use common units of measure for the products sold. Only two boards convert their volumes to cubic metres as requested by the Commission. No boards summarize domestic and export volumes.

**4.144** The boards also report monthly the volume of wood sold by the board. This is called a "production report", although it is really a sales volume report. Reporting of this information preceded the TC reporting requirements. In addition to their board sales, two of the boards include known direct sales in their production report.

**4.145** At the Commission, manual summations and conversions to common units of measure are frequently required in order to prepare the boards' volume reports for processing. These manual calculations by Commission staff are not an efficient use of resources. Manual intervention also introduces some risk of inaccuracy and error in the Commission's reporting.

## Annual reporting

**4.146** The Commission prepares annual volume reports for distribution to DNR and external stakeholders. We noted three examples of such reporting.

**4.147** First, the Commission prepares an annual harvest volumes spreadsheet showing comparative figures for Production, TC, and TUS volumes. The figures are reviewed with the boards prior to submission to DNR; however, the Commission does not discuss issues of sustainability with the boards. This spreadsheet is submitted informally to DNR.

**4.148** Second, the Commission prepares a *Multi-Year Production Summary* document. This spreadsheet is updated annually and reports for each board its AAC figures, production volumes, and TC volumes. This document has been prepared since 1980 and is distributed to the Department, the Federation, the boards, industry stakeholders, etc.

**4.149** Third, in October 2005, the Commission published its first annual report. Prepared for the fiscal year 2003-04, this report includes ten years of production data and two years of TC volumes reported by board and product species. The data was taken from the *Multi-Year Production Summary*. This report was prepared in response to our Office's report in April 2004 to the provincial Crown Corporations Committee. In our report to the Committee, we discussed the need for the Commission to account publicly for its operations.

Computer software  
applications

**4.150** The computer software application used to prepare the Commission's volume reports was originally designed for the "production reporting" and is based on older database technology. A duplicate copy of the application processes the TC data. To address concerns with this program and the data preparation process, the Commission has engaged DNR's information technology group to develop a new reporting application to serve their reporting needs.

**4.151** As previously noted, the Federation is also developing a management information system for the boards. These two projects have similar reporting objectives; therefore, there may be opportunities to share data, reduce duplication in the systems, and increase the value of the final products.

*Recommendation*

**4.152** We recommended the Department direct its information technology group to ensure the management information systems being developed for the New Brunswick Forest Products Commission and for the New Brunswick Federation of Woodlot Owners complement each other and meet the reporting needs of all parties.

**4.153** We anticipate the project managers would meet to identify all opportunities for collaboration in the development of their respective systems.

*Departmental response*

**4.154** *The New Brunswick Forest Products Commission in its development of the new information management system (W.H.A.T. System) has ensured that it is being developed in conjunction with the Federation of Woodlot Owners program developer to allow for the required format of reporting from the boards to the Commission to be done in an electronic upload format. The projected completion of the Federation program is September 2006 with the Commission program following shortly thereafter.*

**Conclusions**

**4.155** We concluded that the requirements for boards to report monthly to the Commission are not being met. Annually, the reporting requirements are fulfilled.

**4.156** We also concluded that the manual nature of the work performed by the Commission staff introduces some risk of error in preparation of the reported volumes.

**Forest Products  
Commission's auditing  
responsibility****Description**

**4.157** Our sixth issue dealt with the audit function originally intended to apply to the wood tracking system. In an early memo detailing the operation of the system, the Minister gave direction to the Commission to audit the wood tracking system to ensure it operated as described by legislation.

**4.158** Our purpose in auditing this issue was to determine if this audit function has been performed by the Commission.

**Audit procedures and  
findings**

**4.159** From interviews with staff, we found that the Commission has not audited the wood tracking system as required. The Commission expressed that a lack of resources and expertise has prevented this task from being performed.

**4.160** We believe the Commission should prepare an audit plan that is based upon an assessment of the risks of non-compliance with the Act. We noted that Crown wood audit procedures employed by DNR may serve as a good model for future audit efforts made by the Commission.

**4.161** The Commission could also review the "Certificate of Origin" program sponsored by the Maritime Lumber Bureau. The Certificate of Origin serves as the required entry document that exempts softwood lumber processed in Atlantic Canada from American countervailing duties. The program includes certification of the source province or state for the round wood processed in Atlantic Canada and destined for the U.S. market. It also includes controls and audit procedures required under ISO 9001 accreditation.

**4.162** The results of future audits of the wood tracking system should be made available to forest industry stakeholders. Public knowledge of incidents of non-compliance should result in effective pressure from industry peers to comply with the Act. Greater levels of compliance will then increase the value of the reported volumes.

**Recommendation**

**4.163** We recommended the Department ensure the wood tracking system is audited as required by departmental policy.

**4.164** DNR should set the audit objectives for the Commission and ensure it has sufficient resources to effectively perform such an audit. DNR should make results of audits of the wood tracking system publicly available to forestry industry stakeholders. The Commission's annual report would be an efficient place to publish the findings of audits of the wood tracking system.

***Departmental response***

**4.165** *The Forest Products Commission has engaged the services of an outside firm to develop an audit procedure for the wood tracking system. The procedure which is expected to be completed the fall of 2006 will be used to conduct audits of the wood tracking system as it applies to private woodlots. The timing and frequency of audits will be determined in consultation with the Department.*

***Conclusion***

**4.166** We concluded that the Commission has not performed the audit function for the wood tracking system as directed by the Minister.

**Enforcement**

**4.167** Our third criterion dealt with the efforts made by DNR to enforce the Act and promote compliance from industry stakeholders:

*The Department of Natural Resources should operate an enforcement program to ensure compliance with the forest products tracking system legislation.*

**4.168** Within this criterion, we identified two issues for investigation.

**4.169** We conclude this criterion is partially met because roadside and mill inspection programs have been put in place but require improvement.

**4.170** We make four recommendations.

**4.171** We also observed the government is proceeding with a ticketing initiative for more efficient protection of forest resources.

**DNR's enforcement activities**

***Description***

**4.172** Our first issue dealt with the management and resulting effectiveness of DNR's enforcement activities with respect to the *Transportation of Primary Forest Products Act*. The wood tracking system was set up with the boards administering the system while DNR would monitor compliance and take enforcement action as necessary.



**4.173** The Act provides for two primary enforcement mechanisms. First, peace officers may perform roadside inspections of motor vehicles transporting primary forest products. Peace officers may include DNR forest service officers, police officers, and commercial vehicle inspectors. They may stop a vehicle and require the operator to produce a properly completed TC, his/her driver's license, and the vehicle's registration certificate. It is the trucker who may be *personally* charged with a violation under the Act, not his/her employer.

**4.174** Second, the Minister may designate persons as inspectors for the purposes of the Act and the regulations. Inspectors may enter and inspect any mill, other place of business or location where the inspector reasonably believes that a primary forest product has been offloaded. They may inspect any substance they believe to be a primary forest product and inspect any TC and any records, in any form, of the receiver. They may verify whether TCs and scale slips are remitted as required to the boards. They may also retain any substance, TC, or financial record as evidence.

**4.175** In 2002, DNR established a protocol with the Department of Public Safety, Commercial Vehicle Enforcement (CVE). Under this protocol, CVE officials would ask for presentation of a properly completed TC in cases where they inspected a motor vehicle carrying primary forest products. Information gathered from these inspections would be forwarded to DNR for enforcement action, if necessary.

**4.176** When we began our audit, staff from the boards and the Federation expressed concern that DNR's enforcement activities were insufficient and, therefore, ineffective in ensuring compliance.

**4.177** We expected that roadside and mill inspections would be of sufficient frequency to promote a mentality of compliance in the industry. We expected that sufficient resources were assigned to accomplish the enforcement program goals. We also expected that DNR would evaluate its enforcement program to ensure it was achieving its goals. Our audit procedures were designed to determine if DNR is meeting these expectations.

#### ***Audit procedures and findings***

##### **Inspection standards**

**4.178** Our first procedure was to determine what inspection standards DNR established for its TC enforcement program.

**4.179** We found that DNR provided standard inspection procedures for staff. For roadside inspections, DNR Regions 1-3 were expected to perform a minimum of 100 inspections annually, with Region 4

performing a minimum of 90 inspections. A roadside inspection form was introduced in 2004 to better document the inspections performed. For mill inspections, all mills and other locations receiving primary forest products were to be inspected annually, with revisits for any location suspected or found to be in non-compliance with the Act.

**4.180** Our next step was to document DNR's actual enforcement activities to determine if its enforcement standards have been followed.

#### Organization and delivery

**4.181** We first looked at how the enforcement program was organized and delivered. We found that staff in DNR's Regional Operations division performs the enforcement activities. Conservation officers perform roadside inspections while regional inspectors perform mill inspections. The staff members from head office who give program support are the Manager of Enforcement and the Chief Scaler, respectively. They noted there is some difficulty in promoting enforcement efforts since they do not directly supervise the staff performing these functions. A selected organizational chart showing the staff members involved in the enforcement efforts is presented in Appendix H.

#### Initial enforcement activity

**4.182** Next, we looked for examples of enforcement activity. The first documented review of the wood tracking system was performed by Region 1 inspection staff. They reviewed all of the TCs received by the North Shore Forest Products Marketing Board in December 2003. They found that a number of truckers were not properly completing the TCs.

**4.183** Another example of enforcement activity occurred in December 2004. DNR initiated a one-day Province-wide roadside inspection blitz. This blitz was not a surprise to the forestry industry; rather, it was announced publicly in advance. In total, 298 trucks were inspected. Only 11 TCs, or 4%, had violations.

#### Roadside inspections

**4.184** In addition to these special enforcement efforts made by DNR, we requested an accounting of DNR's *regular* roadside inspection efforts since 2002. The data provided by the four regional directors was incomplete for 2002-03 and 2003-04 because the *Roadside Inspection Report* was only introduced in 2004. The roadside inspection statistics for 2004-05, however, are shown in exhibit 4.9.

**4.185** By comparing the minimum number of inspections with the actual inspections performed, we found that three of four regions effectively met their standard for inspections. Inspections that found TCs with errors, omissions, or other violations totalled 91, for a provincial average of 22%. Expressed another way, 78% of TCs inspected did not have violations. As a measure of the visibility of the inspections to the industry, we determined the inspections throughout the Province were performed on 120 separate days. These figures indicate that roadside inspections may be more prevalent than anticipated by industry stakeholders.

Exhibit 4.9

DNR's roadside inspection statistics 2004-2005

<b>Roadside inspections 2004-05</b>					
<b>Region</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>Total</b>
<b>Head office location</b>	<b>Bathurst</b>	<b>Miramichi</b>	<b>Islandview</b>	<b>Edmundston</b>	
Minimum inspections	100	100	100	90	390
Actual inspections	151	99	131	27	408
Inspections with violations	48	32	10	1	91
Percentage with violations	32 %	32 %	8 %	4 %	22 %
Days inspections performed	56	53	44	17	120*

\* does not add due to inspections being performed in more than one region on a given day

## Disposition of violations

**4.186** Violations found during roadside inspections are tracked in a database managed by DNR. This database tracks violations under many pieces of legislation enforced by DNR. We reviewed the statistics on DNR's disposition of roadside inspection violations. The statistics for the three fiscal years of operation of the wood tracking system are presented in exhibit 4.10.

Exhibit 4.10

DNR's disposition of roadside inspection violations

<b>Department of Natural Resources</b> <b>Roadside Inspection Violations</b> <i>Source: Province of New Brunswick Violations Database</i>					
<b>Disposition</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>	<b>Total</b>	<b>Percentage</b>
Acquitted	0	2	0	<b>2</b>	1 %
Convicted	4	23	29	<b>56</b>	30 %
Not completed	0	1	5	<b>6</b>	3 %
Not proceeded	0	8	4	<b>12</b>	7 %
Warning	21	24	55	<b>100</b>	54 %
Withdrawn	0	7	3	<b>10</b>	5 %
<b>Total</b>	<b>25</b>	<b>65</b>	<b>96</b>	<b>186</b>	<b>100 %</b>

**4.187** As shown in exhibit 4.10, there is a large degree of discretion and judgment afforded DNR staff in deciding whether to issue warnings or to proceed with prosecution. Prosecution involves a high consumption of resources for a low financial penalty. Parties involved in the prosecution include conservation officers and inspectors, Crown prosecution staff, judicial and court staff, and the violator.

**4.188** To address the inefficiency of the prosecution process, the government announced in its *Speech from the Throne, December 2004*, that it was proceeding with a ticketing initiative for the protection of fish, wildlife and forest resources. The necessary enabling amendments were made to the *Provincial Offences Procedures Act* in 2005. With respect to the *Transportation of Primary Forest Products Act*, this initiative will permit conservation officers to issue tickets for the failure to provide a properly completed TC at the time of a roadside inspection.

Observations by DNR  
enforcement staff

**4.189** DNR enforcement staff made further observations with respect to roadside inspections. First, the PID on the TC currently cannot be verified at the time of inspection. Were this verification technologically possible, it would increase the value of the inspection significantly. More timely identification of erroneous property identification would result in more accurate decisions by enforcement staff with respect to the prosecuting of violators.

**Recommendation**

**4.190** We recommended the Department develop a means for staff to verify the source woodlot identified on the transportation certificate at the time of inspection.

**4.191** As an example, enforcement staff could radio office staff to look up properties on the provincial geographic database and confirm the reasonableness of the PID recorded on the TC. Newer technologies such as global positioning systems might be adaptable for this purpose.

**Departmental response**

**4.192** *Currently, the Department does not have the technological ability to verify the source woodlot identified on a transportation certificate during a roadside inspection. The Department will explore various cost effective options that will enable Conservation Officers to perform these queries as information technology solutions become available.*

**4.193** A second staff observation involved TC violations found during inspections. Such violations may be an indicator of larger

patterns of non-compliance; therefore, if details of violations were shared with the boards, the boards may have an opportunity to identify habitual violators. The Manager of Enforcement indicated such information could only be shared with the boards subsequent to a successful conviction.

### ***Recommendation***

**4.194 We recommended the Department share information on transportation certificate convictions with the forest products marketing boards.**

**4.195** DNR could provide background information following a conviction to the appropriate marketing board for their consideration or investigation.

### ***Departmental response***

**4.196** *On an annual basis, the Enforcement Section will supply the number of cases, dispositions, and all other possible related information for cases under the Transportation of Primary Forest Products Act to the marketing boards via Forest Management Branch.*

### **Role of Commercial Vehicle Enforcement**

**4.197** With our next procedure, we wanted to confirm the role of the Department of Public Safety - Commercial Vehicle Enforcement in the inspection program. Therefore, we interviewed staff from CVE and we also visited two weigh scales on the day of our enforcement audit. We found there were very few examples of TC non-compliance reported to DNR from CVE. Of trucks stopped for weighing at provincial scales, only those identified as being overweight or in violation of another regulation are actually inspected and the TC verified along with other paperwork. Thus, an insignificant number of motor vehicles are actually inspected by CVE for TC compliance.

### **Mill inspections**

**4.198** Next, we turned our attention to the mill inspection program. We requested DNR provide us with statistics on their mill inspections. Exhibit 4.11 summarizes those statistics.

**4.199** From 2003-04 to 2004-05, the number of TCs inspected by DNR decreased from 2,378 to 2,117, but the percentage of compliant TCs increased from 59% to 68%. The percentage of mills inspected fell from 42% to 26%, not meeting DNR's standard of 100%. We also found there was inconsistency between the four Regions. One region did no inspections at all in 2004-05, while one region increased inspections over the prior year.

**4.200** One regional manager expressed concern that Regional Inspectors cannot achieve the volume of inspections specified by DNR given the total workload placed upon these staff members. Their responsibilities include inspections of weigh scales and reviews of wood scaling procedures at mills. He felt the goal of inspecting TCs at every mill annually was unrealistic; rather, a risk-based approach to the mill inspections should be employed, focusing on higher risk areas such as suspected or repeat violators. He believed a re-assignment of responsibilities may be required to increase the efficiency of inspections.

*Exhibit 4.11*  
*DNR's mill inspection statistics*

<b>Department of Natural Resources</b> <b>Mill Inspection Statistics</b> <b>Performed under the <i>Transportation of Primary Forest Products Act</i></b>				
<b>Fiscal Year</b>	<b>2003-04</b>	<b>%</b>	<b>2004-05</b>	<b>%</b>
<b>Inspections:</b>				
Number of TCs found fully compliant	1,408	59%	1,447	68%
Number of TCs found non-compliant (1)	970	41%	670	32%
Total number of TCs inspected	2,378	100%	2,117	100%
<b>Mills:</b>				
Number of mills inspected	42		26	
Total number of mills available (estimated)	100		100	
Percentage of mills inspected	42%		26%	
Percentage inspection required under DNR policy	100%		100%	
(1) Non-compliant TCs include loads received without TC, improper TC used, inaccurate information, and incomplete information				

**4.201** Violations found during mill inspections have not been tracked in DNR's provincial violations database. Regional inspectors are not considered to be "enforcement" staff like the conservation officers that perform the roadside inspections. Since the "enforcement" group manages the database, the "inspection" group of staff overlooked the possibility of managing their inspection violations through the violations database. DNR should determine if there is any value to be gained by including mill inspections in the provincial violations database.

Program evaluation

**4.202** As a final procedure, we inquired about DNR's self-evaluation of the enforcement program. We found limited

evaluation at the regional level and no evaluation to date at the provincial level.

***Recommendation***

**4.203** We recommended the Department prepare a risk-based management plan with respect to its enforcement activities under the *Transportation of Primary Forest Products Act*.

**4.204** A risk-based management plan could evaluate the results of inspections noted above and focus resources on those areas with a higher risk of violation. DNR could use its management plan to periodically evaluate the effectiveness of its enforcement program.

***Departmental response***

**4.205** *The DNR Enforcement Section and Forest Management Branch will consult periodically on compliance problems under the Act and develop a risk-based enforcement strategy to improve compliance. This strategy will be in conjunction with all other enforcement activities under the mandate of DNR.*

***Conclusions***

**4.206** We concluded that DNR's enforcement program has been able to identify incidents of non-compliance and has contributed to the industry demonstrating a moderate level of compliance with the Act. We concluded that the staff assigned to the enforcement program is unable to meet the inspection standards as currently defined. Finally, we concluded that DNR has not evaluated the effectiveness of its enforcement program.

**Wood theft**

***Description***

**4.207** Our second issue involves the theft of wood from private woodlots. One of the stated objectives of the wood tracking system was the reduction of wood theft.

**4.208** Demand for select hardwoods drove prices up significantly in the 1990s, making wood theft a lucrative venture. Theft can occur from contractors crossing property boundaries, from recreational users looking for private use of wood, from roadside piles, and from harvest activity. Current media coverage documents an increasing sophistication in wood theft methods. For example, thieves may use global positioning systems to identify trees in the daytime and then return to harvest them at night.

**4.209** With the introduction of the wood tracking system, it should be more difficult for thieves to sell wood without identifying its source. Therefore, DNR expected that rates of theft would decrease and that TCs would be used as a tool in prosecuting violators. We wanted to determine whether these two expectations have been met.

***Audit procedures and findings***

**4.210** We interviewed stakeholders from DNR, the boards, the Federation, and the RCMP. The RCMP is responsible to prosecute wood theft under the Criminal Code of Canada.

**4.211** For private lands, we found no statistics were available to identify the rates of theft. The RCMP does not separately identify wood theft within their violations database.

**4.212** We were made aware of the difficulties experienced to successfully prosecute wood theft from private forest lands. The landowner usually must have a land survey performed and the proof of ownership burden is placed on the landowner. TCs are one piece of evidence that may be helpful in a prosecution. For example, one board stated they have been called upon to testify in court regarding declarations made on TCs.

**4.213** In 2004, Quebec's Department of Natural Resources, Wildlife, and Fisheries and their provincial police force were investigating wood theft in Quebec. They requested access to wood purchase records from several mills in New Brunswick. DNR agreed to this request, performed mill inspections of TCs, and shared the results with the Quebec officers. This sharing of information demonstrated value that may be obtained from the wood tracking system in addressing wood theft.

**4.214** It appears, however, that additional steps could be taken by DNR and the boards to increase the effectiveness of the TC system in identifying private wood theft. The element currently missing from the inspection procedures is physical verification that the primary forest products truly were harvested from the woodlot specified on the TC.

***Recommendation***

**4.215** We recommended the Department establish a wood theft preventive strategy involving verification of the source woodlots reported on transportation certificates.

**4.216** Implementation of this recommendation would involve both departmental and board staff. We have already recommended that DNR share information on TC convictions with the boards. We also suggested that boards could review harvest levels by PID or by landowner as another test that might identify unusual harvest levels or patterns. The boards could also perform field inspections on selected woodlots in order to confirm the actual harvest with the volumes reported by the TC system.



**Departmental response**

**4.217** *The RCMP has the exclusive mandate to investigate theft of wood from private land. Currently, Conservation Officers alert the RCMP if they have information concerning theft of wood from private land.*

**4.218** *The Department will explore various options that will enable Conservation Officers to perform source woodlot queries during roadside inspections as information technology solutions become available. Once the technology is available, Conservation Officers will continue the present practice of alerting the RCMP if theft of wood from private land is encountered during a roadside inspection.*

**4.219** *The Department will forward a copy of this report and the subsequent recommendation to RCMP - H.Q. at "J" Division.*

**Conclusions**

**4.220** We were unable to conclude whether rates of theft from private woodlots have decreased following the introduction of the TC. We were able to conclude that TCs have been used as a tool in the prosecution of wood theft.

**Monitoring  
sustainability of  
private wood supply**

**4.221** Our fourth audit criterion dealt with monitoring the sustainability of the private wood supply in New Brunswick:

*The Department of Natural Resources should compare harvest levels from private forest lands with annual allowable cut figures in assessing the sustainability of the private wood supply.*

**4.222** We looked at three issues within this criterion.

**4.223** We conclude this criterion is not met. Comparing incomplete harvest volumes with out-dated annual allowable cut figures does not produce useful information. DNR makes limited strategic use of the Commission's annual harvest volumes report in monitoring the sustainability of the private wood supply.

**4.224** We make two recommendations on this matter.

**Establishing private  
woodlot AAC figures**

**4.225** Our first issue dealt with establishing annual allowable cut (AAC) figures for private woodlots.

**Description**

**4.226** Establishing AAC figures is a critical component of effective forest management. In the management of Crown forests, these harvest volumes are clearly set out and adhered to in harvest operations.

**4.227** In the private woodlot sector, boards need AACs to serve as guidelines for forest management purposes. Private woodlot forest management is difficult, however, because neither the boards nor DNR have the authority to enforce adherence to AACs. Woodlot owners' private property rights prevail and they can harvest whatever volumes they individually choose.

**4.228** AACs were last established for private woodlots in 1992. In responding to our 2000 audit of private forest lands, DNR expected new AACs to be established for private woodlots by 2004. We wanted to determine the current status of these AACs.

***Audit procedures and findings***

**4.229** We made inquiries of staff from DNR, the Commission, the Federation, and the boards. We reviewed a study completed in April 2004 by UNB's Department of Forestry and sponsored by DNR and the Federation. This study looked at five of the seven board regulated areas and proposed new AACs for the boards.

**4.230** The boards reported that little additional work has been done in reviewing and accepting the proposed AACs. They are hesitant to adopt new AACs without knowing the resolution of the "primary source of supply" issue. As a result, they have made no commitment to the UNB proposals.

**4.231** As we stated in the background to this chapter, the Minister has a mandate to ensure the sustainable harvesting of private woodlots. In order to fulfill this mandate, there must be a benchmark established of what level of harvesting is considered sustainable. Ideally, DNR should reach a consensus with the forest products marketing boards on revised annual allowable cut figures. In the event a consensus is not achievable, DNR should establish its own estimated sustainable cut figures. Such estimates would be an improvement over AACs that are over 13 years old.

***Recommendation***

**4.232** We recommended the Department establish estimated sustainable cut figures for private woodlots.

**4.233** To implement this recommendation, DNR should initiate a review of the available data, hold consultations with the boards, and set a deadline by which time revised estimated sustainable cut figures will be established.

***Departmental response***

**4.234** In April 2004, the Department and Federation of Woodlot owners sponsored the University of New Brunswick to conduct wood supply analysis for five of the seven forest products marketing

*boards. The respective boards in consultation with the Department were to review the work of the University and set sustainable harvest levels for each board area. Marketing boards have made no commitment to revise their sustainable harvest levels until the issue of “primary source of supply” is resolved.*

**4.235** *Since April 2004, the Department has made several attempts with the forest industry and marketing boards to resolve this issue. All attempts have failed.*

**4.236** *While new sustainable harvest limits would provide a benchmark to compare harvest against, neither the marketing boards nor the Department have the authority to enforce adherence to these levels. This is so because the rights of property owners prevail and they can harvest the volumes they individually choose.*

**4.237** *Notwithstanding the above, revised sustainable harvest levels are guidelines to good forest management. As such, the Department will continue to address this issue with the boards as their involvement is essential in establishing levels that are realistic and meaningful to the private woodlot sector.*

### **Conclusion**

**4.238** We concluded that current AACs have not been established for private woodlots.

### **Comparing actual harvest levels with AACs**

#### **Description**

**4.239** Our second issue dealt with how actual harvest volumes are compared with the AACs for private woodlots, even though the AACs for private woodlots are out-of-date.

**4.240** We wanted to determine the nature and appropriateness of the comparisons made by the boards, the Commission, and DNR.

#### **Audit procedures and findings**

**4.241** To identify current monitoring practices, we made inquiries of staff of the boards, the Commission, and DNR.

#### **Marketing boards**

**4.242** In general, staff of four of the seven boards responded positively to our queries regarding their review of wood supply sustainability. They indicated they performed the following actions:

- participated in long-range planning activities;
- prepared wood supply analyses;
- monitored actual harvest cuts against AACs; and
- used wood tracking system data for forest management purposes.

**New Brunswick Forest  
Products Commission**

**4.243** The Commission's practice is restricted to compiling data from the boards and preparing harvesting reports. In its annual report, the Commission included graphical analyses of harvesting volumes versus the AACs from 1992. Our concerns with these presentations are that the AACs are out-dated and the actual harvest volumes are incomplete. Indeed, marketing board sales volumes are used in the graphical analyses while more complete harvest volumes are already available from the TUS. Stakeholders could make erroneous decisions regarding private wood supply if they failed to understand the shortcomings of the information presented in the Commission's annual report.

**DNR**

**4.244** DNR performs no additional review to assess the reasonableness of the Commission's harvest volume reporting.

**Conclusions**

**4.245** We concluded that the practice of comparing actual harvest levels with a benchmark in order to monitor sustainability of private woodlots is appropriate. However, comparing incomplete harvest volumes with out-dated annual allowable cut figures does not produce useful information.

**DNR's use of harvest  
volume reports**

**4.246** With our third issue in this criterion, we sought to learn what use DNR makes of the information provided from the wood tracking system.

**Description**

**4.247** We expected the information might be used for comparison purposes with other wood harvest volume data sources such as the TUS.

**4.248** We also expected that, given the relative significance of each major source of wood supply to the forestry industry, DNR would prepare a comprehensive provincial wood supply model. This model would incorporate Crown, private, freehold and import sources of wood supply. It would compare AAC figures with projected and actual harvest volumes on a multi-year basis. We expected the wood tracking system would serve as one source of data for populating this model.

**Audit procedures and  
findings**

**4.249** Our audit procedures consisted of inquiry of DNR staff.

**4.250** We found that DNR makes little strategic use of the wood tracking system information. The Commission's harvest volumes' reporting is kept as a reference document when holding discussions regarding private wood sustainability. However, since the harvest

volumes are known to be incomplete, DNR does not include them in the Department's annual report.

**4.251** The staff person responsible for preparing the TUS compares his figures with the Commission's harvest volumes. However, since the TUS is prepared at least a year after the Commission's report, this review is not sufficiently timely to provide much value.

**4.252** We found one example of DNR considering all sources of supply in the form of a comprehensive provincial wood supply model. This analysis took the form of a graphic comparing source of wood supply with consumption demand from New Brunswick mills. This graphic was prepared for the Select Committee on Wood Supply and was included at page 8 of their final report. It was also included in the Commission's annual report for 2003-04. In 2006, DNR staff updated the graphic for the government's forestry task force. This graphic is reproduced in Appendix I.

**4.253** We reviewed this graphic to determine the reliability of the data for private woodlots. The sustainable supply figures were the 1992 AAC figures for private woodlots. These figures agreed with those reported in the Commission's annual report. The mill consumption figures are the average taken from the TUS over the ten-year period from 1993 to 2002, supplemented with data on exports provided by the Commission. The wood tracking system harvest volumes were not used in preparing this graphic.

**4.254** We have a number of concerns with this presentation. The graphic:

- has not been updated on an annual basis to reflect current data;
- does not compare actual harvest volumes with the sustainable supply (AAC);
- does not adequately portray the significance of import supply and export consumption for both softwood and hardwood species; and
- does not consider a multi-year perspective.

**4.255** The graphic needs to be expanded to include the type of data we prepared in our comprehensive analysis in Appendix E.

**Recommendation**

**4.256** We recommended the Department prepare and make publicly available a comprehensive provincial wood supply model.

**4.257** To implement this recommendation, the Department could use the same information sources we accessed in our audit; i.e. the TUS, the Maine Forest Service, and the wood tracking system. To improve the completeness of the TUS export volumes, DNR could solicit the participation of exporting brokers. Alternatively, DNR could consider introducing legislation similar to that of Nova Scotia, requiring all wood buyers to report volumes harvested in the Province.

**4.258** There is another possible source of data for this purpose. Under subsection 29(5) of the *Crown Lands and Forests Act*, Crown licensees and sub-licensees are required to include in their annual operating plans the total volume of wood needed for their processing facilities. They are also required to report the proportion of that wood to be supplied from each of private woodlots, freehold lands, other sources within and without the Province, exchanges between licensees, and Crown lands.

**4.259** Further, subsection 29(7.2) of the *Crown Lands and Forests Act* requires the Minister to monitor the actual percentage of wood purchased from private woodlots as compared to the operating plan. Thus, the licensees should be reporting the actual wood supply figures for each operating year.

**4.260** DNR staff advised that the above-noted information has not been supplied by Crown licensees for several years. DNR may wish to revive this reporting requirement and use the information in preparing the comprehensive provincial wood supply model.

**Departmental response**

**4.261** *At five-year intervals, as revised sustainable harvest levels are determined for Crown land, the Department prepares a comprehensive provincial wood supply using the most recent information from Crown, private woodlots and the industrial freehold landbase. The comprehensive picture of provincial wood supply has not been made widely available as a result of outdated private woodlot wood supply information. With updated information, a comprehensive picture of provincial wood supply could be made publicly available.*

**Conclusion**

**4.262** We concluded that DNR makes limited strategic use of the Commission's annual harvest volumes reporting from the wood tracking system.

**Public reporting on  
sustainability of  
private wood supply**

**4.263** Our fifth audit criterion was described as follows:

*The Department of Natural Resources should report publicly on the sustainability of the private wood supply in New Brunswick.*

**4.264** We identified one issue for investigation.

**4.265** We conclude this criterion is partially met through the publishing of the annual report of the New Brunswick Forest Products Commission.

**4.266** We make one recommendation with respect to this criterion.

**Provision of information  
to the public**
**Description**

**4.267** Legislators and interested stakeholders must have access to comprehensive information in order to make sound decisions with respect to wood supply. The *Select Committee on Wood Supply* noted the following principle regarding provision of information to the public:

*DNR has a responsibility to provide clear, objective, and unbiased information about forestry and forest management and otherwise contribute to public awareness and understanding of these subjects.*

**4.268** In the government's response to the Select Committee, it committed to employ best practices and technology to disseminate objective information to the public.

**4.269** We wanted to assess whether DNR provides sufficient information in order for the public to be well-informed about private wood sustainability issues.

**Audit procedures and  
findings**

**4.270** We looked at what mechanisms currently exist to provide comprehensive information on private wood supply to the public.

**4.271** Annual reports are intended to be the primary accountability documents for government departments and agencies; therefore, we reviewed DNR's recent annual reports. In the 2004-05 annual report, we found no mention of private woodlot management or wood supply sustainability.

**4.272** We reviewed DNR's publicly-accessible internet site. We found the primary content to be management of Crown lands and forests. Private woodlots were given secondary treatment, with no dedicated discussion of sustainable management of the private wood supply. Data similar to that presented in our comprehensive wood supply analysis was not readily available.

**4.273** Finally, we reviewed the Minister's *State of the Forest Report, 2005*. In this report he addresses only the state of the Crown forest.

**4.274** As previously discussed, the Commission's first annual report provided a brief discussion of wood supply sustainability issues plus graphical comparisons of harvest volumes and AACs for each board. However, none of the DNR reference sources refer to this annual report.

**4.275** In summary, we found it difficult to locate information on private wood supply and sustainability issues from DNR's public reporting.

***Recommendation***

**4.276** We recommended the Department make reference in its annual report to the discussion of private wood sustainability issues found in the annual report of the New Brunswick Forest Products Commission.

***Departmental response***

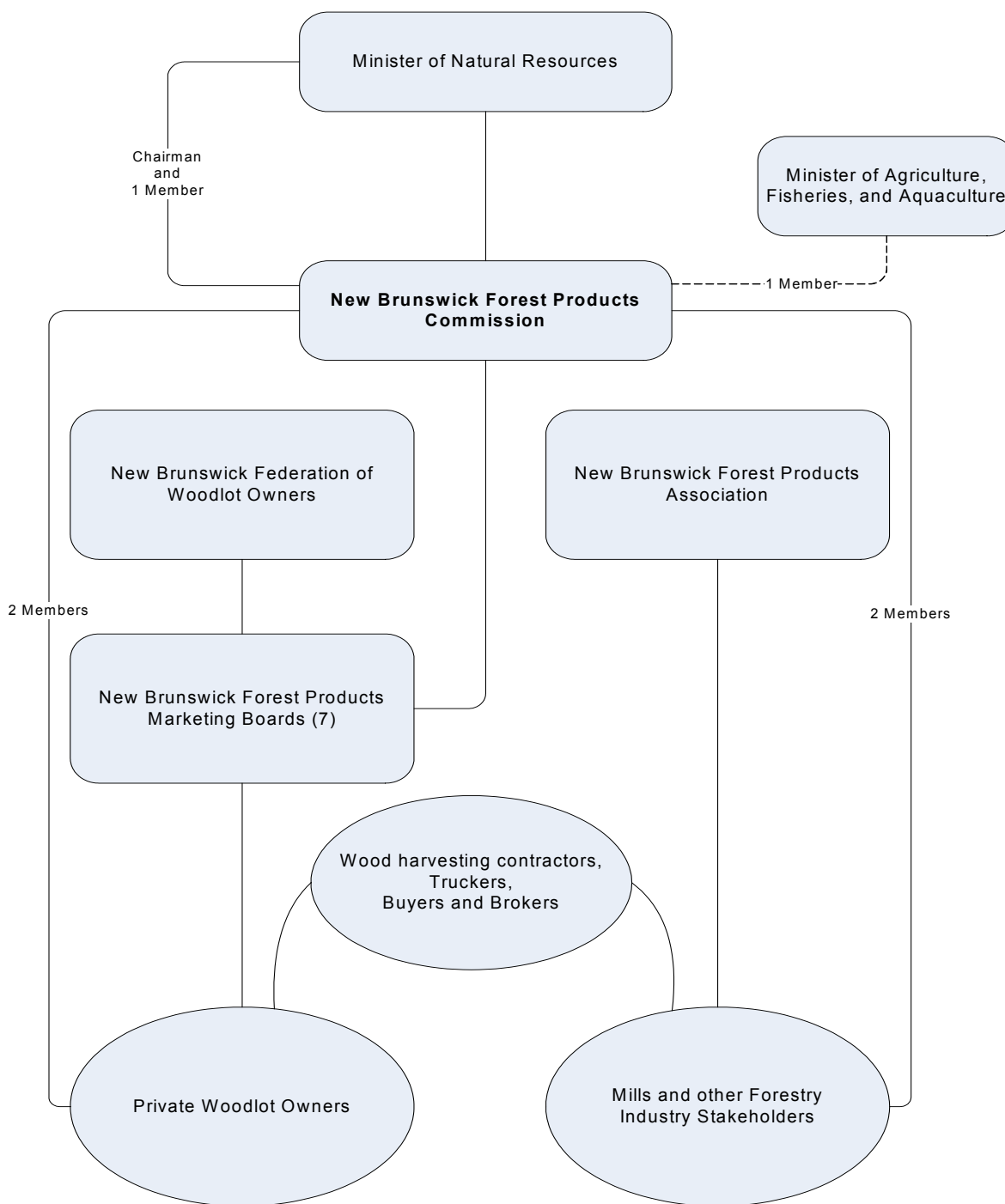
**4.277** *Further to Government's response to the Select Committee, the Department of Natural Resources is committed to disseminating forestry information to the public. The Department will determine the most effective medium to use to provide information regarding the sustainable management of private woodlots.*

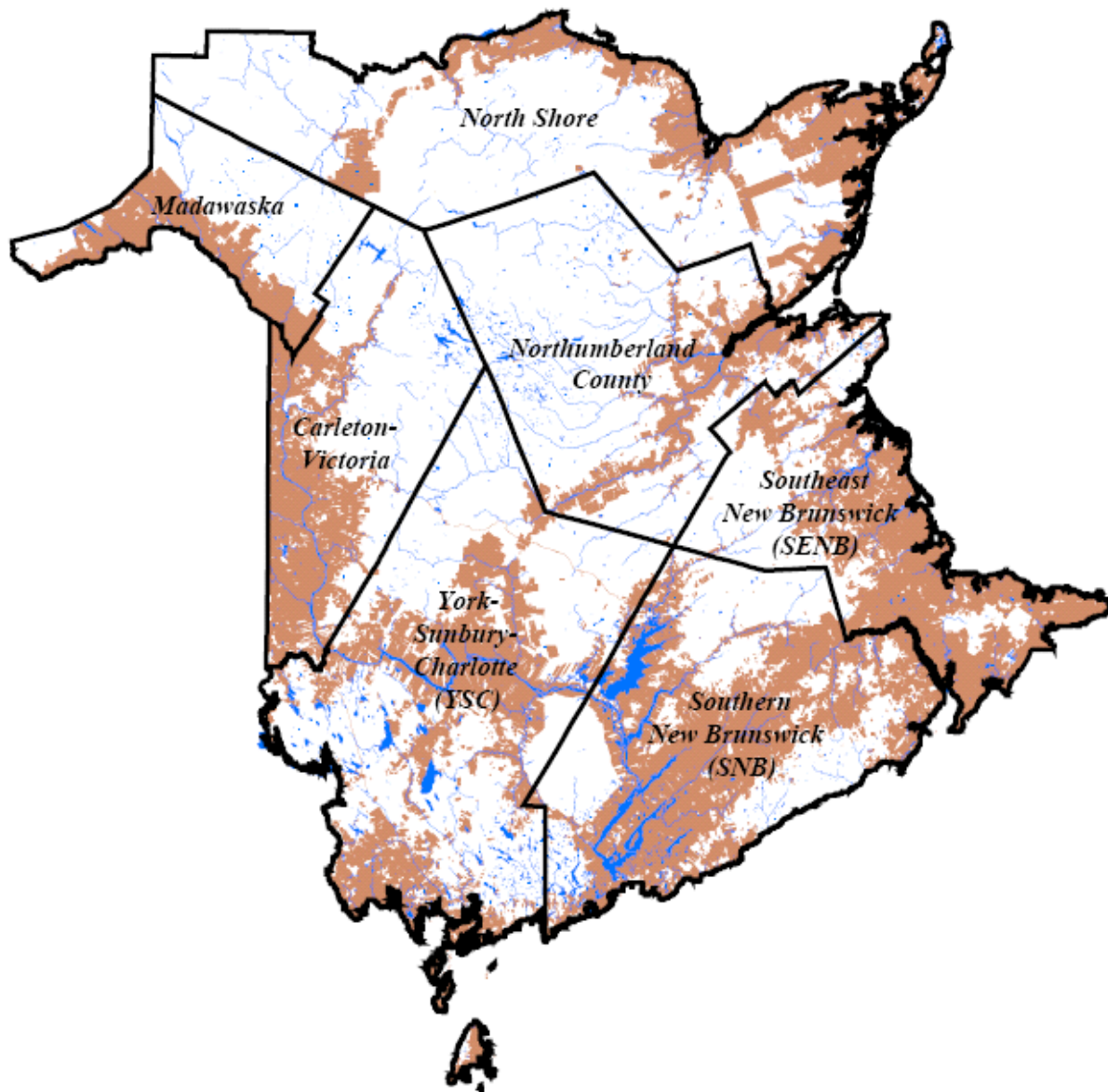
***Conclusion***

**4.278** We concluded that DNR does not readily provide sufficient information for the general public to be well-informed about private wood sustainability issues. We acknowledged, however, that some progress has been made in this regard through the publishing of the annual report of the New Brunswick Forest Products Commission.




## Appendix A: Private Wood Sector Stakeholders



**Appendix B: Forest Products Marketing Boards of New Brunswick***New Brunswick's Private Woodlots  
by Forest Products Marketing Board*

## Appendix C: Sample Transportation Certificate

		No. _____																		
<b>TRANSPORTATION CERTIFICATE/CERTIFICAT DE TRANSPORT</b> <b>FOR PRIVATE WOODLOTS/POUR LES BOISES PRIVES</b>																				
<b>Issued By:/Émis par:</b> <b>S.N.B. FOREST PRODUCTS MARKETING BOARD</b> 13 Drury's Cove Rd., PO Box 4473, Sussex, NB E4E 5L6 (T) 506-433-9860 (1-888-762-1555) (F) 506-433-3623		<b>TRANSFER WOOD ONLY</b> <b>BOIS DE TRANSFERT SEULEMENT/</b> ( ) Transfer yard to yard (no scale)/ Transféré de cour en cour (Pas de mesurage)																		
<b>For the following areas/Pour les régions suivantes:</b> Counties of/Comtés de St. John, Kings, Queens, Albert; Parish of/Paroisse Civile de Salisbury																				
<b>Delivery Information de Livraison</b>																				
<b>Contract #/N° du contrat</b> _____		<b>Company/Entreprise</b> _____																		
<b>Trucking Zone de Camionnage</b> _____		<b>Trucking Co. /Cie de Camionnage</b> _____																		
<b>Producer/ Producteur</b> _____		<b>#</b> _____																		
<b><u>PART/PARTIE A</u></b> <b>Woodlot Owner/ Propriétaire du boisé</b> _____ <b>PID #/NID</b> _____ <b>Location/Endroit//</b> _____ <b>Exporter (where applicable)/Exportateur (s'il y a lieu)</b> _____ <b>Destination (mill, holding yard, and Province or State/Usine, cour à bois, et Province ou État):</b> _____																				
<b>Product/Produits (check/cocher):</b> <input type="checkbox"/> Pulpwood/Bois à pâtes <input type="checkbox"/> Studwood/Bois du colombage <input type="checkbox"/> Sawlogs/Billots de sciage <input type="checkbox"/> Veneer/Bois de déroulage <input type="checkbox"/> Treelength/arbres en longueur <input type="checkbox"/> Chips/Copeaux <input type="checkbox"/> Others/Autres _____		<b>Species/Espèces (check/cocher):</b> <input type="checkbox"/> Spruce, Fir, Jack Pine/Épinette, sapin, pin gris <input type="checkbox"/> White Pine/Pin blanc <input type="checkbox"/> Cedar/Cèdre <input type="checkbox"/> Hardwood/Bois franc <input type="checkbox"/> Poplar/Tremble <input type="checkbox"/> Other/Autres _____																		
<b>Date/Time Loaded</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>Y-A</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>M-M</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>D-J</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>HR-H</b> <b>MIN</b> <b>θ AM</b> <b>θ PM</b> <b>Date /Heure de Chargement</b>																				
<b>Vehicle Reg. # / N° d'immatriculation du véhicule</b> _____																				
<b>Driver's Name (Print)</b> _____		<b>Signature</b> _____																		
<b>Nom du conducteur (Caractère d'imprimerie)</b> _____																				
<b><u>PART/PARTIE B</u></b> <b>Date/Time Unloaded</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>Y-A</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>M-M</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>D-J</b> <table border="1" style="display: inline-table; border-collapse: collapse;"><tr><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td><td style="width: 20px; height: 20px;"></td></tr></table> <b>HR-H</b> <b>MIN</b> <b>θ AM</b> <b>θ PM</b> <b>Date/Heure du déchargement</b>																				
<b>Signature/Confirmation of Receiver of Load/</b> _____		<b>Volume</b> _____ <b>(unit/unité)</b> _____																		
<b>Signature/Confirmation du receveur de la charge</b> _____																				
<b>Part A must be completed before truck leaves loading site and the certificate delivered to the receiver of the product.</b> <b>Remplir la partie A avant le départ du camion du lieu de chargement et remettre le certificat au receveur du produit.</b> White/Blanc = Scaleslip Copy/Billet de mesurage    Yellow/Jaune = Receiver/Receveur    Pink/Rose = Book/Livret																				

## Appendix D: Research on Wood Supply in New Brunswick

Study/Publication/Event	Comments on Crown wood supply	Comments on private wood supply
Jaakko Pöyry Report, December 2002 ( <i>New Brunswick Crown Forests: Assessment of Stewardship and Management</i> ).	<ul style="list-style-type: none"> <li>Double Crown wood supply over 35 years.</li> <li>Softwood import supply will decline.</li> </ul>	<ul style="list-style-type: none"> <li>Private softwood harvests above estimated sustainable levels.</li> <li>Need increased silviculture investments.</li> </ul>
Government's Election Platform, Spring 2003.	<ul style="list-style-type: none"> <li>Sustainable wood supply from all sources.</li> </ul>	<ul style="list-style-type: none"> <li>Sustainable wood supply from all sources.</li> <li>Ensure private woodlots are considered as a primary source of supply for the forest industry.</li> </ul>
DNR's guidebook <i>Management of New Brunswick's Crown Forest</i> , September 2003.	<ul style="list-style-type: none"> <li>Published to inform public about high level of Crown forest management activity.</li> </ul>	<ul style="list-style-type: none"> <li>Private forest lands represent 30% ownership of productive NB forest lands.</li> <li>Industry's wood supply requirements obtained from Crown (40%), Private (40%) and Imports (20%).</li> </ul>
<i>Wood Supply Analysis for Private Woodlots</i> , UNB Faculty of Forestry and Environmental Management, April 2004; Commissioned by New Brunswick Federation of Woodlot Owners (NBFWO) and DNR.		<ul style="list-style-type: none"> <li>Surveyed 5/7 marketing board regulated areas.</li> <li>Some boards over, some under sustainable levels of softwood harvesting.</li> <li>Harvesting at maximum rates not deemed sustainable.</li> <li>Incomplete export volumes understate total harvest levels.</li> <li>TC system problems should be corrected.</li> </ul>
Select Committee on Wood Supply of the Legislative Assembly of New Brunswick, September 2004.	<ul style="list-style-type: none"> <li>All forests in NB, regardless of ownership and management objectives, should be managed in a sustainable and environmentally responsible manner.</li> <li>Crown land should be the residual source of wood supply.</li> <li>Recommendation #8: DNR should regularly provide objective information to the public about forest management, harvesting and silviculture.</li> </ul>	<ul style="list-style-type: none"> <li>All forests in NB, regardless of ownership and management objectives, should be managed in a sustainable and environmentally responsible manner.</li> <li>Wood from Crown land should not unfairly compete with wood from private lands.</li> <li>Recommendation #21: Government to support ongoing negotiations between industry and woodlot producers concerning primary source of supply.</li> </ul>
Speech from the Throne, December 2004.	<ul style="list-style-type: none"> <li>Government to establish quantifiable wood supply objectives, a wood supply plan, and sustainable silviculture funding.</li> </ul>	<ul style="list-style-type: none"> <li>Government to establish quantifiable wood supply objectives, a wood supply plan, and sustainable silviculture funding.</li> </ul>
New Brunswick Federation of Woodlot Owners, Report on Activities, June 2005.	<ul style="list-style-type: none"> <li>Crown land competes unfairly with private woodlots.</li> </ul>	<ul style="list-style-type: none"> <li>Seeking return of primary source of supply policy.</li> </ul>
Government's response to Select Committee on Wood Supply, June 2005.	<ul style="list-style-type: none"> <li>Response #8: DNR to employ best practices to disseminate objective information to the public and specific target audiences.</li> </ul>	<ul style="list-style-type: none"> <li>Response #21: Consider all perspectives, intending to resolve long-standing issues associated with primary source of supply, marketing, and sustainability of private woodlots.</li> </ul>
DNR Strategic Plan, July 2005.	<ul style="list-style-type: none"> <li>Optimize quantity and quality of wood supply that can be harvested in a sustainable manner from Crown lands while respecting non-timber values.</li> </ul>	<ul style="list-style-type: none"> <li>Pursue sustainable management of private forest lands through building better partnerships with stakeholders.</li> </ul>
Speech from the Throne, December 2005.	<ul style="list-style-type: none"> <li>Support and strengthen forestry sector.</li> </ul>	
<i>State of the Forest Report</i> , December 2005.	<ul style="list-style-type: none"> <li>Forest management activities, harvest volumes, timber royalties, etc. presented for Crown forests.</li> </ul>	

## Appendix E: Comprehensive Analysis of New Brunswick Wood Supply

### New Brunswick Wood Supply Comprehensive Analysis For the fiscal year 2003-04

Industrial Roundwood (millions m <sup>3</sup> )									
	Crown Land		Industrial Freehold		Private Woodlots		Imports		Total Sources
<b>Combined softwood &amp; hardwood</b>									
Total consumption by NB mills	5.1	42%	2.7	22%	2.5	21%	1.8	15%	12.1 100%
Less: Imports	-		-		-		(1.8)		(1.8)
NB harvest consumed by NB Mills	5.1		2.7		2.5		-		10.3 91%
Plus: NB harvest exported	-		0.4		0.6		-		1.0 9%
NB harvest	5.1	45%	3.1	27%	3.1	28%	-	0%	11.3 100%

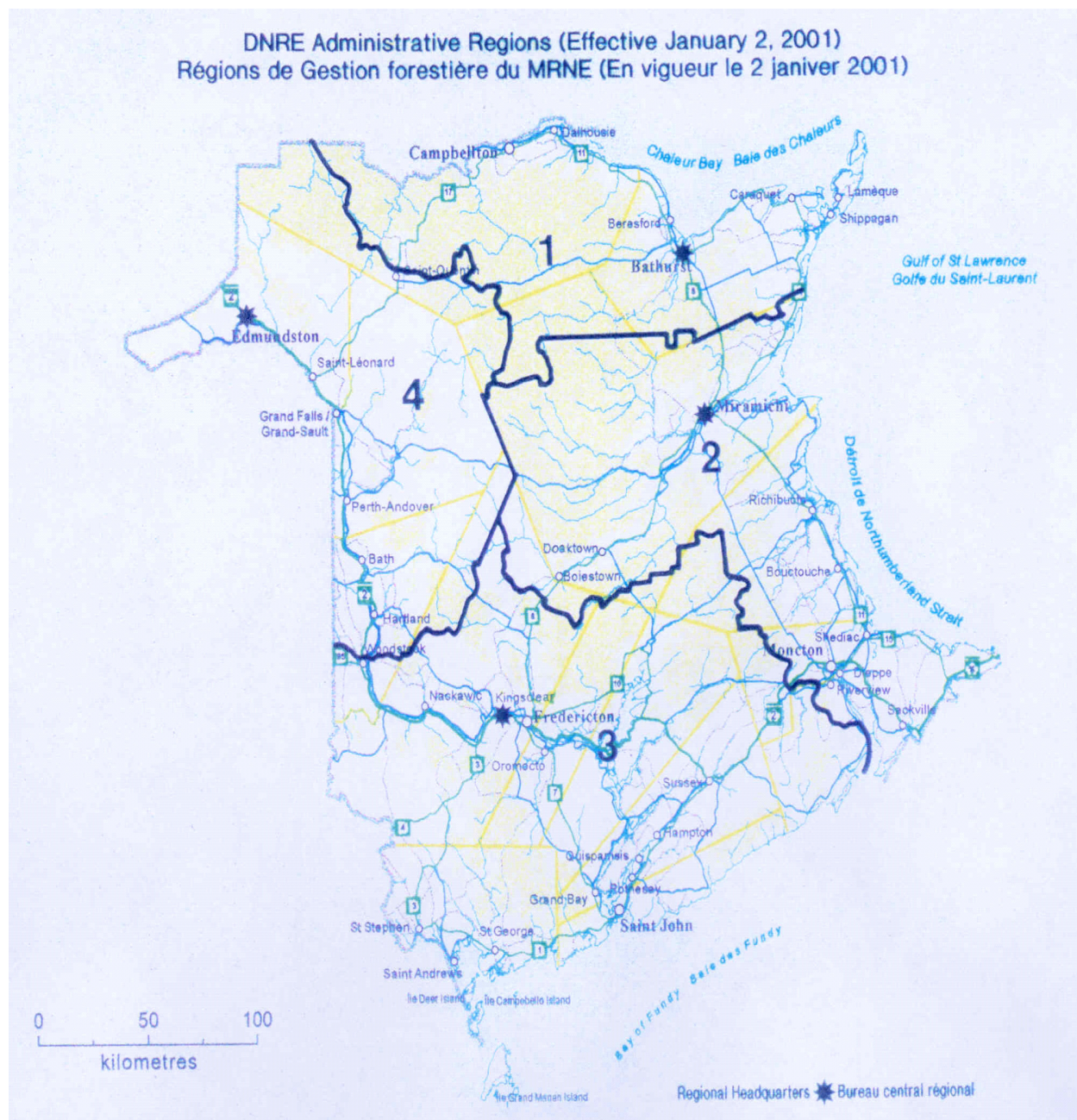
<b>Softwood</b>									
Total consumption by NB mills <sup>1</sup>	3.4	40%	1.7	20%	1.8	22%	1.5	18%	8.4 100%
Less: Imports <sup>1</sup>	-		-		-		(1.5)		(1.5)
NB harvest consumed by NB Mills	3.4		1.7		1.8		-		6.9 97%
Plus: NB harvest exported <sup>1 2</sup>	-		0.1		0.1		-		0.2 3%
NB harvest	3.4	48%	1.8	25%	1.9	27%	-	0%	7.1 100%
<b>Hardwood</b>									
Total consumption by NB mills <sup>1</sup>	1.7	46%	1.0	27%	0.7	19%	0.3	8%	3.7 100%
Less: Imports <sup>1</sup>	-		-		-		(0.3)		(0.3)
NB harvest consumed by NB Mills	1.7		1.0		0.7		-		3.4 81%
Plus: NB harvest exported <sup>1 2</sup>	-		0.3		0.5		-		0.8 19%
NB harvest	1.7	40%	1.3	31%	1.2	29%	-	0%	4.2 100%

**Sources:**

<sup>1</sup>NB Department of Natural Resources, *Timber Utilization Survey 2003-04*

<sup>2</sup>Maine Forest Service, *Wood Processor Report 2003*

## Appendix F: DNR Administrative Regions



## Appendix G: Potential Levies Unpaid to Marketing Boards

Wood Tracking System Potential Levies Unpaid to Marketing Boards For the fiscal year 2003-04				
Volume understatement:	Units	Softwood	Hardwood	Total
<b>Cubic metres</b>				
Industry-reported volumes (1)	Thousand m <sup>3</sup>	1 888	1 270	3 158
TC system reported volumes (2)	Thousand m <sup>3</sup>	1 687	853	2 540
Understated volumes	Thousand m <sup>3</sup>	201	417	618
<b>Cords</b>				
Conversion factor (3)	m <sup>3</sup> to cords	2,115	1,841	
Industry-reported volumes	Thousand cords	893	690	1 583
TC system reported volumes	Thousand cords	798	463	1 261
<b>Understated volumes</b>	Thousand cords	95	227	<b>322</b>
Percentage understated		11%	33%	<b>20%</b>
Levies:		Administration	Forest Management	Total
Average rate (4)	Per cord	\$ 2,00	\$ 1,36	
<b>Potential Levies Unpaid to Marketing Boards</b>		<b>\$ 644 000</b>	<b>\$ 438 000</b>	<b>\$ 1 082 000</b>
Sources:				
(1) Appendix E, Comprehensive Analysis of New Brunswick Wood Supply				
(2) New Brunswick Forest Products Commission, 2003-04 annual report				
(3) Department of Natural Resources, Chief Scaler				
(4) Forest Products Marketing Boards				

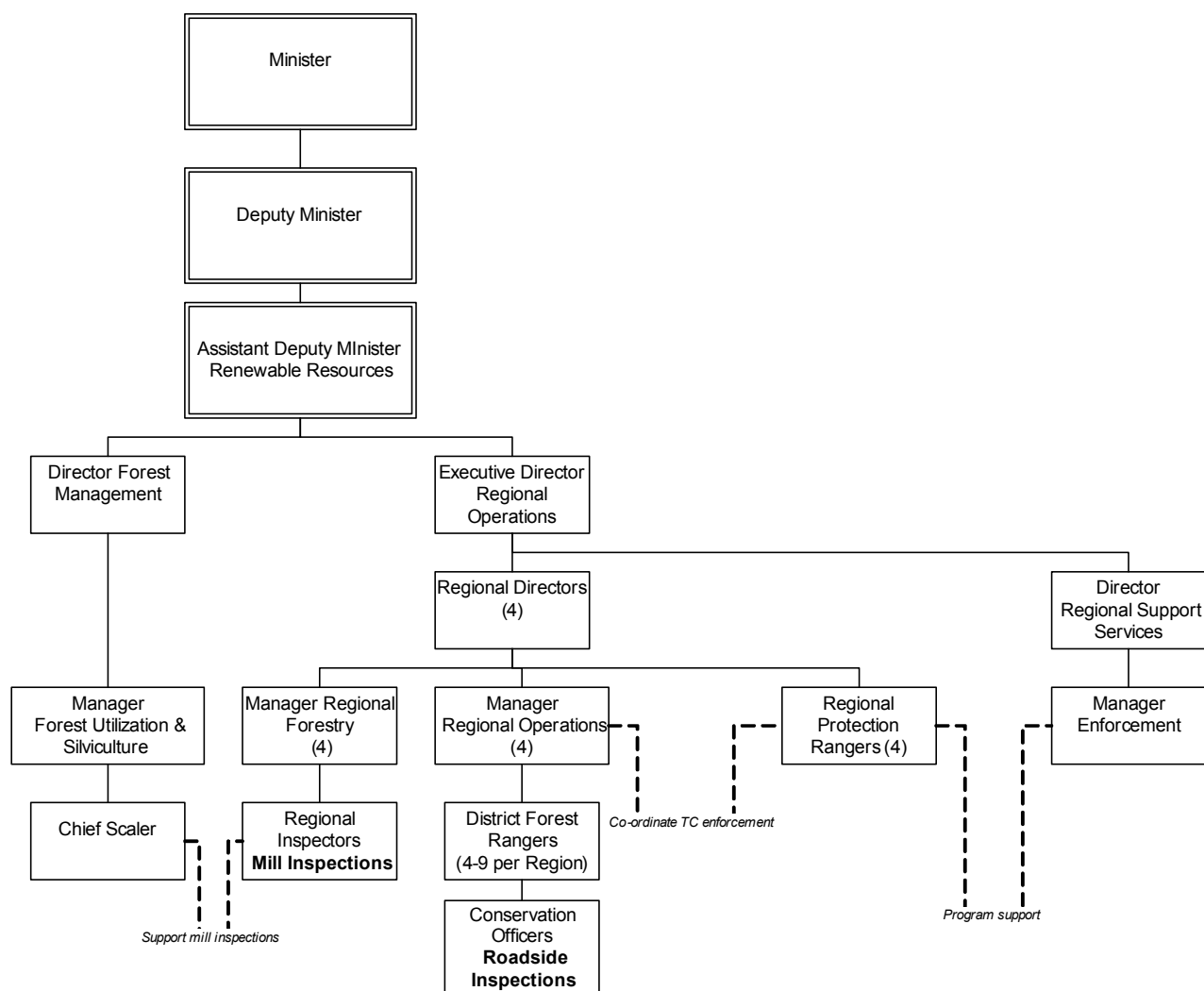


## Appendix H: Selected Organizational Chart from DNR

### Department of Natural Resources

#### Selected Organizational Chart

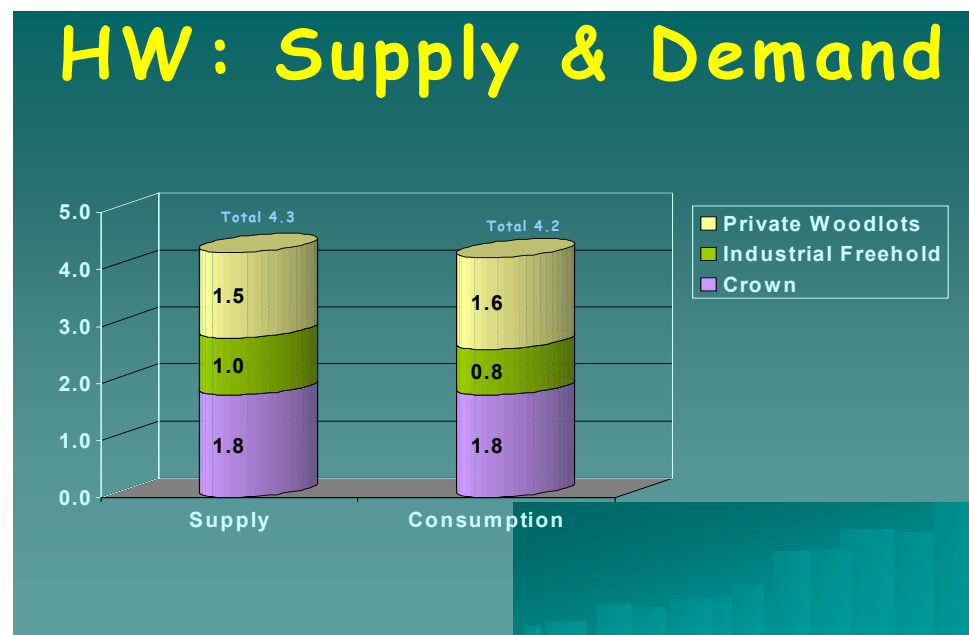
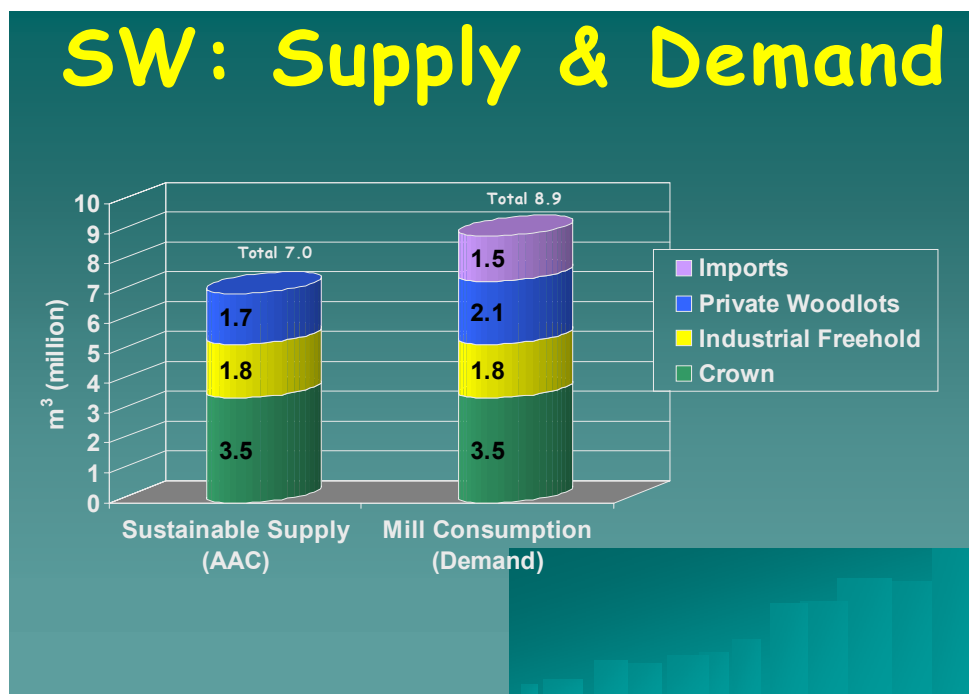
#### Transportation Certificate Enforcement Activities





## Appendix I: DNR's Wood Supply and Demand Analysis

“SW” = Softwood; “HW” = Hardwood



# Chapter 5

## Departments of Health and Justice and Consumer Affairs Health Levy

### Contents

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# Departments of Health and Justice and Consumer Affairs Health Levy

## Background

**5.1** In our 2005 Report we noted that we had begun a compliance audit of the health levy on insurers of motor vehicles.

**5.2** The health levy has been in place since 1993. It is intended to recover certain specified costs incurred by the Province for the managing of personal injuries arising from motor vehicle accidents. It is charged to motor vehicle insurers in the Province based on the value of motor vehicle insurance premiums they bill. It is not the only charge that the Province has placed on motor vehicle insurance premiums. In addition to the health levy, there is an Insurance Premium Tax and a charge for the Office of the Fire Marshal (the latter under the *Fire Prevention Act*).

**5.3** This chapter includes information in the following areas:

- background
- scope
- overall conclusion
- summary of findings
- understanding the health levy
  - health levy revenue
  - premium tax revenue
  - legal authority
  - history
  - how the process works
  - compliance with legislation
  - summary of issues with the levy process
- financial analysis
  - calculating the levy amount
  - cost of administering the levy
  - summary of issues identified from the financial analysis
- recommendations

## Scope

**5.4** The health levy generates a significant amount of revenue for the Province and we wanted to find out what its purpose was, how it worked and what, if any, relationship it had to the Province's Insurance Premium Tax.

**5.5** Our objectives for this audit were to:

- understand what the health levy is for;
- determine if the health levy process complies with legislation; and
- determine if there are any financial or value-for-money issues related to the health levy.

## Overall conclusion

**5.6** This chapter explains in detail the weaknesses of the health levy system that we observed during our examination. It also includes some recommendations for fixing those weaknesses. However, at the end of our work we had one overall impression: the health levy could easily be replaced with a simpler method of raising the same amount of revenue. So, our overall conclusion is that rather than fixing the weaknesses, the Province should replace the health levy.

## Summary of findings

**5.7** We found that the underlying concept behind the health levy is not complex, but the process of imposing it is more complex than it needs to be.

**5.8** The health levy process and calculation is not working as it was intended to work. In our opinion, the amount of the levy is below the costs incurred by the Province to treat motor vehicle accident injuries.

**5.9** The method used to calculate the health levy has not been recently validated. The Department of Health has started a review of the 2005 levy amount which should determine if the existing method is valid.

**5.10** While the method of determining the amount of the health levy is unique, the collection process closely resembles the collection of the Insurance Premium Tax.

**5.11** Like the other charges on insurance premiums - the Insurance Premium Tax and the charge for the Office of the Fire Marshal - it is very difficult for an insured individual to know how much of their insurance premium is caused by provincial taxes, levies and charges.

**5.12** The existence of the three different charges on motor vehicle insurance premiums causes confusion.

**5.13** While most of the legislated requirements associated with the health levy are adhered to, the legislated deadlines are not.

**5.14** The revenue generated by the health levy has been decreasing since 2002. The primary reason for this is the falling number of motor vehicle accident benefit claims.

## Understanding the health levy

### *Health levy revenue*

*Exhibit 5.1*  
*Health levy revenue*

**5.15** A summary of the health levy revenue recorded from the year ended 31 March 1997 through to the year ended 31 March 2006 and the budgeted revenue for the year ended 31 March 2007 is provided in exhibit 5.1 (all figures in \$ millions). These figures have all been taken either from volume II of the Province's Public Accounts or from the 2006/2007 Main Estimates.

Fiscal year ended 31 March										
2007 Budget	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
16.9	13.3	19.5	24.1	26.6	26.7	25.2	23.7	21.7	20.8	17.0

**5.16** The large decrease in revenue in 2006 was caused by three factors:

- a decrease in the base levy due to favourable motor vehicle accident benefit claims experience;
- a re-estimate of the 2004 levy; and,
- a calculation error in 2005 which was corrected in 2006.

**5.17** We have estimated that the health levy rate is about five dollars for every one hundred dollars of premiums billed as shown in exhibit 5.2.

**5.18** The information in exhibit 5.2 is reported on a calendar year basis because motor vehicle premium data is reported on a calendar year basis. The billed motor vehicle premiums and the health levy collections information were obtained from the annual report of the Department of Justice and Consumer Affairs on Insurance.

**5.19** The Department of Health, as part of its financial year end process, reconciles annual levy amounts billed by the Department of

Justice and Consumer Affairs to the levy revenue received. This is to ensure that the levy amounts billed are collected and that the Department of Health can account for any variances. At the time of our audit, the 31 March 2006 levy reconciliation was still outstanding. The Department of Health stated this was due to pending upgrades to the Department of Justice and Consumer Affairs reporting system.

*Exhibit 5.2*  
*Health levy rates*

<b>Year ended 31 December</b>	<b>Billed motor vehicle premiums</b>	<b>Health levy collections</b>	<b>Health levy rate per \$100 of premiums billed</b>
2003	\$539.1 million	\$27.5 million	\$5.10
2004	\$530.5 million	\$25.2 million	\$4.75

### **Premium tax revenue**

**5.20** We compared the health levy to the premium tax imposed under the *Premium Tax Act*.

**5.21** A summary of the premium tax revenue recorded from the year ended 31 March 1997 through to the year ended 31 March 2006 and the budgeted revenue for the year ended 31 March 2007 is provided in exhibit 5.3 (all figures in \$ millions). These figures have all been taken either from volume 2 of the Province's Public Accounts or from the 2006/2007 Main Estimates.

*Exhibit 5.3*  
*Premium tax revenue*

<b>Fiscal year ended 31 March</b>										
<b>2007 Budget</b>	<b>2006</b>	<b>2005</b>	<b>2004</b>	<b>2003</b>	<b>2002</b>	<b>2001</b>	<b>2000</b>	<b>1999</b>	<b>1998</b>	<b>1997</b>
39.3	37.5	37.7	40.3	32.7	28.9	27.0	24.6	23.6	23.2	23.4

**5.22** Exhibit 5.4 totals the health levy revenue and the premium tax revenue (all figures in \$ millions).

**5.23** However, other than the fact that the health levy and the insurance premium tax are both charges that are made based on the value of premiums billed, there is no relationship between them.

Exhibit 5.4  
Health levy and premium tax revenue

Fiscal year ended 31 March											
	2007 Budget	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
Levy	16.9	13.3	19.5	24.1	26.6	26.7	25.2	23.7	21.7	20.8	17.0
Tax	39.3	37.5	37.7	40.3	32.7	28.9	27.0	24.6	23.6	23.2	23.4
Total	56.2	50.8	57.2	64.4	59.3	55.6	52.2	48.3	45.3	44.0	40.4

### Legal authority

**5.24** The authority for the health levy is in subsections 242.1, 242.2, 242.3, 242.4 and 242.5 of the *Insurance Act*.

**5.25** Based on the Act, we have identified that the purpose of imposing the health levy is to allow the Province to recover certain specified costs of managing personal injuries arising from motor vehicle accidents.

**5.26** The *Insurance Act* specifies the recoverable costs in subsection 242.1(2) as

(a) the cost of the entitled services provided to beneficiaries under the Medical Services Payment Act,

(b) the cost of the entitled services provided to persons under the Hospital Services Act, and

(c) the cost of social services provided to persons under the Family Services Act.

### History

**5.27** The health levy was introduced in 1993. Prior to the introduction of the health levy, the Department of Health used legal action to recover the costs of managing personal injuries arising from motor vehicle accidents directly from the individual responsible for the accident. This meant that the health related costs were recovered on a claim-by-claim basis, and the Department incurred costs in the recovery process. For the calendar year 1990, total recoveries were \$3.0 million, and total costs of recovery were \$0.3 million.

**5.28** The claims approach was expensive, and it did not result in full recovery of costs. Costs were not fully recovered because some claims resulted in the division of liability, some claims were settled directly between the parties, and there were limits on the insurance

policies. The claims approach did, however, have the advantage of assigning the costs directly to the individual responsible for causing those costs.

**5.29** When the health levy was first implemented, the calculation of the costs to be recovered did not include the costs of managing injuries sustained as a result of an individual's own actions; it only included the costs of managing injuries caused by another. However, in 1996, the calculation of the levy was changed to include the costs of managing injuries sustained as a result of an individual's own actions.

**5.30** The health levy is a levy imposed on the insurer, as stated in subsection 242.1(2) of the *Insurance Act*; however it involves the Department of Health, the Department of Justice and Consumer Affairs, the insurers, insurance agents, and the insured.

### ***How the process works***

**5.31** Exhibit 5.5 lists the main responsibilities described in the *Insurance Act*.

#### *Exhibit 5.5*

#### *Requirements in the Insurance Act*

<b>Deadline</b>	<b>Responsible Party</b>	<b>Required Action</b>
1 October	Department of Health	Calculates an estimate of the levy that will be imposed for the next calendar year.
1 October	Department of Health	Informs the Superintendent of Insurance of the amount of the estimated levy.
15 January	Superintendent of Insurance	Gives notice to the insurer of the amount of the estimated levy that the insurer must pay.
Quarterly	Insurer	Remits to the Superintendent equal quarterly payments beginning 15 March.
Annually	Department of Health	Reevaluates the accuracy of the levy estimate in the following year and makes any needed adjustments.
Annually	Department of Health	Advises the Superintendent of Insurance of any needed adjustments.
Annually	Superintendent of Insurance	Notifies the insurer of any adjustment to the estimated levy.
Annually	Insurer	Adjusts the next quarterly payment to reflect any adjustment to the estimated levy.



**5.32** The Act does not stipulate how the Superintendent of Insurance should divide the total amount of the levy among the different insurers.

**5.33** Also, the Act does not place any requirements or restrictions on individual insurers about how the health levy is to be recovered from insured individuals. The health levy appears to be just a cost of doing business to the insurer, and would have to be recovered through the prices paid by the insured individuals.

**5.34** The result could be that some insurers simply pass the levy on to individuals in the same manner as the Superintendent determined the insurer's share of the total levy, while others might spread it out over all insurance contracts that they sell.

**5.35** The Act also does not place any requirement on the insurer to inform the insured individuals about the existence of the health levy or its impact on the price of their insurance contract.

**5.36** In actual practice, the Department of Health estimates the annual health levy by extrapolating a base levy that was established by a consultant, and making certain adjustments. The Department of Health then informs the Superintendent of Insurance of the total amount of the health levy to collect. The Superintendent of Insurance determines the total value of motor vehicle insurance premiums billed by each insurer in the previous year, and uses this to divide the total levy up among the insurers. The Superintendent then bills, collects and accounts for the health levy. The insurers would then pass the levy on to their customers as part of the cost of each insurance policy.

**5.37** Because the process of estimating the health levy involves multiple years, its calculation can be complex as illustrated in the sample time line in exhibit 5.6.

**5.38** In addition to the steps included in the process, the Act provides the Superintendent of Insurance with enforcement powers. Specifically, subsection 242.5(1) states that the license of any insurer who does not make its payment of the levy on time is automatically suspended. The Act does not allow any discretion in this suspension.

#### ***Compliance with legislation***

**5.39** Exhibit 5.7 indicates the responsibilities under the *Insurance Act* and the extent to which the requirements are complied with.

Exhibit 5.6

Sample time line for estimating the health levy

Approximate Date	Responsible Party	Action
March 2004	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2004 calendar year.
April 2004	Insurers	All annual returns of insurers have been received by Superintendent.
June 2004	Superintendent of Insurance	Notifies insurers of their individual levy for 2004.
March 2005	Department of Health	Makes a first re-estimate of the 2004 levy.
	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2005 calendar year.
April 2005	Insurers	All annual returns of insurers have been received by Superintendent.
June 2005	Superintendent of Insurance	Notifies insurers of their individual levy for 2005.
February 2006	Department of Health	Makes a final estimate of the 2004 levy.
	Department of Health	Informs the Superintendent of Insurance of the final estimated levy for 2004.
	Department of Health	Makes a first re-estimate of the 2005 levy.
	Department of Health	Informs the Superintendent of Insurance of the estimated health levy for the 2006 calendar year.
April 2006	Insurers	All annual returns of insurers have been received by Superintendent.
July 2006	Superintendent of Insurance	Notifies insurers of the adjustment to their 2004 levy.
	Superintendent of Insurance	Notifies insurers of their individual levy for 2006.

**5.40** We found that the Department of Health is fulfilling all of its responsibilities under the *Insurance Act*, however not within the legislated deadlines. However, because the insurers are not required to file their annual returns with the Superintendent of Insurance until 31 March of each year, no improvement to the process would result from the Department of Health meeting its 1 October deadline.

**5.41** Also, as explained in the Financial Analysis section later in this chapter, while the Department of Health is meeting its obligations under the legislation, we believe that the base information is no longer accurate and so the levy is not actually recovering the costs it is intended to cover.

**5.42** Similarly, we found that the Superintendent of Insurance is fulfilling most of its responsibilities under the *Insurance Act*, however not within the legislated deadline. Because of the 31 March deadline for insurers to file their annual returns, and because those returns are used by the Superintendent of Insurance to determine the

amount of the levy charged to each insurer, it is not possible for the Superintendent of Insurance to meet the legislated deadlines.

*Exhibit 5.7*

*Responsibilities under the Insurance Act*

Deadline	Responsible Party	Sub section	Required Action	Compliance
1 October	Department of Health	242.3(1) (a)	Calculate an estimate of the levy that will be imposed for the next calendar year	Estimate is calculated annually but not by the legislated deadline.
1 October	Department of Health	242.3(1) (b)	Inform the Superintendent of Insurance of the amount of the estimated levy	Superintendent is notified but not by the legislated deadline.
15 January	Superintendent of Insurance	242.3(2)	Give notice to the insurer of the amount of the estimated levy that the insurer must pay.	Notices are sent to the insurers but not by the legislated deadline.
Annually	Department of Health	242.4(1)	Reevaluate the accuracy of the levy estimate in the following year and make any needed adjustments.	The levy is reevaluated, but there is a one year delay.
Annually	Department of Health	242.4(2)	Advise the Superintendent of Insurance of any needed adjustments.	Superintendent is advised (one year delay re reevaluation).
Annually	Superintendent of Insurance	242.4(3)	Notify the insurer of any adjustment to the estimated levy.	Insurers are notified (one year delay re reevaluation).
As required	Superintendent of Insurance	242.5(1)	Automatically suspend the license of any insurer who fails to remit the levy within the time set for remittance.	Not done even though not all remittances are made on time.

**5.43** The *Insurance Act* does not specify how the Superintendent of Insurance is supposed to determine the amount of the levy for each insurer, however using the annual returns of the insurers seems to be a reasonable approach.

**5.44** Because the departments of Health and Justice are not meeting the legislated deadlines, many payments are not received from insurers within the legislated deadlines, although most remittances are made on a quarterly basis as intended by the Act.

**5.45** Other than complying with deadlines, the one requirement of the *Insurance Act* related to the health levy that is not met is the requirement to automatically suspend the motor vehicle insurance license of any insurer that does not make its remittances on time. Because the departments do not comply with the deadlines in the Act, insurers can not make all their payments in accordance with the payment schedule established by the Act, thereby making many remittances late. Because the *Insurance Act* says that the licenses are

then automatically suspended, we are concerned about the possible legal implications of this.

**5.46** Aside from the fact that payments are late because the insurers are not notified about their share of the levy on time, some insurers are late with their quarterly remittances of the levy payments. However, even in these cases, the Superintendent of Insurance does not enforce the automatic suspension of licenses, despite the fact that the Act does not leave room for discretion. The Act says those licenses are to be automatically suspended. Either the Superintendent of Insurance should comply with the suspension requirements of the Act or have the Act amended to allow different penalties for late payment.

### ***Summary of issues with the levy process***

**5.47** Exhibit 5.8 summarizes the issues we identified related to the health levy process.

#### ***Exhibit 5.8***

#### ***Summary of issues with the levy process***

Issue	Description
Allocation based on previous year's premiums.	The Superintendent of Insurance allocates the total levy to insurers based on the insurer's motor vehicle premiums as a percentage of total motor vehicle premiums written in the preceding year. This works as long as the insurer continues to offer motor vehicle insurance in the Province, and as long as the value of premiums written by the insurer stays constant. However, with new entrants into the motor vehicle insurance market or insurers exiting the market, it does not work. New entrants would not have any charge in the first year, and insurers leaving the market would be asked to pay the levy in a year that they have not billed any premiums. Also, if the value of premiums written changes significantly, it takes many months before the levy on the insurer is adjusted to reflect that change.
Is the cost burden borne by the right people?	The cost to the provincial health system of managing injuries that are the result of motor vehicle accidents is charged to insurers who then pass the cost on to the insured. If the charge is included only in motor vehicle insurance premiums, then there may be some distortions in who is paying the levy. For example, uninsured drivers would not be contributing to the cost of motor vehicle accident injuries. Also, an individual that owns two vehicles but is the sole driver of both would be bearing an extra cost for the levy.
Understanding provincial levies and taxes on premiums	The current method of taxation and levies on insurance premiums makes it difficult for an insured individual to understand how much of the cost of their insurance is caused by provincial taxes or levies. For example, an individual's motor vehicle insurance premium would have to cover the cost of the 2% premium tax, the 1% of premiums covering fire risks levied under the <i>Fire Prevention Act</i> , and the health levy which appears to be in the range of 4-5% of premiums.
Scope of cost recovery	Why does the government recover the cost of managing injuries that are the result of motor vehicle accidents through a specific charge, but the cost to the health system of other burdens is covered through general taxation?

Issue	Description
Process for assessing insurers	The process for assessing the insurers with their portion of the levy involves many steps. The Department of Health must do the calculation of costs, annual re-estimates of the costs and periodic revalidations of the baseline costs. The Superintendent of Insurance determines each insurer's share, sends out bills four times a year, makes adjustments to previous years' amounts, and manages the collection of the levy as a separate set of receivables.
Off-road vehicles	The baseline costing only included some costs incurred in accidents involving off-road vehicles. This may mean that the costs are missing a significant component.
Is the levy really a tax?	The total value of the levy is based on a periodic estimate of the cost of managing injuries resulting from motor vehicle accidents. However the levy is assessed to insurers based on the percentage of total motor vehicle insurance premiums billed by that insurer. So we believe that the levy closely resembles a motor vehicle insurance premium tax.
Why are there different processes for the levy and the premium tax?	Insurers are also required to pay insurance premium taxes to the Department of Finance under the <i>Premium Tax Act</i> . The remittance dates are similar to the health levy remittance dates, and the <i>Premium Tax Act</i> requires that insurers annually file a form in the manner prescribed by the Superintendent of Insurance showing the amount of tax payable for the year.
Legislated deadlines	As we described previously, the current method of allocating the levy to individual insurers means it is not possible to comply with the deadlines established in legislation.
Inappropriate penalty	As we described previously, the only penalty imposed by the <i>Insurance Act</i> for late payment is automatic suspension of the insurer's license. This does not provide the Superintendent of Insurance with an appropriate range of penalties to enforce payment.

## Financial analysis

### *Calculating the levy amount*

#### 1992 costing

**5.48** The Act required the Department of Health to establish the first estimated levy for the 1993 calendar year. The Department hired an actuarial consultant to arrive at this estimate. The approach used was:

- The starting point was to determine the actual recoveries that were being realized under the old claims based system.
- On a sample basis, individual files were examined to determine if the actual cost of the injury exceeded the realized recovery for that case.
- An estimate was made of whether the injury would result in long-term future costs to the health system.
- A determination was made of the value of family services that would be required by the injured party.

**5.49** The cost elements did not include any amount for fixed costs such as the cost of hospital buildings.

**5.50** Using this approach, the consultant was able to provide an estimate of the cost of accidents, although the consultant cautioned that the data available for doing the analysis was limited and considerable judgment had to be applied.

**5.51** The estimated total cost was converted to a per vehicle amount. For 1992, the per-vehicle levy estimated by the consultant for third party costs was \$18.46. The per-vehicle estimate for both third party and first party costs was \$27.13.

**5.52** In addition to determining the baseline costs, the original consultant's report recommended an approach to extrapolating the per-vehicle cost into the future. It was recommended that the baseline per-vehicle cost should be annually adjusted for:

- inflation on health care; and
- changes in accident claims frequency and severity.

**5.53** In 1992, it was decided that an appropriate inflation factor would be the Consumer Price Index (CPI) plus 2%.

#### 1998 costing

**5.54** The Department of Health had another actuarial study done in 1998 to revalidate the baseline costs. This study used data from 1996. For 1996, the health levy per vehicle was \$41.69. Based on the new costing, which included data from more sources than were available in 1992, the Department concluded that the levy of \$41.69 was still valid.

**5.55** The 1996 study actually determined that the health levy should have been within the range of \$41.22 to \$49.81 per vehicle, so while the actual levy of \$41.69 was within that range, it was at the low end of the range.

**5.56** The actuary's conclusion was:

*The lower end of the range obtained from our calculations support the current level of the levy. The upper end of the range suggests an increase of about 20%.*

*Based on the best data available and the work that was carried out, we feel that the levy is probably at a minimum level. There is also evidence to suggest that the levy could even be increased.*

**5.57** The Department concluded that:

*...based on the data retrieved in the Health Services Levy Revalidation Project that the amounts billed for the 1996 Auto Levy accurately represent the healthcare costs incurred as a result of motor vehicle accidents.*

**5.58** As a result, no changes were made to the base per-vehicle rate and no changes were made to the method of extrapolating the costs into the future.

## Analysis

**5.59** We would have expected that the revalidation exercise would have placed the actual 1996 per-vehicle rate in the middle of the acceptable range if the extrapolations for the 1993 to 1996 years were appropriate. Since the actual rate fell at the low end of the range, since there has not been a revalidation of the levy since 1996, and since the extrapolation method has not changed, we would expect that the current levy which is \$40.52 would actually fall below the range if a new revalidation exercise were completed.

**5.60** One factor in particular in the extrapolation formula appears to be suspect. That is the inflation factor which was set at CPI plus 2% a year in 1992, and has not been changed since. If we ignore adjustments for accident rates, and simply extrapolated the 1996 per-vehicle rate of \$41.69 using an inflation adjustment only, we would arrive at a 2006 per vehicle rate of \$62.36.

**5.61** The actual per-vehicle levy for 2006 was \$40.52, so favorable adjustments for accident claims frequency have prevented the per-vehicle levy from reaching the \$62.36 rate. However, the health inflation rate of CPI plus 2% appears to be a low estimate of health inflation for the years from 1996 to 2006. We looked at three areas of government health spending over the same time period and found that the costs of providing health care have increased by more than CPI plus 2% per year on average, as the following table illustrates.

Year	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
Ambulance Services	50.3	42.5	38.9	36.5	35.3	32.7	30.3	19.4	12.3	11.6	7.5
Hospital Services	1,026.6	956.7	892.9	841.1	806.6	753.0	703.2	644.9	611.6	609.3	594.5
Medicare	404.9	387.0	355.5	323.2	306.1	273.2	262.2	238.9	229.7	217.2	210.9
Total	1,481.8	1,386.2	1,287.3	1,200.8	1,148.0	1,058.9	995.7	903.2	853.6	838.1	812.9
% Increase	6.9%	7.7%	7.2%	4.6%	8.4%	6.3%	10.2%	5.8%	1.8%	3.1%	

**5.62** If we apply the rates of increase from the preceding table to the 1996 per-vehicle levy rate, again assuming a constant accident profile, the per-vehicle levy rate in 2006 would have been \$75.99, or about 30% higher than the rate calculated using CPI plus 2%.

**5.63** We would therefore expect that if a new revalidation exercise was done, it would find that the actual inflation of costs of managing the injuries incurred in motor vehicle accidents has exceeded the assumed rate that is used in establishing the health levy.

**5.64** The other factor in the extrapolation formula is an adjustment for the frequency of accident benefit claims. The source of the data used in this factor is a letter from the Insurance Bureau of Canada. It is obvious that since the per-vehicle rate for 2006 was set at \$40.52 as compared to a 1996 inflation adjusted rate of \$62.36, the frequency and/or severity of accidents has been decreasing to such an extent that it has been more than offsetting the inflation factor.

**5.65** In fact there has been a decline in accidents in recent years as the following information taken from publications produced by the Canadian Council of Motor Transport Administrators shows:

Per 100,000 Population										
	Fatalities	Injuries	Fatalities	Injuries	Fatalities	Injuries	Fatalities	Injuries	Fatalities	Injuries
	2004	2004	2003	2003	2002	2002	2001	2001	2000	2000
Canada	8.5	664.7	8.8	702.7	9.3	725.1	9.0	713	9.4	732.3
NB	9.4	562.4	12.4	601.8	13.7	666	11.7	686.5	10.5	647

**5.66** This reports a significant improvement in both the number of injuries in road vehicle accidents and the number of fatalities over the time period from 2000 until 2004. This supports the fact that the inflationary increase in the per-vehicle levy would at least be partially offset by a decrease because of an improvement in the accident profile.

**5.67** There is one piece of information however that leads us to wonder if the extent of the reduction for accident frequency and severity is overstated. We compared the injuries per 100,000 population with the number of road accident claims reported by the Insurance Bureau of Canada and we found:



	2004	2003	2002
Injuries for population of 750,000	4,218	4,514	5,037
Claims	3,503	3,890	5,068
Rate of claims	83 %	86 %	101 %

**5.68** This is not enough data to draw a conclusion from. However, it indicates one reason for the frequency improvement reported by the Insurance Bureau of Canada could be due to a reduction in people making claims because of such factors as injuries were minor or insurance policy deductibles have increased.

**5.69** Based on the analysis that we have done, we believe that if a new actuarial study of the health costs of managing the injuries resulting from motor vehicle accidents were completed, it would probably conclude that the current levy is not sufficient to recover the costs. It could be as much as 30 % too low. If this is the case, it means the levy is no longer covering the costs it was intended to cover, and some of the costs are now being covered by other sources of government revenue.

#### *Cost of administering the levy*

**5.70** The annual cost of administering the health levy is not large. The process involves two government departments; however health levy work is not a full time job for anyone. In addition to government departments there are minor administrative costs incurred by other organizations such the insurers and the Insurance Bureau of Canada. The total cost to government would normally be in the range of \$40,000 to \$60,000 per year.

#### *Summary of issues from financial analysis*

**5.71** Exhibit 5.9 summarizes the issues identified from our financial analysis.

### **Recommendations**

**5.72** In our opinion, the health levy process and calculation is not working as it was intended to work. The amount of the levy is probably below the costs incurred in treating motor vehicle accident injuries, meaning some of the costs are now covered by general revenues. The method of calculating the amount of the levy is not, nor can it be, exact. The levy mirrors the premium tax, and is a cost that is unseen by the purchasers of insurance coverage. Furthermore, the process is more complex than it needs to be and the legislation establishes unrealistic dates and collection methods.

## Exhibit 5.9

## Summary of issues identified from the financial analysis

Process for arriving at levy amount	The process of estimating the cost of managing personal injuries arising from motor vehicle accidents is cumbersome. The periodic re-establishment of the baseline is time consuming. The process periodically requires the assistance of an external consultant. The number that is arrived at is necessarily based on many assumptions and estimates.
Inflation rate	The annual inflation factor appears to be low and should be revalidated.
Accident benefit claims frequency rate	The annual adjustment for accident benefit claims frequencies may not be accurate if not all accidents are being claimed through insurance.
Current levy is out of date	We expect that if a revalidation of the levy were done, it would indicate that the current per-vehicle levy rate is not sufficient to recover costs.
Administration cost	While the administration costs are not large, we believe that most of them could be avoided if changes to the process were made.

**5.73** At the end of our work we had one overall impression: the health levy could easily be replaced with a simpler method of raising the same amount of revenue. So, our overall conclusion is that rather than fixing the weaknesses, the Province should replace the health levy. **We therefore recommended:**

**The Department of Health re-evaluate the need for the health levy to determine if it could be replaced with a more efficient and transparent method of generating the same level of revenue for the Province.**

**5.74** To do this the Department would have to consult with the departments of Justice and Consumer Affairs and Finance. The re-evaluation should consider the issues we have raised in this chapter. Some possible alternatives might be to add an extra charge to motor vehicle registrations or driver's licences; to roll the health levy into the Insurance Premium Tax; or to generate the revenue through general taxation.

**5.75** If, after re-evaluating the health levy, the Department of Health decides to continue imposing the levy, we recommend:

**The Department of Justice and Consumer Affairs amend the deadlines in the *Insurance Act* related to the health levy to reflect the actual timetable being used.**

**The Department of Justice and Consumer Affairs review the legislated requirement to automatically suspend licenses of insurers that make late remittances of the health levy, and either make changes to the legislation or enforce the current legislation.**

**The Department of Health hire a consultant to re-establish the base health levy and the method for extrapolating the levy into the future.**

**The Department of Health should, as soon as possible, complete the 31 March 2006 reconciliation of the health levy revenue recorded in the Province's financial system to the original levy calculations and to the amount of health levy collected as reported by the Department of Justice and Consumer Affairs.**

***Department of Justice and  
Consumer Affairs response***

**5.76** The Department of Justice and Consumer Affairs provided the following comments on our report.

*Generally, the Department of Justice and Consumer Affairs supports retaining the current Levy system. Among other things, it is consistent with systems used by the other Atlantic Provinces and insurers appreciate harmonized approaches. However, we acknowledge the problems identified in the Auditor General's Report and agree that changes to the system are warranted.....*

*The Department of Justice and Consumer Affairs accepts the conclusion of the Auditor General that while most of the legislated requirements associated with the Levy are being met, the legislated timelines are not. We also agree that this is the result of the legislated timelines being impossible to meet under the current processes. We also wish to observe that most of the insurers being assessed pay their assessments promptly upon receiving them.*

*If a decision is made to continue with the Levy, the Department of Justice and Consumer Affairs agrees that the deadlines set out in sections 242.1 to 242.5 of the Insurance Act should be amended in the future to reflect the reality of current practices. Also, a provision should be added to provide for a mechanism for making adjustments to the Levy and to credit or reassess insurers.*

*In addition, the Department of Justice and Consumer Affairs agrees that the mandatory suspension of the insurer's license for non-payment of the Levy within the prescribed timelines is too harsh. Mandatory suspension is particularly problematic where the current system makes it impossible for insurers to comply with the timelines. A*

*mandatory suspension is also inconsistent with the treatment of insurers who are late in paying their premium tax or assessments made against the insurance companies under section 94(5) of the Act. Further, if the mandatory suspension was being enforced as required by the Act, it would likely have unintended adverse effects on consumers who would lose their insurer without notice and could allow insurers to circumvent the withdrawal provisions set out in sections 120.1 to 120.3 of the Insurance Act, which were adopted to protect consumers. We support amending the relevant provision to provide for some alternative type of consequence for failing to pay the Levy on time, such as a discretionary power to suspend (as used in Ontario) and/or a penalty or interest charge (as used in Alberta).*

**Department of Health  
response**

**5.77** The Department of Health provided the following comments on our report.

*The Levy rate was initially based on an actuarial assessment of the healthcare costs incurred by the Department of Health in New Brunswick as well as using data from other Canadian provinces for comparison. As a component of the actuarial assessment a formula was presented to re-establish the Levy rate on an annual basis factoring in the changes to consumer price index (CPI), health cost factor (as a component of CPI) and the change in accident frequency. This methodology allowed the Department of Health to restate the estimated healthcare cost incurred as the result of motor vehicle accidents on an annual basis. It should be noted that this methodology is also currently used by all four Atlantic Provinces. The process is also similar in Alberta and Ontario.*

*The Department of Health has acknowledged that the estimates calculated on an annual basis should be revalidated regularly to ensure that the Levy amount billed to the industry through the Department of Justice and Consumer Affairs accurately reflects the true costs. As noted in your report, a revalidation was completed in 1998 and another is currently underway by Department of Health staff. The results of the 1998 revalidation study reflected a nominal variance which did not provide sufficient grounds to the Department of Health to alter the methodology used in calculating the Levy.*

*The Department of Health also acknowledges, however, that the Levy system must remain under constant review. As in 1996, with the inclusion of first party costs in the Levy, the Department is prepared to act should it feel that the Levy no longer reflects the true costs of motor vehicle accidents to the healthcare system. As mentioned, the Department of Health is currently undertaking a study to revalidate the levy amount, as in 1998.*

*In your report, you raise a number of issues which point to an underestimation of the healthcare costs recovered by the Levy. It is the opinion of the Department of Health that it would be premature to address these issues until the completion of the revalidation study in early 2007, at which time we would be in a better position to comment on the recommendations you have identified.*

# Chapter 6

## Department of Public Safety

### New Brunswick's

### Emergency 9-1-1 Service

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# Department of Public Safety

## New Brunswick's Emergency 9-1-1 Service

### Overview

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#### Introduction

The purpose of this chapter is to inform the Legislative Assembly about the work we did on New Brunswick's Emergency 9-1-1 Service (9-1-1 service). We provide information on both the 9-1-1 service and challenges faced by the service. We did not conduct an audit as explained in the section - Scope of Our Work.

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#### Contents

This chapter contains the following sections.

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## Scope of Our Work

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**In this section** The purpose of this section is to explain the extent of our work on the 9-1-1 service. This section contains the following topics:

- why we chose the 9-1-1 service
  - what we did
  - what we did not do
  - rationale for our decision not to audit, and
  - contents of this chapter.
- 

**Why we chose the 9-1-1 service** The 9-1-1 service is responsible for transferring a caller in an emergency situation to the appropriate emergency service provider, who will respond to the emergency. The 9-1-1 service is an essential service for the residents of New Brunswick that we believe would be of interest to the Legislative Assembly. Therefore, we did a preliminary review to determine the extent of our work.

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**What we did** Our Office officially informed the Department of Public Safety (Department) in November 2005 that we would conduct an audit of the Province's 9-1-1 service. We did preliminary work from February to April, 2006. Our work focused on 9-1-1 call receive and transfer responsibilities of the 9-1-1 Bureau. (The 9-1-1 Bureau, a division of the Department, is also responsible for civic addressing and data maintenance operations.)

Our work included the following:

- We interviewed staff members from the Department, the Office of the Comptroller and the Department of Health – Ambulance Services.
- We visited one Public Safety Answering Point (PSAP), a call centre for the 9-1-1 service. We spoke with employees and observed operations.
- We reviewed information provided by the Department (including documentation from the internal review), the Office of the Comptroller, and the Office of the Chief Coroner.
- We reviewed recent audit reports done by the Auditor Generals' offices in Nova Scotia and Newfoundland and Labrador.

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*Continued on next page*



## Scope of Our Work, Continued

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### What we did not do

We decided not to do an audit, based on the findings from our preliminary review. This means we did not develop audit objectives and detailed criteria, and we did not perform audit procedures, such as testing samples.

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### Rationale for our decision not to audit

Significant reasons for our decision not to conduct a comprehensive audit of the 9-1-1 service included the following:

- The Office of the Comptroller (as a result of their last audit performed in 2004) and the Coroner's Office (as a result of the inquest done in July 2003) both reported favorably on the 9-1-1 service.
- An internal review of the 9-1-1 service and dispatch systems was completed in October 2004. It identified the challenges facing the 9-1-1 service and made recommendations for improvement. We reviewed the process and information generated during the review, and we concluded that the internal review was comprehensive.

The Department publicly announced the improvements to be made to the 9-1-1 service to address the challenges identified by the internal review. We saw evidence that the Department is actively implementing the improvements.

- According to a comparative analysis of 9-1-1 services offered within Canada (done in 2004 as part of the internal review), the 9-1-1 service compares well to other Canadian jurisdictions. The analysis indicated that New Brunswick, Nova Scotia and Prince Edward Island are the only provinces within Canada offering border-to-border "Enhanced 9-1-1 service". These provinces also have "Phase I cellular service" for most cell phones. Some provinces have areas with "Enhanced 9-1-1 service", while only "Basic 9-1-1 service" is offered in other areas. (The types of 9-1-1 service are described in the section - Background Information on the NB 9-1-1 Service - About the 9-1-1 service.)
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### Contents of this chapter

We are reporting the following:

- background information on the 9-1-1 service in New Brunswick
  - the Department's actions on issues identified by reviews, and
  - significant observations made during our work, both positive observations and areas for improvement.
-

## Background Information on the 9-1-1 Service

<b>In this section</b>	<p>The purpose of this section is to provide general information on the 9-1-1 service. This section contains the following topics:</p> <ul style="list-style-type: none"> <li>• significant events</li> <li>• about the 9-1-1 service</li> <li>• about 9-1-1 calls</li> <li>• trend analysis on 9-1-1 calls</li> <li>• funding for the 9-1-1 service</li> <li>• improvements to the 9-1-1 service</li> <li>• parties involved with delivering emergency services, and</li> <li>• committee work contributing to 9-1-1.</li> </ul>
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<b>Significant events</b>	Significant events relating to the 9-1-1 service are summarized here.
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Year	Event
1972	Canada recognizes "9-1-1" as an emergency number. Some municipalities establish a 9-1-1 service.
1994	The current provincial service in NB begins. The Act is assented to in December 1994 and comes into force September 1995.
1997	New Brunswick has "Enhanced 9-1-1" service from border-to-border for landlines. The Department states, " <i>At the time of implementation, New Brunswick was the second jurisdiction in Canada, and fourth in North America to establish a province or statewide enhanced 9-1-1 system.</i> "
2002	Ministers from the departments of Public Safety and Health & Wellness announce that government will conduct a review of the 9-1-1 service and dispatch systems.
2004	The internal review of the 9-1-1 service and dispatch systems is completed; improvements to the existing service are announced.
2005	A monthly charge to all telephone subscribers is implemented to fund the proposed improvements. The monthly fee is \$.53/month for each outgoing capable telephone line.

*Continued on next page*

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## Background Information on the 9-1-1 Service, Continued

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### About the 9-1-1 service

*New Brunswick's emergency 9-1-1 service* (9-1-1) is a telephone call-taking and call-transfer service, which is available to all New Brunswickers in both official languages, twenty-four hours per day, seven days per week. With this service in place, an individual can dial the three-digit number to report an emergency and the call will be transferred to the appropriate emergency service provider's dispatch service, which is responsible for dispatching the emergency vehicles. Emergency service providers (police force, fire department, ambulance service) and their dispatch are outside of the Bureau's 9-1-1 service responsibilities.

*The Minister of Public Safety* is responsible for the administration of the *Emergency 911 Act* and the regulations, which provide the authority, definitions and requirements for the service.

*Public Safety Answering Points* (PSAPs) handle all 9-1-1 calls at seven locations throughout the province: Miramichi, Codiac, Saint John, Bathurst, Edmundston, Fredericton and RCMP "J" Division. It is planned that as of October 2006, the RCMP "J" Division will stop handling 9-1-1 calls. As a result, the regional boundaries have been reset and agreements are made with the six municipalities to handle all 9-1-1 calls.

*"Basic 9-1-1 service"* allows the caller to dial 9-1-1 to report an emergency and access emergency service providers. Without this service, callers must dial the appropriate phone number for an emergency service themselves. (Some cell-phone providers in NB provide only basic 9-1-1 service.)

*"Enhanced 9-1-1 service"* allows the 9-1-1 operator to see the phone number and address of the call to 9-1-1 and process the call, even when the caller is unable to speak. (New Brunswick has border-to-border enhanced 9-1-1 service for landline phone calls.)

*"Phase 1 cellular service"* allows the 9-1-1 operator to see the cellular phone number and cellular tower civic address for a 9-1-1 call made using a cell phone. (Some cell-phone providers in NB provide Phase I cellular service.)

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### About 9-1-1 calls

The Department reports that approximately 150,000 calls are made annually and the average breakdown of the 9-1-1 calls is as follows:

- 43% - non-emergency
- 26% - police
- 23% - ambulance
- 4% - fire
- 4% - poison control

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## Background Information on the 9-1-1 Service, Continued

### About 9-1-1 calls (continued)

The average distribution of 9-1-1 calls among the PSAPs is shown in this table.<sup>1</sup> The Department informed us that regional 9-1-1 boundaries were developed by call volume and emergency response service areas and not by population base.

PSAP	% of total calls
Bathurst	16%
Edmundston	7%
Fredericton	21%
Miramichi	6%
Codiac and RCMP "J" Division <sup>2</sup>	26%
Saint John	24%

### Trend analysis on 9-1-1 calls

This table shows the number of 9-1-1 calls handled over the years.

	2005	2004	2003	2002	2001	2000	1999
<b>Total 9-1-1 calls received</b>	139,638	148,651	151,025	146,540	136,741	146,274	114,003
<b>Calls received from cellular phones</b> (Departmental estimates)	47,477 <sup>3</sup> (34%)	47,426 (32%)	50,488 (33%)	at least 25%	Information not available		

Source: Departmental Annual Reports

Continued on next page

<sup>1</sup> Calculated by the Office of the Auditor General using figures provided by the Department for December 2005.

<sup>2</sup> The RCMP "J" Division was still processing 9-1-1 calls in the areas surrounding Moncton in December 2005.

<sup>3</sup> Calculated by the Office of the Auditor General using figures provided by the Department.

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## Background Information on the 9-1-1 Service, Continued

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<b>Funding for the 9-1-1 service</b>	<p>New Brunswickers pay for the 9-1-1 service via fees on their monthly telephone bill. There are two fees:</p> <ul style="list-style-type: none"><li>• “NB 9-1-1 Emergency Service” charge is a federally regulated fee for the 9-1-1 infrastructure, provided by Aliant. This fee has been charged since the introduction of the 9-1-1 service. It has changed over the years and is currently \$.29/month for landline phone services and \$.25-.50/month for cell phone services. This fee is used to fund telephone infrastructure costs; no portion is remitted to the province.</li><li>• “NB 9-1-1 Service Fund” is provincially regulated. The purpose of the fee is to finance the 9-1-1 service and the required improvements. The fee was introduced in November 2005 and is \$.53/month for each outgoing capable telephone line. The Department estimated that the fee will generate \$4 million annually, of which \$1.5 million will be paid to the PSAPs. Prior to November 2005, the Department of Public Safety funded the 9-1-1 Bureau (staff and administration), the provincial policing service contract funded the RCMP “J” Division PSAP for 9-1-1 services, and municipal property taxes funded the other PSAPs (call centres).</li></ul>
<b>Improvements to the 9-1-1 service</b>	<p>Publicly announced improvements to the 9-1-1 service included the following:</p> <ul style="list-style-type: none"><li>• developing and implementing standards for service delivery and training of staff in the PSAPs</li><li>• developing quality assurance methods that will make sure the 9-1-1 service is meeting the needs and expectations of New Brunswickers</li><li>• enhancing technology</li><li>• educating the public on the proper use of 9-1-1</li><li>• assigning call-taking responsibilities regionally to the six existing municipal PSAPs to replace the RCMP “J” Division’s call-taking responsibilities, and</li><li>• developing and implementing regional fire dispatch and improvements so that fire services can communicate with each other on the scene.</li></ul>

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## Background Information on the 9-1-1 Service, Continued

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**Parties involved with delivering emergency services**

In addition to the Department of Public Safety that is responsible for providing the 9-1-1 service, it takes many different parties having specific responsibilities to properly serve an emergency call. Delivering emergency services requires the cooperation and involvement of several government departments, municipalities, public and private corporations, and volunteers in their communities. Some of them are listed here:

***government departments***

- Health is responsible for providing ambulance services.
- Local Government is responsible for providing policy direction and funds for fire services in local service districts.
- Transportation is responsible for proper road signage, mile markers and safe roads.
- Federal - *Ministry of Public Safety and Emergency Preparedness Canada* is responsible for the RCMP, who responds in rural areas and to highway situations.

***municipalities***

- Municipalities are responsible for police and fire services.

***corporations***

- Aliant provides the infrastructure for the 9-1-1 service in our province.
- Telecommunication companies provide landline and wireless phone services to individuals and businesses.

***volunteers***

- There are over 150 volunteer fire departments in New Brunswick.<sup>4</sup>

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*Continued on next page*

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<sup>4</sup> Source = Internet – Department of Public Safety – Office of the Fire Marshal

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## Background Information on the 9-1-1 Service, Continued

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### Committee work contributing to 9-1-1

Committees that meet regularly help different parties communicate, cooperate and coordinate their efforts to provide effective services. 9-1-1 Bureau staff members participate in the following committees:

#### *Provincial*

- PSAP Committee
- Emergency Services Communication Committee
- Regional Fire Dispatch Committee
- Standards Development Committee
- Steering Committee
- Private Roads Committee
- Geo-referenced Civil Address Data Base (task group)
- Geographic Information Management Advisory Committee

#### *Inter-provincial*

- Atlantic Canada E-9-1-1 Regional Council

#### *National*

- National PSAP Working Group
- The Association of Public-Safety Communications Officials
- CRTC<sup>5</sup> Interconnection Steering Committee

#### *International*

- National Emergency Number Association (USA)
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<sup>5</sup> Canadian Radio-Television Telecommunications Commission

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## Department's Actions on Issues Identified by Reviews

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**In this section** The purpose of this section is to provide information on how the Department has responded to issues identified by reviews of the 9-1-1 service. This section contains the following topics:

- recent reviews of 9-1-1
  - coroner's inquest
  - internal review
  - annual audits
  - action on recommendations, and
  - 9-1-1 governance committee needed.
- 

**Recent reviews of 9-1-1** Since the completion of its implementation in 1997, the 9-1-1 service has undergone the following reviews. Each review resulted in recommendations for improving the 9-1-1 service.

- The Office of the Comptroller and Aliant jointly conducted annual audits of 9-1-1 for the first seven years (1998 – 2004).
- The Coroner's Office reported on the results of an inquest done in 2003, where 9-1-1 had been called.

The internal review of the 9-1-1 service and dispatch systems, done cooperatively by the departments of Public Safety and Health and Wellness, was announced in 2002 and completed in October 2004.

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**Coroner's inquest** We reviewed the annual reports of the Chief Coroner for the past five years (2001 to 2005). We are reporting the most significant reference to 9-1-1 - the Coroner's inquest done in July 2003. (The deceased collapsed while playing hockey in an arena in April 2002.) The following information was taken from the annual report.<sup>6</sup>

*"At the time he collapsed, no regular phone line (land line) was available for use anywhere in the arena. In large part, this inquest dealt with the structure of the 9-1-1 system and the nature of emergency response provided in this case. The jury concluded that the public can be confident in the Enhanced 9-1-1 System that serves the communities of New Brunswick and made the following recommendations. ..."* Eight recommendations were made to various parties; two were addressed to the Department's 9-1-1 service.

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<sup>6</sup> NB Chief Coroner's Annual Report 2003-04 (pages 47-56)



## Department's Actions on Issues Identified by Reviews, Continued

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**Internal review** The subject of the internal review, done cooperatively by the departments of Public Safety and Health & Wellness, was the 9-1-1 service and dispatch systems. Several issues were identified by stakeholders during the internal review. Some of the issues related specifically to the 9-1-1 service while others were relevant to the service but outside of its mandated responsibilities.

We saw documentation indicating that a report on the internal review would be prepared in November 2003, and we saw evidence of significant work towards producing a report. We also saw a draft report dated December 2003 that appeared almost complete. We thought it was comprehensive, well written and organized. It included comments from various stakeholders. It contained both challenges and recommendations, including recommendations from the Coroner's inquest and the annual audits. We also saw documentation of additional research done in 2004.

The Department informed us that a final report on the internal review was not prepared. Rather, they took the information, summarized the findings into five issues and proposed enhancements, and presented them to the Executive Council.

Improvements to the 9-1-1 service were publicly announced as explained in the section - Background Information on the 9-1-1 Service.

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**Annual audits** The audit report for 2004, prepared by Aliant Inc. and Office of the Comptroller contains the following statements.

- **"The objective of the audit** is to provide assurance that the PSAP Centres comply with enabling legislation, administration and *Operating Procedure Directives* associated with the management and processing of 9-1-1 calls."
- The **audit opinion** states, "Based on our assessment of the results of the Compliance Self-Assessment questionnaires and our analysis of other data; we are satisfied that the overall risk for non-compliance with the *Operating Procedures Directives* is Low; and that there has been no significant deviation from 2003."

The report contained five recommendations. One of the five involved all recommendations made in the previous six years that had not been acted upon. The audit report contained a table summarizing the status of all prior recommendations. It showed that 31 of the 47 recommendations had been addressed.

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*Continued on next page*

## Department's Actions on Issues Identified by Reviews, Continued

### Action on recommendations

The table below shows the number of recommendations made by the three reviews and the action taken by the Department. We determined the status of action on each recommendation based on our understanding of the Department's work in addressing the issue. (The Department informed us that the findings from the internal review were summarized and presented as five key issues. For consistency in the presentation of our observations, we refer to twenty recommendations from the internal review documentation.) The following comments will help with understanding the information in the table.

- *Applicable recommendations* – Not all of the recommendations from the Coroner's inquest and the internal review applied solely to the 9-1-1 service. The Coroner's inquest made eight recommendations to various parties but only two were directed to the 9-1-1 service. The subject of the internal review was the 9-1-1 service and dispatch systems; therefore some recommendations were outside of the 9-1-1 service's mandate. Only issues and recommendations that the 9-1-1 service is responsible for are included in the table. Also, the internal review incorporated issues from the other reviews; in the table the issues are classified according to the original source.
- *Addressed* - issues that were completely or substantially addressed.
- *Being addressed* - issues that the Department is actively working on.
- *Will be addressed* - issues that the Department has considered and intends to address, but has not yet made significant progress.
- *Will not be addressed* - issues that the Department does not intend to address.

	Coroner's inquest 2003	Internal review 2004	Annual audit	
			2004	1998-2003
<b>Applicable recommendations</b>	<b>2</b>	<b>20</b>	<b>5</b>	<b>47</b>
<b>Addressed</b>	-	4	-	31
<b>Being addressed</b>	1	13	3	Information not included in 2004 report.
<b>Will be addressed</b>	-	3	1	
<b>Will not be addressed</b>	1	0	1	

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## Department's Actions on Issues Identified by Reviews, Continued

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### 9-1-1 governance committee needed

The internal review identified other significant issues that are outside of the Bureau's 9-1-1 service responsibilities; and therefore, the publicly announced improvements did not address the issues. One example follows.

**Governance structure** - As we noted earlier, there are many parties involved with delivering emergency services. The internal review documentation indicated a need for more coordination of initiatives taken by the parties involved with delivering emergency services. It noted that some initiatives are interrelated and may have an impact on effective operations of 9-1-1 service. It also noted that while the PSAP committee was effective in handling operational issues, a different forum was needed for strategic issues. And, the internal review documentation suggested the establishment of a new governance model.

We support the idea for a governance committee.

#### **Recommendation:**

***The Department should take the lead to establish a cross-functional, cross-jurisdictional governance committee to provide strategic direction to the 9-1-1 service and oversee the coordination of related services.***

#### **Departmental response:**

*DPS agrees to the creation of a cross-functional, cross-jurisdictional governance committee. A number of committees (i.e. Regional Fire Dispatch Steering Committee, Emergency Service Communications Committee, PSAP Management Committee, and Operating Procedures Directives Review Committee) have been established and these committees need to complete specific tasks before an integrated one would be beneficial to the program or its stakeholders. It is anticipated that a cross-jurisdictional governance committee will be established in 2007/08.*

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## Positive Observations

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**In this section** The purpose of this section is to present our significant positive observations on the 9-1-1 service.

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**Positive observations on 9-1-1** We observed many positive features in the 9-1-1 service. Our significant observations are listed here.

- *The 9-1-1 service compares well to other Canadian jurisdictions.* (For more information on this, see section: Scope of Our Work - Rationale for our decision not to audit.)
- *The internal review of the 9-1-1 service and dispatch systems was comprehensive.* (For more information on this, see section: Scope of Our Work - Rationale for our decision not to audit.)
- *A Coroner's inquest in July 2003 reported favourably on the Enhanced 9-1-1 service.* (For more information on this, see section: Department's Actions on Issues Identified by Reviews - Coroner's inquest.)
- *Audits of 9-1-1 were conducted annually for the first seven years (1998 - 2004).*
- *The Department is actively enhancing the 9-1-1 service, as a result of the reviews.* The Department has an implementation plan for the required improvements, which is reviewed and updated quarterly.
- *Staff members from the 9-1-1 Bureau serve on several committees* with various stakeholders and also participate in inter-provincial, national and international committees. (For more information on this, see section: Background Information on the NB 9-1-1 Service - Committee work contributing to 9-1-1.)
- *Legal agreements include a provision to audit.* We saw several legal agreements (some in the draft phase) including those with the PSAPs and those relating to the new monthly *NB 9-1-1 Service Fund* fee, and we were pleased to see that the agreements include the provision to audit.
- *The service appears organized* with documented budgets, operating plans, manuals and terms of reference for various committees.

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## Areas for Improvement

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**In this section** The purpose of this section is to present our significant observations in areas of the 9-1-1 service where we feel improvements could be made. This section contains the following topics:

- legislated authority to regionalize fire dispatch is questioned
  - enforcement is lacking
  - no auditors appointed
  - *NB 9-1-1 Service Fund* needs an audit plan
  - contract with Aliant expired in 2004, and
  - 9-1-1 performance reporting is needed.
- 

**Legislated authority to regionalize fire dispatch is questioned**

*We questioned whether the Department has legislated authority to regionalize fire dispatch as part of the 9-1-1 service.* One of the publicly announced improvements to 9-1-1 is to regionalize fire dispatch. However, dispatch of emergency service providers is outside of the legislated mandate for the 9-1-1 service. As explained in a Department document dated 2002, *"The current 911 system deals with taking 911 calls – it does not address the actual dispatch of emergency resources. The scope of the service is to receive calls and transfer the call to one emergency service – either police, fire, ambulance or poison control. The legislation, policy and operations do not include the dispatch of these resources."*

We presented this issue to the Department, questioning whether they had legislated authority to regionalize fire dispatch.

The Department told us that they would be providing only the infrastructure for regional fire dispatch. The Department informed us that they had a legal opinion stating that they had legislated authority to do so. Although we requested a copy of the legal opinion, it was not provided to us.

The Minister's speaking notes for a meeting with fire chiefs and police chiefs on improvements to the 9-1-1 system (on October 19<sup>th</sup>, 2004) state, *"With a Regional Fire Dispatch model, the six remaining PSAPs will now take all fire calls and dispatch all of them in a consistent way where ever the call originates in New Brunswick."* This statement suggests more to us than providing only the infrastructure for regional fire dispatch. At the end of our work, our understanding of the Department's intentions to regionalize fire dispatch was unclear.

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## Areas for Improvement, Continued

**Legislated authority to regionalize fire dispatch is questioned (continued)**

***Recommendation:***

*The Department should make a clear public statement on their intentions for the regionalization of fire dispatch and ensure that they have legislated authority to perform their intentions.*

***Departmental response:***

*Every opportunity is taken when speaking to stakeholders to address the provision of infrastructure for regional fire dispatch. As well DPS has approached legal services to further clarify legislated authority.*

**Enforcement is lacking**

***There are no enforcement actions when PSAPs do not comply with the operating procedures.*** The annual audits reported observations of non-compliance with the *Operating Procedure Directives*. During our work, we observed that the training requirements and the back-up requirement (stated in the *Operating Procedure Directives*) were not met by some of the PSAPs. There could be serious ramifications, involving the safety of individuals, if the 9-1-1 procedures are not followed.

Typically, an enforcement policy describes the sanctions exercised to bring about compliance with the procedures and states the penalties of not complying. Documented enforcement procedures usually specify the roles and responsibilities of the individuals involved, along with the timing of actions. The Department does not have an enforcement policy for the 9-1-1 service and does not have documented procedures regarding enforcement.

***Recommendation:***

*The Department should establish an enforcement policy, with appropriate procedures, to deal with situations when PSAPs do not comply with the operating procedures.*

***Departmental response:***

*As part of the development of PSAP operational standards, procedures are also to be established as to the process followed in the event of non-compliance, or the inability to meet, operational standards.*

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## Areas for Improvement, Continued

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### No auditors appointed

*Currently there are no appointed auditors; the 9-1-1 service had been audited annually during its first seven years of operations.* The last audit report was issued to the Department in September 2004. That report, like the preceding ones, provided recommendations to the Department for improving 9-1-1 operations. The 2004 audit report made the following statement on future audit services, *"It is our view that this type of objective review should be continued in the future; and that the audit role should be expanded to provide an assessment of the operations efficiency, effectiveness and accountability for delivery of the NB 9-1-1 service to the public."*

The internal review documentation had a similar comment that operational audits should be conducted on the PSAPs and dispatch centres so that concerns are dealt with in a timely fashion.

Since the last audit, there have been significant changes to the 9-1-1 service, such as expanding the boundaries of the six PSAPs. An audit could identify new uncontrolled risks resulting from these changes, if any exist. While the Department has auditing provisions in its agreements with the PSAPs, as of April 2006 auditors had not been appointed.

#### ***Recommendation:***

*The Department should appoint auditors for conducting regular operational audits on the PSAPs.*

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

*Existing agreements currently identify an audit process to be conducted at least annually based on detailed standards. Once these operational standards are established, it is planned that auditors will be appointed to observe, measure, report and make recommendations accordingly.*

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## Areas for Improvement, Continued

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**NB 9-1-1  
Service Fund  
needs an audit  
plan**

*A formal audit plan has not been established for the new NB 9-1-1 Service Fund. While the Department has auditing provisions in its agreements for collecting and remitting the monthly fee to the Province, an auditing process has not been established to ensure that the fee is remitted for all telephone subscribers. An audit plan would include details such as the appointment of an auditor, the frequency of auditing, the population to be tested and the procedures to be conducted.*

***Recommendation:***

*The Department should formalize an audit plan for the new NB 9-1-1 Service Fund.*

***Departmental response:***

*Existing agreements and regulatory amendments will provide for an audit of the NB 9-1-1 Service Fund. Upon the advice of the Office of the Comptroller, it is planned that a detailed audit plan will be developed.*

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**Contract with  
Aliant expired  
in 2004**

*A new contract with Aliant has not been signed. Aliant provides the infrastructure for the 9-1-1 service in our province. The contract with Aliant expired in 2004. As of April 2006, a new contract had not been signed.*

***Recommendations:***

*The Department should make securing a legal agreement with Aliant a priority and have a new contract signed.*

*The Department should have a process to ensure legal agreements are signed on a timely basis.*

***Departmental response:***

*Prior to the expiry of the existing service agreement both the Department of Public Safety and Aliant Telecom Inc. were aware of the expiry deadline. There was an agreement between the two parties that services would be continued under the terms and conditions of the existing agreement until such time as a new agreement was ratified. Discussions and negotiations of a draft agreement supplied by Aliant Telecom Inc. in February 2006 are ongoing and are planned to be finalized this fiscal year.*

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## Areas for Improvement, Continued

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**9-1-1  
performance  
reporting is  
needed**

*Procedures have not been established to measure and report on the effectiveness of the 9-1-1 service.* The Department's Annual Report for 2005 does not provide goals for the 9-1-1 service or performance indicators to reflect the success of the service.

***Recommendations:***

*To measure the effectiveness of the 9-1-1 service, the Department should establish goals, performance indicators and monitoring procedures for evaluating performance.*

*To provide better accountability to the public, the Department should report on the performance of the 9-1-1 service in its annual report.*

***Departmental response:***

*Outcomes, goals and standards are being developed with the NB 9-1-1 service to evaluate performance.*

*Each year the Department of Public Safety publishes and submits to the Legislature its Annual Report. As part of the reporting process, the NB 9-1-1 Bureau submits a program update which highlights the actions and activities of the Branch. This public process will continue each year.*

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## Conclusion

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**In this section** The purpose of this section is to provide a brief review of the contents of the chapter. And, we end the chapter by noting how the Department and the Legislative Assembly can help maintain and improve the 9-1-1 service.

This section contains the following topics:

- chapter summary
  - what the Department can do, and
  - what the Legislative Assembly can do.
- 

**Chapter  
summary**

*"The public's expectations of an emergency response system are relatively high and failure of such an essential service is unacceptable."*<sup>7</sup>

We examined the 9-1-1 service because we agree with the statement and we believe government should be accountable for the safety of the people of New Brunswick.

While we did not perform an audit, we chose to report on our work with the 9-1-1 service because we believe it is useful information to the Legislative Assembly for holding the government accountable.

- To improve general understanding of New Brunswick's emergency 9-1-1 service, we reported background information on the service. We explained that while the 9-1-1 service is an integral component of the emergency response system, it is only one of several components that lead to the final response.
  - To show the extent to which the 9-1-1 service has been examined in recent years, we identified the past reviews and reported the Department's action on the issues identified.
  - To recognize good performance, we reported our significant positive observations on the 9-1-1 service; and
  - To help the Department further improve the service, we reported the areas for improvement that we observed.
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<sup>7</sup> Internal review documentation.

## Conclusion, Continued

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**What the  
Department  
can do**

We hope that the Department will

- take action on our recommendations and appropriately address the areas for improvement that we observed,
  - continue implementing the publicly announced improvements, and
  - continue implementing the outstanding recommendations from the Coroner's inquest and the annual audits.
- 

**What the  
Legislative  
Assembly can  
do**

We hope the Legislative Assembly will use the information provided to hold the Department accountable for implementing

- the promised improvements to the 9-1-1 service,
  - the recommendations from the Coroner's inquest and the annual audits, and
  - our recommendations.
-

# Chapter 7

## Department of Business

## New Brunswick

## Community Economic

## Development Agencies

### Contents

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# Department of Business New Brunswick Community Economic Development Agencies

## Background

7.1 In their 2004/05 Annual Report, Business New Brunswick (BNB) identifies Community Economic Development as one of nine key result areas for the Department. Its goals in this area are:

- to continue the leadership role, within government, in community economic development, and
- to support the implementation of Community Economic Development Agency action plans in accordance with provincial and regional priorities.

7.2 Community Economic Development Agencies (CEDAs) are not-for-profit corporations created to work with the regional business community in areas of strategic importance to the funding partners. BNB assists the CEDAs in developing strategic plans and implementing integrated work plans.

7.3 There are fifteen CEDAs in New Brunswick, each governed by a board of directors. The members of the board of directors are appointed by the federal, provincial and municipal governments. The members represent the different business sectors in the communities as well as the different regions covered by the CEDAs.

7.4 In the past, these agencies were known as Regional Economic Development Corporations (REDCs). They became Community Economic Development Agencies following a restructuring in 2002. According to departmental staff, the main differences between the former REDCs and the CEDAs are:

- all agencies are now required to have a strategic plan, and
- the boards of directors of CEDAs are made up of local business leaders, instead of elected officials.

**7.5** CEDAs do not provide funding to businesses. Instead they provide a number of programs and services to assist organizations, such as:

- small business counselling;
- business plan development;
- information on available financial assistance, markets, transportation, wage rates, and taxes;
- facilitate application for financial assistance;
- export development and investment information; and
- assistance in locating real estate to rent or purchase.

**7.6** Each CEDA has a staff to carry out its day-to-day activities. The staff are not employees of the Province and are not part of the civil service. Exhibit 7.1 provides the number of board members and staff by CEDA.

*Exhibit 7.1*

*Board members and employees by agency for 2004/05*

<b>CEDA</b>	<b>Number of Board members</b>	<b>Number of Employees</b>
Enterprise South East	11	5
Enterprise Grand Falls	12	5
Enterprise Greater Moncton	20	11
Enterprise Carleton	12	5
Enterprise Central	12	4
Enterprise Chaleur	12	7
Enterprise Charlotte	13	4
Enterprise Fredericton	15	8
Enterprise Fundy	15	6
Enterprise Kent	18	5
Enterprise Madawaska	12	5
Enterprise Miramichi	15	6
Enterprise Peninsula	15	6
Enterprise Restigouche	13	9
Enterprise Saint John	16	14

## Scope

**7.7** During the year, we conducted a preliminary review in Business New Brunswick to learn more about Community Economic Development Agencies. The purpose of this review was to determine whether to conduct an audit. As a result of our preliminary findings,

we decided not to conduct a full audit at this time. However, we thought it would be useful to provide the Legislative Assembly with the information we gathered on CEDAs, and to bring forward the observations we made as a result of our work. This is consistent with section 13(1) (a) of the Auditor General Act which states “The Auditor General shall report annually to the Legislative Assembly on the work of his office.”

## **Summary of recommendations**

**7.8** Although we did not conduct an audit of Community Economic Development Agencies, our preliminary review did result in the following recommendations to the Department:

- We recommended the Department work together with ACOA and the CEDAs to establish a standard financial statement reporting format.
- We recommended, as an annual exercise, the Department prepare a reconciliation of amounts paid by all government departments to the amount of revenue as reported in the financial statements of the agencies, and obtain explanations as required to ensure the agencies are accurately reporting revenue.
- We recommended the Department work together with ACOA and the CEDAs to establish a standard annual reporting format.
- We recommended the Department establish a procedure to ensure all CEDA reporting documents are properly filed for reference, especially those documents required for the purpose of releasing payments to agencies.
- We recommended BNB require applicants to submit a brief description of the actual outcomes in relation to the expected outcomes of the initiatives under the Community Economic Development Fund.

## **Funding**

**7.9** Community Economic Development Agencies receive a significant portion of their core operational funding from the Atlantic Canada Opportunities Agency (ACOA) and BNB under a funding agreement that established a 70/30 split. Additional core operational funding comes from participating municipalities.

**7.10** Core operational funding is allocated to each CEDA based on a per capita funding formula. A three-year funding agreement was

established between ACOA and BNB for the period of 2002/03 to 2004/05, and it was extended for an additional year to 2005/06.

**7.11** In addition to the core operational funding, CEDAs also receive project-specific funding or other grants from various organizations, such as the Regional Development Corporation and the Department of Training and Employment Development (now the Department of Post-Secondary Education and Training), as well as private businesses and other federal agencies.

**7.12** In order to understand the total amount of funding provided to each CEDA in 2004/05, we started by summarizing the revenue reported by the CEDAs in their financial statements by core operational funding partner (ACOA, BNB, municipalities) and grouped all other revenue as “Other Funding”. This analysis is found in exhibit 7.2.

*Exhibit 7.2*

*Core funding by partner and other funding in 2004/05 based on financial statements*

CEDA	Core Funding			Other Funding	Total Agency Revenue per Financial Statements
	Federal/Provincial Funding Agreement		Municipal		
	ACOA	BNB			
Enterprise South East	\$ 173,700	\$ 74,443	\$ 34,565	\$ 135,039	\$ 417,747
Enterprise Grand Falls	169,920	72,824	27,876	281,435	552,055
Enterprise Greater Moncton	252,538	98,104	558,665	590,361	1,499,668
Enterprise Carleton	169,829	72,784	5,304	12,385	260,302
Enterprise Central	169,796	82,571	9,082	90,013	351,462
Enterprise Chaleur	178,740	76,603	58,826	465,569	779,738
Enterprise Charlotte	188,462	72,883	11,852	195,343	468,540
Enterprise Fredericton	200,319	86,097	198,143	607,924	1,092,483
Enterprise Fundy	183,597	79,584	16,239	28,182	307,602
Enterprise Kent	174,360	74,726	23,515	287,573	560,174
Enterprise Madawaska	169,748	72,766	96,101	706,227	1,044,842
Enterprise Miramichi	153,161	76,437	54,500	442,029	726,127
Enterprise Peninsula	192,225	82,382	44,300	809,510	1,128,417
Enterprise Restigouche	173,340	74,288	27,542	783,010	1,058,180
Enterprise Saint John	233,765	100,185	550,000	1,378,366	2,262,316
Total	\$ 2,783,500	\$1,196,677	\$1,716,510	\$ 6,812,966	\$12,509,653

Funding by partner as a

% of total core funding

Federal-Provincial Sharing

49%

21%

30%

70%

30%



**7.13** This exhibit also shows that BNB met its 30% commitment under the federal-provincial agreement, and provided 21% of total core operational funding overall. In total, BNB is the smallest contributor to core operational funding of the three partners. However, for eleven of the fifteen CEDAs, BNB is the second largest contributor to core operational funding.

**7.14** Our analysis also shows that the CEDAs received \$6,812,966 in other funding from various provincial government departments and agencies, the federal government and other contributors.

*Exhibit 7.3*

*Payments to CEDAs by various provincial departments in 2004/05*

CEDA	BNB	TED	AFA	FCS	IA	TP	RDC	Misc. amounts	Total
Enterprise South East	\$ 37,347	\$ 85,130	-	-	-	-	-	-	\$ 122,477
Enterprise Grand Falls	32,370	101,407	\$ 10,000	-	-	-	-	-	143,777
Enterprise Greater Moncton	120,789	247,545	-	-	-	-	-	-	368,334
Enterprise Carleton	37,812	57,358	-	-	-	-	-	\$ 60	95,230
Enterprise Central	58,423	2,591	-	-	-	-	-	-	61,014
Enterprise Chaleur	35,055	77,431	-	-	-	\$ 1,676	\$ 234,310	-	348,472
Enterprise Charlotte	30,966	54,991	-	-	-	-	-	-	85,957
Enterprise Fredericton	89,154	65,197	-	-	-	-	35,322	1,169	190,842
Enterprise Fundy	55,083	-	-	-	-	-	-	-	55,083
Enterprise Kent	15,784	81,896	-	-	-	-	29,440	-	127,120
Enterprise Madawaska	113,367	126,288	-	-	-	-	50,000	300	289,955
Enterprise Miramichi	6,750	185,871	-	-	-	-	-	-	192,621
Enterprise Peninsula	124,625	143,978	34,950	-	-	-	234,691	900	539,144
Enterprise Restigouche	47,495	279,010	-	\$ 55,748	-	-	62,614	40	444,907
Enterprise Saint John	160,249	465,351	-	-	\$ 30,000	-	-	230	655,830
<b>Total</b>	<b>\$965,269</b>	<b>\$1,974,044</b>	<b>\$44,950</b>	<b>\$55,748</b>	<b>\$30,000</b>	<b>\$1,676</b>	<b>\$646,377</b>	<b>\$2,699</b>	<b>\$3,720,763</b>

Note: Amounts obtained as a result of extraction from provincial financial records for the fiscal year 2004/05. The amount of funding provided by BNB reflects amounts *in addition* to core funding identified in exhibit 7.2.

Legend:

BNB	Department of Business New Brunswick
TED	Department of Training and Employment Development (now the Department of Post-Secondary Education and Training)
AFA	Department of Agriculture, Fisheries and Aquaculture
FCS	Department of Family and Community Services
IA	Department of Intergovernmental Affairs
TP	Department of Tourism and Parks
RDC	Regional Development Corporation

**7.15** We then prepared an analysis of payments other than core operational funding payments made to the CEDAs by all provincial departments in 2004/05, to determine how much of the CEDAs' \$6,812,966 other funding was provided by the Province. This analysis can be found in exhibit 7.3.

**7.16** This analysis shows that \$3,720,763 out of a total of \$6,812,966 in other funding came from the Province. We were then able to mathematically determine that the CEDAs other funding from non-provincial sources was \$3,092,203. This analysis is found in exhibit 7.4.

**7.17** This analysis reports negative *Other Funding from Non-Provincial Sources* for both the Carleton and Fundy CEDAs. This occurred because the amount of revenue as reported by these CEDAs in their financial statements is less than what we expected based on our comparison to core operational funding and other payments by provincial departments. The negative value represents the amount required to reconcile known revenues to the amount of revenue reported in the CEDAs' financial statements.

*Exhibit 7.4*

*Operational funding by partner and other funding in 2004/05 based on financial statements*

CEDA	Total Other Funding	Other Provincial Funding	Other Funding Non-Provincial Sources
Enterprise South East	\$ 135,039	\$ 122,477	\$ 12,562
Enterprise Grand Falls	281,435	143,777	137,658
Enterprise Greater Moncton	590,361	368,334	222,027
Enterprise Carleton	12,385	95,230	<b>(82,845)</b>
Enterprise Central	90,013	61,014	28,999
Enterprise Chaleur	465,569	348,472	117,097
Enterprise Charlotte	195,343	85,957	109,386
Enterprise Fredericton	607,924	190,842	417,082
Enterprise Fundy	28,182	55,083	<b>(26,901)</b>
Enterprise Kent	287,573	127,120	160,453
Enterprise Madawaska	706,227	289,955	416,272
Enterprise Miramichi	442,029	192,621	249,408
Enterprise Peninsula	809,510	539,144	270,366
Enterprise Restigouche	783,010	444,907	338,103
Enterprise Saint John	1,378,366	655,830	722,536
<b>Total</b>	<b>\$ 6,812,966</b>	<b>\$ 3,720,763</b>	<b>\$ 3,092,203</b>

\* Note: The amount of *Other Provincial Funding* may or may not be accurate due to funding provided by BNB from the Community Economic Development Fund (CEDF) (discussed later in this report). We were unable to accurately determine the amount each agency was recording as revenue from the CEDF.

**7.18** In the case of Enterprise Fundy, the amount recorded as *Other Provincial Funding* is a payment from BNB to the CEDA in relation to the Community Economic Development Fund. Enterprise Fundy in turn paid the money to a client organization to complete their planned activities as per their CEDF application. Therefore,

although it appears as a payment to Enterprise Fundy, the CEDA did not record the funding as revenue since it redirected the funding to its clients for their project.

**7.19** As for Enterprise Carleton, the net value of revenues and expenditures related to special projects was recorded as a liability on the balance sheet of their 2004/05 financial statements. This method of accounting for special projects for CEDAs is unique. All other CEDAs record revenues and expenditures for special projects.

**7.20** Adopting a standard reporting format would improve the comparability and consistency of the financial statements for the CEDAs, improving their overall accountability.

### ***Recommendation***

**7.21 We recommended the Department work together with ACOA and the CEDAs to establish a standard financial statement reporting format.**

**7.22** The type of analysis demonstrated by exhibits 7.2 to 7.4 is simple to prepare, and could be used by the Department as a monitoring tool to support accountability.

### ***Recommendation***

**7.23 We recommended, as an annual exercise, the Department prepare a reconciliation of amounts paid by all government departments to the amount of revenue as reported in the financial statements of the agencies, and obtain explanations as required to ensure the agencies are accurately reporting revenue.**

**7.24** To do this, the Department may need to obtain a report of all payments to CEDAs from the Province's Office of the Comptroller.

**7.25** From this analysis of funding, we can calculate that the total funding provided to the CEDAs by the Province for the fiscal year ended 31 March 2005 was \$4,917,440 which was 39% of the CEDAs' total funding.

## **Expenditures**

**7.26** We prepared an analysis of the expenditures of the CEDAs for the year ended 31 March 2005 from their financial statements. This analysis is contained in exhibit 7.5.

**7.27** This analysis shows that the CEDAs spent \$12,273,503 of the \$12,509,653 they received in funding. The percentage of spending for each category was:

- Special projects                      45.2%
- Salaries                                      33.9%

- Office expenses 16.9%
- Travel expenses 2.4%
- Capital expenditures 0.8%
- Training 0.4%
- Vehicle expense 0.4%

**Exhibit 7.5**

Summary of expenditures by agency for the year 2004/05 \*

CEDA	Salary	Office	Training	Vehicle	Travel	Capital Expenditures	Special Projects/ Programs	Total
Enterprise South East	\$ 231,607	\$ 74,308	\$ 1,825	\$ -	\$ 31,323	\$ 7,091	\$ 59,939	\$ 406,093
Enterprise Grand Falls	211,939	51,626	-	7,467	7,205	-	256,820	535,057
Enterprise Greater Moncton	608,403	375,252	-	-	-	7,044	386,119	1,376,818
Enterprise Carleton	149,982	84,877	2,080	-	23,273	2,998	-	263,210
Enterprise Central	217,781	104,716	-	-	32,424	11,765	41,575	408,261
Enterprise Chaleur	244,850	96,003	10,834	-	19,020	3,397	407,235	781,339
Enterprise Charlotte	215,135	127,789	-	-	16,841	-	109,750	469,515
Enterprise Fredericton	415,268	133,187	1,561	-	12,310	8,793	539,291	1,110,410
Enterprise Fundy	184,552	68,000	3,674	-	29,743	-	(254)	285,715
Enterprise Kent	180,774	103,707	204	7,530	6,384	-	271,747	570,346
Enterprise Madawaska	297,772	111,788	6,014	20,113	5,393	4,222	465,836	911,138
Enterprise Miramichi	209,162	97,033	-	-	39,681	-	379,507	725,383
Enterprise Peninsula	282,633	199,788	5,878	-	43,810	-	595,972	1,128,081
Enterprise Restigouche	239,025	212,539	5,670	-	31,132	-	569,814	1,058,180
Enterprise Saint John	466,071	227,712	11,109	19,457	-	49,307	1,470,301	2,243,957
<b>Total</b>	<b>\$ 4,154,954</b>	<b>\$ 2,068,325</b>	<b>\$ 48,849</b>	<b>\$ 54,567</b>	<b>\$ 298,539</b>	<b>\$ 94,617</b>	<b>\$ 5,553,652</b>	<b>\$ 12,273,503</b>

\* Enterprise Saint John has a year end of December 31; therefore, we used figures from their December 31/04 financial statements.

## Reporting relationships

**7.28** As part of our preliminary review, and because the Province provided the CEDAs with \$4.9 million, we wanted to determine what reporting the CEDAs were required to provide to the Province.

**7.29** CEDAs are accountable to their funding partners. A CEDA framework document established the guidelines and underlying principles that govern the CEDA concept. The reporting requirements of CEDAs are set out in these guidelines. As part of the funding requirements, CEDAs must provide the following documents to BNB:

- three-year strategic plan (BNB must approve the plan);
- annual work plan;
- six-month progress report on the annual work plan with interim financial statements;
- annual report; and
- audited financial statements

**7.30** These reports are tools the Department uses to hold the agencies accountable for the funding they received. Once a CEDA sets a strategic direction, it must create annual work plans to identify what activities it will undertake in order to achieve the objectives in the strategic plan. Midway through the year, the CEDAs must submit a progress report on how they are doing in relation to their workplans. In fact, annual funding from BNB is tied to the workplans and progress reports. Funding is provided in two sums; 50% is provided with the submission of the workplan, while another 50% is provided once a six-month progress report is submitted. The annual report with financial statements allows the CEDA to highlight the year's overall activities and progress towards the goals and objectives set in the strategic plan.

## Review of reporting documents

### *Mid-year update*

**7.31** We reviewed the mid-year update for the year 2004/05 for a sample of three CEDAs to determine what type of information they are providing to BNB to reflect progress on the actions in their workplans. We found that all sampled CEDAs had identified planned actions as well as naming who was responsible for its achievement. (One of the three CEDAs included a target date for implementation.) All three indicated results of planned actions as at 30 September 2005. Here are some examples of the information provided on business counselling:

Planned Action	Result
1. Provide counselling to new and existing small and medium entrepreneurs	<ul style="list-style-type: none"> <li>• 89 field visits carried out by agency staff</li> <li>• 418 client office visits</li> </ul>
2. Provide 9 Business Basics sessions	<ul style="list-style-type: none"> <li>• 1 Business Basics session held to date, 11 participants</li> </ul>
3. Provide learning opportunity on tax regulations for business owners with a Revenue Canada session with the CBDC	<ul style="list-style-type: none"> <li>• 8 people attended CCRA session (target of 10).</li> </ul>

### *Financial statements and annual reports*

**7.32** We reviewed the 2004/05 annual reports, including financial statements, of all 15 CEDAs. We established criteria for adequate performance reporting based on the Province's annual report policy. We reviewed each annual report against these criteria. Our findings are summarized in exhibit 7.6.

**7.33** Highlights from our review:

- All reports contained an overview section or executive director's message.

- Annual reports focused solely on presenting positive outcomes.
- The majority of reports (67%) did not provide a clear account of the respective agency's goals/objectives.
- Annual reports had an average length of 30 pages, ranging from 10 to 57 pages.
- No reports contained variance analysis of results and financial position.
- Reporting of revenues on the income statement was inconsistent from agency to agency. Some reported by source, some by program, and some by both.
- The majority of reports (60%) did not provide a budget, and of those that did, none explained significant variances.

*Exhibit 7.6**Review of CEDA annual reports*

Criterion	Criterion met	
	Yes	No
1. Summary of the agency's mission/mandate, environment and products and services	13/15	2/15
2. Overview section, director message	15/15	0/15
3. Clear account of agency goals/objectives	5/15	10/15
4. Performance indicators are measurable	3/15	12/15
5. Provides information and advice on "program relevance"	14/15	1/15
6. Actual and budget information in summary form	6/15	9/15
7. Explanations are given for significant variances between actual and budget	0/15	15/15
8. Contains other aspects of financial performance	11/15	4/15
9. Financial information includes unqualified auditor's report, financial statements and notes	13/15	2/15
10. Analysis of results and financial position in comparison to performance targets, with explanations	0/15	15/15
11. Well organized, logical, and easy to read	15/15	0/15

**7.34** This review indicates that there are weaknesses in the annual reports of CEDAs.

**Recommendation**

**7.35** We recommended the Department work together with ACOA and the CEDAs to establish a standard annual reporting format.

**All documents**

**7.36** We also examined the documents provided to BNB by each CEDA for the year 2004/05 to determine if the reporting requirements identified previously were met. Our findings are found in exhibit 7.7.

*Exhibit 7.7**Results of testing of reporting requirements for the year 2004/05*

CEDA	Strategic Plan	Workplan	Mid-year update to workplan	Interim Financial Statements	Audited Financial Statements	Annual Report
Enterprise South East	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Grand Falls	Yes	Yes	No**	No**	Yes	Yes
Enterprise Greater Moncton	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Carleton	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Central	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Chaleur	Yes	Yes	Yes	No**	Yes	Yes
Enterprise Charlotte	Yes	Yes	No**	No**	Yes	Yes
Enterprise Fredericton	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Fundy	Yes	Yes	No**	No**	Yes	Yes
Enterprise Kent	Yes	Yes	No**	No**	Yes	Yes
Enterprise Madawaska	Yes	Yes	Yes	No**	Yes	Yes
Enterprise Miramichi	Yes	Yes	No**	No**	Yes	Yes
Enterprise Peninsula	Yes	Yes	Yes	No**	Yes	Yes
Enterprise Restigouche	Yes	Yes	Yes	Yes	Yes	Yes
Enterprise Saint John	Yes	Yes	No**	No**	Yes	Yes

*\*\* Although the information was not found at the Department, other corroborating support was obtained to indicate the agencies had prepared these documents.*

**7.37** We found that BNB had complete documentation (all six documents) on file for only six of the fifteen CEDAs. We discussed the issue with departmental staff, who indicated that the information was likely elsewhere in the Department and had not made it to the file, since many people work with the information. As a compensating test, we were able to obtain the missing documents from the CEDAs themselves, indicating that the information exists and is readily available. We believe this to be an indication of an issue with filing rather than with obtaining appropriate documentation from the CEDAs.

**Recommendation**

**7.38** We recommended the Department establish a procedure to ensure all CEDA reporting documents are properly filed for reference, especially those documents required for the purpose of releasing payments to agencies.

**7.39** For example, the Department could create a checklist of documents required to release a payment to a CEDA, and assign

responsibility to an individual to review the central file to ensure the necessary documents have been properly filed.

## Community Economic Development Fund

**7.40** The Community Economic Development Fund (CEDF) is a fund administered by BNB for the purpose of providing funding to CEDAs in order to support both strategic planning and business and entrepreneurship development as part of the implementation of their regional economic development plans. Payments to CEDAs would be included in the total for BNB in exhibit 7.3.

**7.41** Funding from the CEDF is allocated to each agency on a per capita basis. The allocation by CEDA, as well as the amount paid in 2004/05, is shown in exhibit 7.8.

*Exhibit 7.8*

*CEDF funding allocation by CEDA for 2004/05*

Agency	Allocated Amount	Actual Amount Paid
Enterprise South East	\$ 44,224	\$ 44,224
Enterprise Grand Falls	37,967	32,101
Enterprise Greater Moncton	67,833	67,833
Enterprise Carleton	37,812	37,812
Enterprise Central	75,637	43,793
Enterprise Chaleur	52,571	52,570
Enterprise Charlotte	38,195	38,195
Enterprise Fredericton	44,631	42,000
Enterprise Fundy	64,095	62,454
Enterprise Kent	45,316	45,316
Enterprise Madawaska	37,744	37,744
Enterprise Miramichi	51,931	47,551
Enterprise Peninsula	74,906	74,900
Enterprise Restigouche	43,627	42,520
Enterprise Saint John	71,855	71,855
<b>Total</b>	<b>\$788,344</b>	<b>\$ 740,868</b>

**7.42** Funding can be provided to CEDAs or directly to private companies. In the case of the latter, the respective CEDA would apply for funding on behalf of the client company. Regardless of the beneficiary, the amount is deducted from the CEDA's total allocation.

**7.43** In order to receive funding, the initiatives must meet the following criteria. They:

- must be identified as priorities in the strategic plan and be consistent with provincial priorities and policies;



- should demonstrate the extent to which the initiative contributes to increasing the global competitiveness of the Province's businesses and industry sectors through gains in productivity and efficiency;
- should be endorsed and/or supported by the sector, region or community financially or in kind; and
- should demonstrate the initiative will not proceed without assistance from the Fund because of location, scope, timing or risk.

**7.44** Should the cost of the project be less than anticipated, the balance must be returned to BNB.

**7.45** We tested 10% of 124 applications made during 2004/05. The monetary value of the projects we tested was \$150,232. We reviewed the applications to determine whether the criteria for each initiative were met, and whether the appropriate documentation was obtained. In all items tested, all documents were obtained and all criteria were met. We also found that in cases where the project costs were less than anticipated (which occurred in 25% of the applications we tested), there was evidence that the overage was refunded to the Department.

**7.46** We noted that the Project Evaluation Form (the application form with criteria) includes a section describing the expected outcomes resulting from the proposal. We inquired whether these expected outcomes are evaluated against actual outcomes, and found that they are not. It would be beneficial to require applicants to briefly describe the outcome of the initiative for which they received funding to ensure full accountability.

### ***Recommendation***

**7.47** We recommended BNB require applicants to submit a brief description of the actual outcomes in relation to the expected outcomes of the initiatives under the Community Economic Development Fund.

**7.48** The Department should assign this responsibility to an appropriate individual to ensure the information is collected and filed.

### ***Departmental response***

**7.49** The Department provided the following comments on our report and recommendations:

*[We were] pleased to see your recommendations and we generally agree that the operation and management of the Agencies will be improved if implemented.*

*[We] will ensure that these recommendations are discussed with our Partners at the earliest convenience.*

# Chapter 8

## Strengthening the Role of the Auditor General

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# Strengthening the Role of the Auditor General

## Introduction

8.1 In June, 2006, the government of the day issued its *Response to the Final Report and Recommendations* of the Commission on Legislative Democracy. That *Response* refers to the government's intention to strengthen the authority of the Auditor General to examine important issues of public management.

8.2 We decided that this would be an opportunity to provide our thoughts on strengthening the authority of the Auditor General. We recognize that the government position on the *Final Report and Recommendations* of the Commission on Legislative Democracy may change because of the recent change in government, however we believe that our recommendations are still valid and would result in a stronger mandate for the Auditor General.

## The *Response*

8.3 The references to the Auditor General that are contained in the *Response* are summed up in Initiative 16. It says:

*16. The authority of the Auditor General to examine important issues of public management will be strengthened.*

8.4 In the *Response*, the Auditor General is mentioned in three areas:

- legislature oversight of the Auditor General;
- financial guidelines, and
- value-for-money audits, with specific reference to governance.

8.5 Regarding the establishment of a Legislative oversight committee for the Auditor General, the *Response* says:

*Recently, Members of the Legislative Assembly favourably considered amending the role of the rarely-used Ombudsman Committee to be expanded to include review and oversight of the activities of all the Officers of the*

*Legislature. This includes the Auditor-General, Chief Electoral Officer, Ombudsman, Conflict of Interest Commissioner, Official Languages Commissioner and others. The new Standing Committee on Legislative Officers will reinforce the independence and authority of the Legislative Assembly and may play a role in the selection process for these positions in the future.*

**8.6** Having an oversight committee for our work would be useful, as long as the roles and responsibilities of the committee are clearly understood and documented. We would suggest this committee should have a mandate for such things as:

- reviewing the resources and budget of the Office;
- providing input into our annual work plan;
- considering potential changes to the *Auditor General Act*; and
- as stated in the *Response*, playing a role in the process of appointing the Auditor General.

**8.7** While the committee should have input into our work plan, the final determination of the work plan must remain with the Auditor General to ensure independence. Also, we assume that the existence of this committee would not affect our responsibility to report to the Legislative Assembly.

**8.8** Regarding the role of the Auditor General as it relates to financial guidelines, the *Response* says:

*We will enhance the role of the Auditor General by strengthening provincial financial guidelines. Appropriate measures will also be adopted to protect those who report the misappropriation of funds. Government will work with the Auditor General to ensure the protection of public servants, and all of those who deal with public funds, when a potential misappropriation has been identified and brought to light.*

**8.9** We are not quite sure what the reference in the *Response* to us playing a role in strengthening of financial guidelines means, however, if this is a role that the new government is interested in having us play, we welcome the opportunity to discuss it with them.

**8.10** We are also not sure what role we would play in ensuring the protection of public servants when a potential misappropriation has been identified, however we are also willing to discuss this with the new government if it is a position that they support.

**8.11** Regarding the role of the Auditor General as it relates to value-for-money auditing, the *Response* says:

*The Auditor General has a mandate to report on the value of money spent, procedural practices, and programs offered by government on behalf of the people of New Brunswick. We will take the appropriate actions to heed the comments of the Auditor General and his office. For instance, the following are areas that have been identified as requiring attention, and upon which the government is taking action.*

**8.12** We appreciate that the *Response* stated the government's intention to take appropriate actions to heed our comments. We only make recommendations that we believe can be implemented and they are intended to improve the programs that government provides to the people of New Brunswick. When formulating our recommendations we will endeavour to include suggestions about how they can be implemented wherever it is appropriate to do so.

**8.13** One area specifically mentioned in the *Response* is Crown agency governance.

*The Auditor General's Office has also stated that better Crown agency performance and protection of the public interest would be facilitated by improvements in how Crown agencies are governed. New Brunswick has made continual improvements in the area of Crown agency governance. While best practices are already being put in place across a number of New Brunswick's agencies, board and commissions, there is no question that the pursuit of improvement in the areas of accountability and effective ABC performance will continue.*

*In particular, there is a need to ensure that there is clear understanding between the Crown agency boards and government about both the mandate of the boards and the performance expectations of government. It also needs to be understood that government will be monitoring board performance in relation to compliance with legislation and stated performance objectives.*

*Beginning with the most significant ABCs, and in particular the major Crown Corporations, Memorandums of Understanding (Shareholder Agreements) between the ABC and sponsoring departments will be established.*

*These MOUs will clarify the mandate of the ABC and the performance expectations of government. They will also provide a framework for accountability with respect to the achievement of results.*

**8.14** We continue our work on governance in government organizations. Good governance practices result in better functioning organizations. We are also convinced that weaknesses in governance practices result in costs that could have been avoided. We are pleased that the *Response* specifically addresses the importance of good governance, and hope that the new government will be committed to strengthening governance practices. We would be willing to provide input to the government on improving governance practices. We would like to see the government clearly assign the responsibility for completing this governance work, and establish some target dates that will allow progress to be monitored.

**8.15** We believe that the weaknesses that still exist in governance in various government organizations are evidence of the need to establish a governance centre of excellence within the civil service. In Volume 1 of the 2003 Report of the Auditor General, we recommended:

*The Executive Council Office's coordinating role should be expanded to include providing guidance and support to Crown agencies in some or all of the following areas:*

- *setting and periodically updating governance standards for use by all New Brunswick Crown agencies;*
- *monitoring compliance with those governance standards;*
- *providing guidance to Crown agencies in the application of those governance standards;*
- *providing governance training opportunities for Crown agency directors;*
- *communicating the shareholder's perspective, government priorities, and emerging issues to Crown agencies;*
- *providing independent advice to Cabinet, Ministers, Boards and/or CEOs on Crown agency mandates, direction, plans, and performance, as requested; and*
- *identifying and coordinating major Crown agency policy issues and projects as required.*

**8.16** We believe this recommendation is still valid.

## Ways to strengthen the authority of the Auditor General

**8.17** We therefore support all of the initiatives related to the Office of the Auditor General that are contained in the *Response*, and we encourage the new government to also support these initiatives.

**8.18** Returning to the summary initiative number 16, which was to strengthen the authority of the Auditor General to examine important issues of public management, we considered how the authority of the Auditor General could be strengthened in a way that helps to strengthen government accountability. To compile a list of suggestions, we considered:

- issues we have raised in past audit reports;
- challenges we have faced in completing audits;
- discussions with other legislative auditors;
- the phase 2 report of the federal *Commission of Inquiry into the Sponsorship Program and Advertising Activities* (Gomery commission) entitled *Restoring Accountability: Recommendations*; and
- the document entitled *Parliamentary Oversight – Committees and Relationships: A Guide to Strengthening Public Accounts Committees* produced by CCAF-FCVI Inc., a research and education foundation that focuses on the public sector.

**8.19** Our suggestions for ways to strengthen the authority of the Auditor General, in addition to the specific items mentioned in the *Response* document, are as follows:

- The *Auditor General Act* should be updated, to add clarity and to legislate the measures that would strengthen our authority and independence.
- There needs to be an independent method for us to put proposed changes to the *Auditor General Act* in front of the Legislative Assembly.
- An audit committee comprised of members of the Executive Council should be established. The purpose of this committee would be to receive a briefing from the Auditor General about the audit of the Province's financial statements, including
  - any issues that arose and how they were resolved;
  - any issues identified that will affect the next year's audit; and
  - comments about the variance analysis and other discussions and analysis attached to the financial statements.



- On the occasion of a change in government, there should not be an external party brought in to examine accounting issues. Operating policies, management, or operational issues could be the subject of an external review, however financial statement policies and issues should only be handled by our Office, since we are the independent auditor of the financial statements.
- We should have the right to attend any meeting of the board or any committee of the board of any Crown corporation for which we are not the financial statement auditor, if the external auditor of the corporation will be attending that meeting.
- We should have the legal right to cease the audit of a government agency, board or commission for which we have been appointed auditor by legislation if we feel that there is no longer reason to perform an audit.
- Before being appointed in legislation as the auditor of a government agency, board, commission or Crown corporation, or before being legally required to audit any other statement, we should have the right to refuse the appointment.
- We should have a clear right to follow grant payments to the recipient and ensure the proper usage of those grant payments. This would not be something we would do for every grant payment, but we should have clear legal authority to do so.
- There should be a simple mechanism for us to access additional one time funds in situations where it is necessary to properly complete an audit, either because the scope of the audit is large, or we believe the audit requires expertise we do not have on staff. For example, the investigation of misappropriation of funds can be complex and time consuming, and if such a situation arose, we would not be able to complete it within our existing budget.

**8.20** These are, of course, suggestions, and we would welcome the opportunity to discuss each of them.

**8.21** Instituting changes to strengthen the authority of the Auditor General is only one way to enhance the accountability and effectiveness of government. The government should also look at other ways to strengthen the management of the resources entrusted to the government. For example, the work prepared by CCAF-FCVI Inc. concerning public accounts committees is a source of good information to improve the effectiveness of public accounts

committees. Also, the Gomery commission made recommendations to the federal government about improving accountability; these should all be considered to determine their applicability to New Brunswick. And finally, strengthening the internal control and internal audit roles in government is at least as important as strengthening the role of the Auditor General.

# Chapter 9

## Follow up on Prior Years’ Recommendations

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# Follow up on Prior Years' Recommendations

## Background

**9.1** We have a strategic goal that departments and agencies accept and implement our recommendations. Consequently, we track both the number of recommendations accepted and the number of recommendations implemented. This chapter reports on those two key performance indicators.

**9.2** This chapter is intended to promote accountability by giving MLAs and the general public information about how responsive departments and agencies have been to our recommendations. We think it is important that MLAs and the public see if departments and agencies are making progress with our recommendations; recommendations that were significant enough to have been brought to the attention of the Legislative Assembly in previous years.

## Scope

**9.3** Our practice is to track the status of our recommendations for four years after they first appear in the Report of the Auditor General. We do not normally prepare an update after the first year. After years two, three and four we prepare a status report, which shows departments' and agencies' progress, or lack thereof, in implementing our recommendations. In other words, in this Report for the year ended 31 March 2006, we are tracking progress on recommendations from 2002, 2003 and 2004.

**9.4** To prepare this chapter, we request written updates on progress from the respective departments and agencies. We review these updates by meeting with appropriate officials. In some cases we request additional documentation to test the accuracy of the accounts we have been given. In other words, if a department says it has implemented a recommendation, we normally do some checking to see if this is the case.

**9.5** This follow-up work is what professional accountants refer to as a "review engagement". Rather than carry out an audit on these updates, we carry out enough procedures to allow us to conclude the information is plausible in the circumstances. Whereas an audit

provides high, but not absolute, assurance, a review provides moderate assurance.

**9.6** Exhibit 9.1 gives an overview of the status of recommendations by department and agency. Exhibit 9.2 shows the results organized by year of the original audit. We devote most of the space in this chapter to the status of recommendations from 2002. This is because these recommendations have reached the end of the four year follow-up cycle. We promote accountability by providing the Members of the Legislative Assembly and the general public one last look at those recommendations which have not been adopted.

**9.7** For the most part, we have not given any comment on our 2003 and 2004 audits, other than that provided by exhibits 9.1 and 9.2. In cases, though, where we believe a recommendation from 2003 or 2004 requires more attention from a department or agency than it has received, we have provided some additional commentary. We have also reported on recommendations that were originally agreed to but that are now, either tacitly or directly, disagreed with by the department or agency concerned.

## Results in brief

**9.8** Exhibit 9.1 shows departments and agencies had implemented 170, or 43%, of our 392 recommendations from 2002, 2003 and 2004 by the time we prepared our 2006 Report. We rated another 94, or 24%, as partially implemented.

**9.9** Fifty-four of our 153 recommendations from 2002 have not been implemented. We do not intend to follow up on these recommendations in 2007.

**9.10** The Department of Supply and Services has still not signed contracts for cellular phone airtime usage charges and long distance charges. The Province has missed out on cost savings of at least \$2 million by not calling and awarding this tender in a timely fashion.

**9.11** We do not believe the Department of Transportation has taken sufficient and appropriate action with a number of recommendations we made about comparing costs of the Vehicle Management Agency to costs of procuring the same services from outside providers.

Exhibit 9.1  
Status of recommendations

Department	Audit area	Year	Recommendations					
			Total	Disagreed	Implemented	Partially implemented	Agreed/Not implemented	No longer applicable
Various	Crown Agency	2003	19	1	0	3	15	0
	NB Salmon Aquaculture	2004	35	3	8	4	18	2
Business New Brunswick	Accounts Receivable	2002	6	0	6	0	0	0
Education	Payroll Procedures in School Districts	2004	3	0	0	3	0	0
Environment and Local Government	Environmental Inspections	2002	21	0	11	5	3	2
	Beverage Containers Program	2004	12	0	6	3	3	0
Family and Community Services	Child Day Care Facilities	2003	22	0	10	11	1	0
	NB Housing	2003	3	0	0	2	1	0
	Nursing Home Services	2004	24	0	6	14	4	0
	NBCase System	2004	21	3	5	5	7	1
Finance	Pension Plan Governance	2002	23	4	11	1	6	1
	Accounts Receivable	2002	9	0	9	0	0	0
	Tax Expenditure Programs	2003	6	0	0	1	5	0
Health & Wellness	Accountability of Psychiatric Hospitals and Psychiatric Units	2003	22	1	17	1	3	0
	Client Service Delivery System	2002	1	0	1	0	0	0
Justice	Accounts Receivable	2002	9	1	2	5	0	1
	Pre-Arranged Funeral Services	2004	2	0	1	1	0	0
Office of Human Resources	Absenteeism	2003	26	8	10	7	1	0
	HRIS	2003	5	0	3	1	1	0
Post-Secondary Education, Training and Labour	Employment Development Programs	2002	12	0	11	1	0	0
	Training and Skills Development	2003	3	0	3	0	0	0
Public Safety	Office of the Fire Marshal	2002	23	0	16	5	2	0
	Motor Vehicle Revenue	2002	2	0	2	0	0	0
Regional Development Corporation	Provincially Funded Programs	2004	18	3	8	2	3	2
Service New Brunswick	Service Agreements	2003	2	0	0	2	0	0
Supply and Services	Cellular Phones	2002	7	0	2	4	0	1
	Management of Insurable Risks to Public Works Buildings	2003	16	1	1	8	6	0
Transportation	Vehicle Management Agency	2002	40	12	21	5	1	1
<b>Totals</b>			<b>392</b>	<b>37</b>	<b>170</b>	<b>94</b>	<b>80</b>	<b>11</b>

## Exhibit 9.2

## Status of recommendations by year

Year	Recommendations					
	Total	Disagreed	Implemented	Partially implemented	Agreed/Not implemented	No longer applicable
2002	153	17	92	26	12	6
2003	124	11	44	36	33	0
2004	115	9	34	32	35	5
Totals	392	37	170	94	80	11

### Comments on recommendations from 2002

**9.12** Fifty-four of the 153 recommendations we made in our 2002 Report have not been fully implemented by departments. While we are pleased that 65% of our 2002 recommendations have been appropriately addressed, we are reporting in this chapter on the 35% that have not been completely implemented.

**9.13** Exhibit 9.3 shows all of the fifty-four 2002 recommendations that have not been fully implemented and our assessment of their current status. Our assessment appears under the column titled “our assessment after four years”. The term “partial” in this column means we have judged the recommendation as partially implemented. The term “not implemented” means we have determined the department or agency has not made progress with the recommendation, but neither have they disagreed with it in their responses of the last four years.

**9.14** These recommendations have reached the end of the four year follow-up cycle. We believe it is important from an accountability point of view for the Members of the Legislative Assembly and the general public to have one last look at these recommendations which have not been fully implemented. Perhaps the Members could reflect upon them when making their enquiries during meetings of the Public Accounts Committee.

**9.15** Immediately following exhibit 9.3, we provide some additional commentary on some of those recommendations from 2002 audits in:

- Department of Justice – Accounts Receivable
- Department of Post-Secondary Education, Training and Labour – Employment Development Programs
- Department of Supply and Services –Cellular Phones
- Department of Transportation – Vehicle Management Agency

Exhibit 9.3

Department	Audit	Recommendations made in 2002 that were not fully implemented	Our assessment after 4 years
Environment and Local Government	Environmental Inspections	The Department should use inspection schedules to assign work to the inspectors. The inspection schedule should include both routine and non-routine inspections. (Routine inspections should be done to control risks in accordance with a predetermined coverage plan. Non-routine inspections should also be done when appropriate, to address complaints received from the public and to determine if identified deficiencies have been corrected.)	partial
		The Department should update its compliance and enforcement policy.	partial
		To aid in the enforcement of the legislation, the Department should integrate the inspection function with the processes for issuing licenses, permits, approvals, etc.	partial
		The Department should establish a reporting system for inspection results so problems and common issues are identified and appropriate corrective action is taken on a timely basis.	partial
		The Department should establish controlled processes for designating inspectors and issuing identification cards to inspectors.	partial
		The Department should prepare the inspector's report required by paragraph 25(3) of the <i>Petroleum Product Storage and Handling Regulation - Clean Environment Act</i> and issue a copy of the inspector's report to the applicant, as required by paragraph 27(6) of the regulation.	not implemented
		The Department should consider the inspection of salvage yards when performing a risk assessment and developing an inspection strategy and an inspection plan.	not implemented
		The Department should establish performance indicators and monitoring procedures for evaluating and reporting on compliance with legislation.	not implemented
Finance	Pension Plan Governance	The plan document should clearly define the roles and responsibilities of all parties involved in the selection of investment managers.	partial
		The governor has never formally approved the investment policy and we recommended the appropriate approval be sought.	disagreed
		We recommended the investment policy include the requirement for appropriate communication with the plan governor when changes to investment policy are prepared.	disagreed
		We recommended the role of the plan governor be formalized to ensure that the governor's approval is required for certain changes to the investment policy (i.e. asset classes and allocation percentages).	disagreed
		We recommended the actuarial review committee be used by the governor to provide information that can be used to assist in making well-informed decisions on the investment policy of the plan.	disagreed
		The identity of the plan governor of the General Labour, Trades and Services Pension Plan should be formally recognized. The duties and responsibilities should be clearly set out in pension plan documentation.	not implemented
		We recommended there be a documented purpose or mission for the pension plan. We also recommended there be a clear link between the purpose of the pension plan and the long-term real rate of return objective as set by NBIMC in the investment policy for the fund.	not implemented
		There should be a requirement in place for the plan governor to formally monitor and evaluate NBIMC, as an investment manager, on at least an annual basis.	not implemented
		The plan governor should publish an annual report for this pension plan. The Province's annual report policy should be used as a guideline for the preparation of the report.	not implemented
		We recommended that the governor's practice of approving major decisions of the plan be supported by requirements within the plan document.	not implemented



Department	Audit	Recommendations made in 2002 that were not fully implemented	Our assessment after 4 years
Justice	Accounts Receivable	We recommended a formal collection system be established to collect overdue court fines.	partial
		In the short term, the Department should develop strategies, including specific objectives, to eliminate the backlog of receivables. Priority should be given to collecting large fines.	partial
		The Department should use performance targets, standards, and indicators to measure collection performance. These measurements should be used to evaluate the success of collection efforts and to hold staff and managers accountable for their performance.	partial
		We recommended that annual reporting should include financial information and performance measures relating to the collection function. The Department could include, as part of the accountability information it provides to the Legislative Assembly about receivables, year-to-year comparisons of: the number and dollar value of fines satisfied during the year including fines satisfied by serving jail time; recoveries and write-offs; timeliness of collection; costs of programs for collecting overdue receivables; and the balance of overdue accounts at year end.	partial
		We recommended old receivables be written off promptly when it is deemed they will not be collected.	partial
		Data prior to 1999 should be verified to ensure it contains accurate information for collections and to ensure the receivable balances are correct.	disagreed
Post-Secondary Education, Training and Labour	Employment Development Programs	We recommended that the draft departmental information technology security policy be completed and finalized as soon as possible.	partial
Public Safety	Office of the Fire Marshal	We recommended the OFM complete the P & P manual it started in 2000 as soon as possible.	partial
		We recommended the OFM assign duties for specific sections of the Act to individual employees and monitor them to ensure they are completed.	partial
		We recommended that the OFM develop a formal process to monitor the degree to which the Act is complied with.	partial
		We recommended the OFM take immediate corrective action to ensure there is compliance with the following: an annual report should be submitted to the Minister; time deadlines should be monitored; fire and insurance reports should be submitted on time; all building plans specified in the Act should be filed; there should be volunteer and paid firefighter training standards set by the OFM; the method of fire order delivery should be monitored; and the OFM should consider imposing a levy on fire premiums relating to automobiles.	partial
		We recommended that all PDQs be reviewed periodically to ensure they are still current and are updated or re-written where they are not.	partial
		We recommended the Department pursue the implementation of the amendments proposed and consider the additional points we have raised to determine if further amendments are required.	not implemented
		We recommended that the OFM develop a formal process to report on the degree to which the Act is complied with. Since compliance with legislation would seem to be such a key measure of effectiveness reporting in this safety organization, we recommended that the degree of compliance be reported in the Department's annual report.	not implemented
Supply & Services	Cellular Phones	We recommended the Department comply with the <i>Public Purchasing Act</i> and tender airtime and long distance usage for cell phones.	partial
		We recommended all departments establish written guidelines for assigning cell phones and the related usage plans to users based on identified need.	partial
		We recommended that departments ensure cell phone charges are reviewed by users on a regular basis and by supervisors on a random or test basis.	partial
		We recommended that all departments have a written description of the duties of their telecom officers. These descriptions should include the telecom officers' specific duties with respect to cell phones and the importance of using the guidelines of the Department of Supply and Services for managing telecommunications.	partial

Department	Audit	Recommendations made in 2002 that were not fully implemented	Our assessment after 4 years
Transportation	Vehicle Management Agency	We recommended the Agency formalize a succession plan to address the problems associated with its aging work force. This plan should include strategies, goals and time frame for completion.	partial
		We recommended the Agency comply with policy by reporting to Board of Management the cost per kilometre of operating the government fleet, and comparative costs of alternate means of providing transportation. Further, this type of reporting would seem to be an excellent measure of effectiveness to include in the Agency's annual report.	partial
		We recommended that the Agency revisit its measures for the customer perspective of the Balanced Scorecard. This should include enhancements to the measures for the fleet reliability and customer convenience objectives.	partial
		We recommended the Agency attempt to replace vehicles according to its own life cycle costing plan.	partial
		We recommended the Agency review the role of regional inspectors and develop guidelines for more systematic inspection schedules. For example, inspectors could inspect all assets over the optimal replacement age or all assets that exceed pre-established annual and/or lifetime spending limits.	partial
		We recommended the Agency complete a staffing study of head office to ensure adequate services are being provided in the most economical fashion.	disagreed
		We recommended the Agency continue to review the assignment of shop superintendent staff to ensure the most equitable and economical assignment of superintendent positions.	disagreed
		We recommended the Agency review the cost/benefit of having an accurate costing system that reflects the true cost of repairing and maintaining a vehicle. This would include ensuring the following: assets are only charged once for repair costs; warranty charges are debited and warranty credits are credited to the proper asset; and HST is not charged to an asset.	disagreed
		We recommended the Agency have systems in place to detect large and unusual charges made against an asset.	disagreed
		We recommended that the results of the comparable pricing review be used to determine the most economical means of providing repair and maintenance services to government-owned vehicles.	disagreed
		We recommended the Agency develop clearly defined goals regarding mechanic utilization that are based on relevant industry standards. These goals should be clearly communicated to staff and progress towards achievement should be monitored.	disagreed
		We recommended the Agency develop standards and measures for mechanic effectiveness. Further, the Agency should consider the benefits and costs of extending these standards and measures to its performance evaluation process for mechanics.	disagreed
		We recommended that the Agency revisit the Balanced Scorecard to ensure it includes established industry benchmarks for its performance indicators.	disagreed
		We recommended the Agency formalize and enforce policy regarding work to be done on executive vehicles prior to disposal.	disagreed
		We recommended the Agency audit a sample of credit card vendor invoices for authenticity on a monthly basis.	disagreed
		We recommended the Agency ensure kilometres travelled are accurately reported on a monthly basis.	disagreed
		We recommended the Agency consider comparing kilometrage to fuel consumption through random sampling as a tool to monitor fuel usage.	disagreed
		We recommended the Agency develop standards for measuring mechanic efficiency. We further recommended that these standards be monitored and used as a component of performance evaluation.	not implemented

**Department of Justice and Consumer Affairs – Accounts Receivable**

**9.16** There are six recommendations outstanding from our 2002 audit of Justice accounts receivable. Five were intended to improve the collection of accounts receivable. The other one recommended writing-off uncollectible accounts receivable.

**9.17** The Department informed us that they have done some work on improving collections. They have carried out a pilot project in

Saint John, and are currently carrying out an additional pilot project in the Miramichi region.

**9.18** The Department also informed us that they would soon meet to discuss procedures to write off certain types of overdue fines; specifically, the fines associated with deceased people. We do not believe that the Department has responded promptly to our recommendation. The problem with retaining uncollectible accounts on the active listing is that they can interfere with the active management of the accounts that can still be collected. We reiterate that the Department promptly write-off old receivables when it is deemed that they will not be collected.

***Department of Post-Secondary Education, Training and Labour – Employment Development Programs***

**9.19** In 2002 we recommended that the Department's draft information technology security policy, which it had just established, be completed and finalized as soon as possible. Over the last three years the Department has continued to inform us the policy is still in draft form pending government-wide direction from the Department of Supply and Services. As noted in this year's response from the Deputy Minister of Post-Secondary Education, Training and Labour:

*Since 2002, Corporate Information Management Services (CIMS) has been working on developing a government wide Information Technology Security Policy. Although the CIMS policy is still not "official", our Department has put in place many of its recommendations and best practices. Our Department will provide the necessary resources to implement the remaining aspects of the CIMS policy once it has been approved as the official government wide policy.*

**9.20** In our opinion, the Department of Post-Secondary Education, Training and Labour has done what it can do to implement this recommendation.

***Department of Supply and Services – Cellular Phones***

**9.21** During our 2002 audit of Cellular Phones, we recommended the Department comply with the *Public Purchasing Act* and tender airtime and long distance usage for cell phones. At the time of the audit in 2002 the Department responded:

*The Department will be tendering for cellular air time and cellular long distance rates by the spring of 2003, in conjunction with the new cellular hardware contract. This is consistent with the telecom procurement policy approved by the Board of Management at the request of the Department of Supply and Services.*

**9.22** In 2004, the Department issued a tender for cellular service plans and long distance which would result in five year service contracts. That tender closed in April 2004. The Department completed its evaluation of this tender in the fall of 2004, and proceeded to submit the results of the evaluation and the Department's recommendations to cabinet.

**9.23** Board of Management Minute 06.0092, dated March 30, 2006 "...authorized the Department of Supply and Services to negotiate five-year contracts with Rogers Communications Incorporated and Aliant Telecom for the provision of..." a package of telecom services that included cellular air time and cellular long distance. The Board Minute stated that these telecommunications services were to have "a targeted split of 80% of the total expenditures to Aliant and 20% to Rogers." The Board Minute also indicated there would be savings of an estimated \$22.4 million over the five year life of these contracts. Further, the Department informed us that \$6.7 million of the savings could be specifically attributed to the cellular phone portion of the contracts. We reviewed the calculation of this \$6.7 million in savings and obtained reasonable assurance that it was accurately calculated.

**9.24** In the fall of 2006 Supply and Services informed us that letters of intent had been signed with Rogers and Aliant and contracts should be signed shortly. As of December 2006 the contracts remained unsigned, but the new rates were in effect for most users.

**9.25** In 2005 we said that by failing to award these tenders on a timely basis, the Province had paid hundreds of thousands of dollars in unnecessary cellular airtime and long distance charges. We now estimate that by delaying the award of the contract from 2004, when the Department had completed its evaluation and had arrived at a recommendation, until 2006, the Province gave up at least \$2 million in savings on the cellular phone portion of the telecommunications contract. It is also possible that savings in the other components of the telecommunications contract were foregone.

**9.26** We have not done any work to verify whether the Province achieved the lowest possible rates in either the cellular phone component or the full telecom services package dealt with in the two contracts. We have also not audited the Department's process to determine if it was in compliance with the *Public Purchasing Act*.

**Department of  
Transportation – Vehicle  
Management Agency**

**9.27** We made 40 recommendations to the Department of Transportation in 2002 as a result of our audit of the Vehicle Management Agency (VMA). The Department has implemented 21. It has disagreed with or rejected another 12, and one was eliminated due to a policy change. There are still six of our recommendations that have not been fully implemented.

**9.28** In this, the last year of follow-up on this VMA audit, we are highlighting some of our recommendations which VMA chose not to implement and which concerned due regard to economy.

**9.29** We recommended in 2002 that the Agency comply with policy by reporting to Board of Management the cost per kilometer of operating the government fleet and comparative costs of alternate means of providing transportation. We also included a recommendation that this reporting would be an excellent effectiveness measure to include in the VMA's annual report.

**9.30** Instead of implementing this recommendation, the Department had the Board of Management revise Vehicle Policy AD-1702 by removing the requirement for them to make cost comparisons.

**9.31** Another of our recommendations was that the Agency revisit its Balanced Scorecard to ensure it includes established industry benchmarks for its performance indicators.

**9.32** In its original 2002 response, the Department said *“VMA agrees to review information on industry standards and will consider the feasibility of using this information in various aspects of measuring performance.”* In 2005, however, the Department informed us *“Because of the diversity of the vehicle fleet (e.g. type of vehicle, make model, age and nature of use) being repaired at its shops, VMA is currently using internal benchmarks to compare results from similar size Agency shops rather than comparing to industry benchmarks.”*

**9.33** In other words, the Department was again rejecting the notion of comparing itself to outside providers. By comparing the Agency's performance to established fleet benchmarks, the Agency could have been in a better position to assess performance. If it was meeting or exceeding industry benchmarks, it would have had objective evidence it was doing a good job.

**9.34** We found this reluctance to compare and report somewhat surprising, particularly in light of the Department's response to another of our recommendations. This recommendation called for the Agency to conduct a review to compare its costs to the prices of comparable repair and maintenance services offered by the private sector. In 2005 the Department informed us that it "completed a review to compare pricing of major types of work by the private sector." The Department added that "Based on this review, it was determined that any further analysis would be of limited benefit."

**9.35** To support this viewpoint, the Department provided us with its own spreadsheet "Comparison of Central Repair versus Outside Vendors." This spreadsheet analyzed approximately twenty different types of repair services. It compared the VMA average central repair cost to an outside vendor's remanufactured or new cost. According to this spreadsheet, in about 90% of the cases, average VMA cost was cheaper than the private sector.

**9.36** Based on its spreadsheet analysis, which we did not audit, VMA indicates that it is the low cost provider of services. Yet, on the other hand, in dealing with any recommendations to present comparative cost information, VMA has decided not to disclose its cost advantage.

**9.37** In our 2002 Report we said "in situations where government is providing services that can also be provided by the private sector it is extremely important to regularly evaluate whether or not a change should be made. This is the only way to ensure taxpayers are receiving value for money."

**9.38** We continue to believe it is important for government to assess and report publicly on the cost efficiency of the VMA. We understand that it would not be practical to do an annual comprehensive external cost comparison for all of the activities of the VMA, however, we continue to believe that periodic comparisons would be valuable. By not presenting comparative data, MLAs do not have the means to ensure VMA is providing these services as efficiently as possible. Therefore,

**We recommend that the government amend Board of Management policy AD-1702 to require measures of cost effectiveness. Further, these measures should be included in the annual report in order to demonstrate the Department's effectiveness in providing this service.**

## Comments on recommendations from 2003 and 2004

### General - 2003 audit on Crown agency governance

**9.39** We continue to believe that this reporting should regularly compare the cost per kilometer of operating the government fleet and comparative costs of alternate means of providing transportation.

**9.40** In 2003 we made 19 recommendations on various aspects of Crown Agency Governance. They included such things as selecting the right mix of board members, clearly establishing government's performance expectations for its Crown agencies, and improving the quality of reporting to board members and the public.

**9.41** On June 27, 2006 a letter from Executive Council informed us:

*In the government's response to the final report of the Commission on Legislative Democracy (CLD), there is a call to establish an Agency, Board and Commission (ABC) Appointment Unit, similar to that of the models found in Nova Scotia and British Columbia. It is expected that this unit will be housed in the Executive Council Office and will be responsible to coordinate all ABC appointments, work with departments to streamline levels of compensation, create board profiles, determine personal suitability of members that are used to fill vacancies and advertise vacancies to the general public. ...*

*The ABC Appointments Unit of the Executive Council Office will be guided by the fundamental principles of good governance. As such your recommendations will provide direction for future governance practices as coordinated by the Appointments Unit. ...*

*The public, as a stakeholder, is constantly demanding greater accountability from government and those that provide advice or direction to ABCs. Tangible efforts have been made by ABCs to ensure that practices of good governance are applied to their situation. The government's desire to do more in the area of good governance will be realized once the ABC Appointments Unit is established and its mandate is implemented. In the interim, the government is committed to utilizing good governance practices where applicable.*

**9.42** This response offered substantial promise of progress.

***Office of Human Resources  
2003 audit on absenteeism  
management***

**9.43** We are uncertain how the process will unfold given the recent change in government, but we urge the Executive Council to improve the Province's governance frameworks for Crown Agencies.

**9.44** In 2003 we recommended that the Office of Human Resources regularly compare absenteeism statistics to other Provinces and private industry, as a step to measure the effectiveness of absenteeism management.

**9.45** This year the Office informed us that

*Given the variability in the types of work performed between the private, other public sectors and the New Brunswick public sector, comparing absenteeism statistics would not be meaningful.*

**9.46** We believe the Office should work towards obtaining relevant comparative absenteeism statistics in order that the Province can better manage absenteeism.



# Appendix

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## **Summary of Significant Audits Conducted in Departments and Crown Agencies over the Past Ten Years**

The following is a list of value-for-money audits reported in a separate chapter of our annual Reports over the last ten years, organized by department and agency. The year of reporting is in brackets following the subject of the audit. The list is organized using the current name of the department or agency, even though in some cases the audit was conducted prior to a government reorganization.

### **Department of Agriculture and Aquaculture**

#### **Salmon Aquaculture (2004)**

This chapter assesses whether Province of New Brunswick programs ensure that New Brunswick salmon cage culture operations are economically, environmentally, and socially sustainable.

#### **Review of Legislation (2000)**

This chapter examines how well the Department is meeting its administrative responsibilities pertaining to legislation it has been assigned, and whether the results are being adequately measured and reported to the Legislative Assembly.

### **Department of Business New Brunswick**

#### **Financial Assistance to Business and Performance Reporting (1998)**

This chapter examines whether the Department is appropriately approving and monitoring financial assistance provided to business under the *Economic Development Act*, and whether an appropriate effectiveness reporting system is in place in the Department and functioning.

#### **Centre Plein Air de Kedgwick (1997)**

Between 1985 and 1991, the provincial and federal governments provided approximately \$2 million in funding to the Centre Plein Air de Kedgwick, primarily for the development of facilities. The operation encountered serious financial problems, and in 1995 the assets were sold to the private sector for \$110,000. This chapter examines the process government used to approve and monitor the project.

### **Department of Education**

#### **Facilities Maintenance (2005)**

This chapter examines whether the Minister of Education has adequate systems and practices in place to ensure that school facilities are appropriately maintained.

### **Pupil Transportation (2001)**

This chapter examines the systems and practices in place in the Department of Education for the safe transportation of pupils to and from their schools.

### **Excellence in Education (1998)**

This chapter examines whether the government has adequate systems in place to measure and report on the effectiveness of the Excellence in Education initiatives, and whether the government has complied with the accounting and audit provisions established by the Board of Management.

## **Department of the Environment**

### **Beverage Containers Program (2004)**

This chapter examines whether the Department has established satisfactory procedures to measure and report on whether the Beverage Containers Program is achieving its intended results. It also reports on the progress the Department has made in implementing the recommendations and responding to the findings of our 1994 report on the Beverage Containers Program.

### **Environmental Inspections (2002)**

This chapter examines the inspection process established by the Department to monitor and report compliance with environmental legislation.

### **Domestic Well Water Quality (2000)**

A reliable supply of safe drinking water is important to everyone. Approximately 40% of New Brunswickers living in small towns and rural areas rely on domestic wells as their primary source of water. Two regulations under the *Clean Water Act* that contribute to the prevention of drinking water problems for individuals on newly drilled or dug domestic wells are the *Water Well Regulation* and the *Potable Water Regulation*. This chapter examines the performance of the Departments of the Environment and Local Government and Health and Wellness in ensuring compliance with these regulations as they relate to private wells.

### **Tire Stewardship Program (1999)**

This chapter examines the approach taken by government in establishing the Tire Stewardship Program, and whether or not the Department is overseeing the Program in accordance with the legislation and regulation. Our work also addresses whether or not the public is adequately protected from danger of tire fires.

## **Department of Family and Community Services**

### **Special Care Homes and Community Residences (2005)**

This chapter examines whether the Department has appropriate practices to ensure compliance with the Province's legislation and standards for special care homes and community residences.

### **Nursing Home Services (2004)**

This chapter examines whether the Department has appropriate practices to ensure that licensed nursing homes are complying with the Province's legislation for nursing homes, and that the Province's legislation and departmental policies for nursing homes are reviewed and amended on a regular basis.

### **Child Day Care Facilities (2003)**

This chapter examines whether the Department has appropriate policies and practices to ensure compliance with the Province's legislation and standards for child day care facilities.

### **Prescription Drug Program (2001)**

This chapter examines the government plan to provide drug benefits to people who receive income assistance and those who have drug expenses for which they do not have the resources to pay. Our objective was to determine whether the Departments have appropriate systems and practices in place to ensure that each person who is eligible for benefits is offered the program, and that the plan provides services only to those people who qualify.

## **Department of Finance**

### **Tax Expenditures (2003)**

This chapter examines and assesses the processes of approving, monitoring, evaluating and reporting provincial tax expenditure programs.

### **Pension Plan Governance (2002)**

This chapter examines whether the governors of two provincially sponsored pension plans have established satisfactory procedures to measure and report on the effectiveness of the plans' asset management activities.

### **Early Retirement Program (2001)**

This chapter examines the process followed by government to reach the decision to offer a voluntary early retirement program to its employees.

### **Pension Plan Governance (2000)**

This chapter examines the governance structure of four provincially-sponsored pension plans.

### **Consumption Tax (1999)**

As of 1 April 1997 the provincial consumption tax was replaced by the federally administered Harmonized Sales Tax. Since then the government has hired additional auditors to identify unassessed taxes. We were interested in examining the economy and efficiency of this special audit effort and the collection of sales tax in general.

### **Evergreen and Wackenhut Leases**

#### **(Special Report for the Public Accounts Committee - 1998)**

Our objective as assigned by the Public Accounts Committee was “to review the financial terms of the Evergreen and Wackenhut leases and compare the total cost under the private sector arrangements as compared to traditional government methods.”

### **Revenue Management System (1997)**

This chapter examines the contracts between the Department and IBM to implement a revenue management system. The initiative was terminated prior to completion due to the anticipated agreement with the government of Canada for the Harmonized Sales Tax.

## **Department of Health**

### **Health Levy (2006)**

This chapter explains what the health levy is for, and summarizes the issues we identified related to the health levy process.

### **Prescription Drug Program (2005)**

This chapter examines whether the Department has adequate procedures in place to manage the performance of the Prescription Drug Program, and whether there is adequate reporting on the Prescription Drug Program’s performance. It also examines whether the Department has adequate procedures in place to ensure that the drug assessment process for formulary listing and the amount paid for drugs and pharmacy services are managed with due regard for cost effectiveness.

### **Accountability of Psychiatric Hospitals and Psychiatric Units (2003)**

This chapter assesses whether the Department has appropriate accountability processes in place for the operations of the psychiatric hospitals and psychiatric units under the direction of the Regional Health Authorities.

### **Client Service Delivery System (2002)**

This chapter examines why the development of the Client Service Delivery System, which was approved in 1995 for \$4.5 million and was to be operational in three years, is costing substantially more and taking much longer than anticipated. It also examines whether there has been any non-compliance with contractual arrangements, government policy or provincial legislation related to the higher costs and longer completion time.

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**Food Safety (1999)**

This chapter examines the Province's role in inspecting the 2,870 food service establishments in the Province. The objective of this project was to determine whether or not current systems and practices are sufficient in ensuring that food service establishments are complying with the food safety standards set out in the Regulations under the *Health Act*.

**Extra-Mural Hospital (1999)**

On 1 July 1996, The Extra Mural Hospital Corporation became the Extra-Mural Program as it merged into the regional hospital corporations. Why was this decision made? How does government make such decisions? Our interest in understanding the decision-making process of government led us to examine the merge decision.

**Ambulance Services (1998)**

This chapter examines the consequences of the replacement of St. John Ambulance volunteer services with paid service providers.

**Ambulance Services (1997)**

This chapter examines whether the departmental "Standards for Ambulance Services" are being met by the service providers. It also examines whether the Department's inspection process actively contributes to the deliverance of an effective ambulance service and to improvement in the providers' performance.

### **Air Ambulance (1997)**

This chapter examines whether the New Brunswick Air Ambulance service is meeting its mandate with due regard for economy and efficiency while complying with established legislative and policy guidelines. It also examines whether the Department has established satisfactory procedures to measure and report on the effectiveness of the Air Ambulance program.

## **Department of Justice and Consumer Affairs**

### ***Pension Benefits Act* (2006)**

This chapter examines the protections offered by the *Pension Benefits Act* to active and former pension plan members, and the nature of the operations of the Office of the Superintendent of Pensions.

### **Health Levy (2006)**

This chapter explains what the health levy is for, and summarizes the issues we identified related to the health levy process.

## **Department of Natural Resources**

### **Tracking System for Wood Harvested from Private Woodlots (2006)**

This chapter examines whether the Department maintains appropriate processes to ensure the tracking system for primary forest products harvested from private woodlots is operating as required by the *Transportation of Primary Forest Products Act*. It also examines whether the Department uses the information provided by the wood tracking system in assessing and reporting publicly on the sustainability of the private wood supply in New Brunswick.

### **Crown Lands Management (2001)**

This chapter examines the Minister's responsibilities for Crown lands, and looks at how well the Department is doing in measuring and reporting on the effectiveness of its Crown lands programs.

### **Private Forest Lands (2000)**

This chapter examines the government's role in encouraging the management of private forest lands as the primary source of timber for wood processing facilities in the Province.

### **Mining Taxes and Royalties (1997)**

This chapter examines whether the systems in place are adequate to guarantee compliance with legislation and the required amount of dollars are collected from mining activities in New Brunswick.

## **Office of Human Resources**

### **Absenteeism Management (2003)**

This chapter examines whether government has systems and practices in place to effectively manage employee absenteeism in the Civil Service.

## **Department of Public Safety**

### **Office of the Fire Marshal (2002)**

This chapter examines whether the Office of the Fire Marshal is adequately carrying out the provisions of the *Fire Prevention Act*, and whether it has appropriate human resource systems and practices in place to sufficiently deliver provincial fire prevention and protection programs.

### **High Risk Drivers (2001)**

This chapter examines whether the Department has a system in place to identify and respond appropriately to high-risk drivers of private passenger vehicles. It also looks at one specific class of high-risk driver – the student driver.

## **Department of Supply and Services**

### **Management of Insurable Risks to Public Works Buildings (2003)**

This chapter examines how the Department manages significant insurable risks for the public works buildings it is responsible for.

### **Cellular Phones (2002)**

This chapter examines whether the government has an adequate system in place to administer the acquisition and use of cell phones.

### **Provincial Archives of New Brunswick (2001)**

This chapter examines the work of the Provincial Archives of New Brunswick. It considers their role in the assessment and preservation of archival records.

### **Purchasing (2001)**

This chapter examines whether the Minister is fulfilling his responsibilities under the *Public Purchasing Act* and Regulation.

### **Contracts for IT Professionals (2001)**

This chapter presents the results of an examination of forty contracts from six departments for the services of various Information Technology professionals.



### **Land Management Fund (2000)**

The Land Management Fund buys, manages and sells land on behalf of the government. This chapter examines whether the Fund is achieving the purposes for which it was established. This chapter also examines compliance with the government-wide policy on the disposal of real property.

## **Department of Post-Secondary Education, Training and Labour**

### **Employment Development Programs (2002)**

This chapter examines the management of economic development programs, and whether there are adequate procedures in place to measure and report on program effectiveness.

## **Department of Transportation**

### **Vehicle Management Agency (2002)**

This chapter examines whether the Vehicle Management Agency is providing repair and maintenance services for government cars, executive vehicles and light trucks in a manner which minimizes costs and maximizes efficiency. It also examines whether the Agency has adequate systems and practices in place to monitor and control the usage of fuel for government cars and light trucks.

### **Engineering Consulting and Road Construction Materials (2000)**

This chapter examines the Department's procedures for obtaining engineering consulting services and managing its inventories of road construction materials. It also examines the progress made by the Department in implementing End Results Specifications as a guarantee of road construction quality.

## **Government-wide audits**

### **Program Evaluation in Government Departments (2004)**

Our objective for this project was to determine the approach to program evaluation employed by provincial departments.

### **Contract Administration (1999)**

More and more government services are being delivered by the private sector through privatization, public-private partnerships and straight contracting-out arrangements. Our objective in performing audit work in this area was to determine what systems are in place to ensure contracts are being administered in accordance with negotiated terms and conditions.

**Fredericton-Moncton Highway (1999)**

This chapter examines the decision-making process that led up to the issuance of a Request for Proposals to three short-listed bidders on 27 March 1997. With the issuance of the Request for Proposals it was clear that the government was going to build the highway through a public-private partnership. We looked at the objectives government set for this project, whether alternative arrangements were considered, and whether the Request for Proposals reflected the government objectives.

**Leasing of Equipment (1999)**

Our audit objectives for this project were to ensure that decisions to lease were made with due regard for economy and that leases are being properly recorded in the books of the Province. Our analysis and conclusions are based on examining leasing decisions for personal computers, photocopiers, fire tankers and heavy equipment.

**Performance Measurement and Effectiveness Reporting (1999)**

It had been ten years since the Province adopted its first annual report policy. This was the policy that recognized annual departmental and agency reports as the “major accountability document” for the Legislative Assembly and the general public. This chapter examines the progress that had been made in the past ten years in the area of performance measurement and effectiveness reporting.

**The Year 2000 Program (1997)**

This chapter examines whether the Province has demonstrated an appropriate awareness of the Year 2000 problem, and whether measures have been taken to properly plan and coordinate the provincial initiative to become Year 2000 compliant.

**Privatization (1997)**

In May 1995 the government privatized its data processing facility. This chapter compares the results obtained during the first two years of private data centre operation with the expectations set out in the agreements with the private sector consortium.

**Crown agency audits****Crown Agency Governance (2003)**

This chapter summarizes the results of our governance reviews over the past five years, reviews practices in other jurisdictions, and makes major overall recommendations on steps the Province can take to improve Crown agency governance.

**Hospital Corporation Governance (1998)**

Our objective for this project was to gain an understanding of the governance arrangements relating to regional hospital corporations in the Province and to solicit the views of board members on certain issues impacting the role and effectiveness of hospital corporation boards.

## **New Brunswick Investment Management Corporation**

### **Governance (2006)**

This chapter examines whether current governance structures and processes established for the New Brunswick Investment Management Corporation set a framework for effective governance.

## **New Brunswick Liquor Corporation**

### **Governance (1999)**

For a number of years our Office has taken an interest in the governance and accountability of Crown corporations. This year we examined governance and accountability practices at the New Brunswick Liquor Corporation.

## **NB Power**

### **Governance (2005)**

This chapter examines whether the current governance structures and processes established for NB Power set a framework for effective governance.

## **Regional Development Corporation**

### **Provincially Funded Programs and Projects (2004)**

This chapter examines whether the Regional Development Corporation has satisfactory procedures in place to measure and report on the effectiveness of the provincially funded programs and projects it administers.

## **Economic Development Fund (1999)**

In fiscal year 1997-98 over \$15 million was expended from the Economic Development Fund for initiatives such as tourism marketing, agriculture development, Crown land silviculture and Film New Brunswick. Our objective in conducting work in this area was to ensure that adequate systems were in place related to the approval of funding and monitoring initiatives.

## **Service New Brunswick**

### **Property Assessment for Taxation Purposes (2005)**

This chapter examines whether Service New Brunswick complies with the *Assessment Act* by assessing real property at “real and true value”.

## **Atlantic Lottery Corporation Inc.**

### **Governance (1997)**

As part of a joint audit with the Auditor General of Nova Scotia, we examined governance and accountability practices at the Atlantic Lottery Corporation Inc.

**NB Agriexport Inc. (2000)**

This chapter highlights the results of a special review of the operations and accountability of NB Agriexport Inc., carried out at the request of the Crown Corporations Committee.

**Regional Health Authorities (2000)**

This chapter summarizes the Auditor General's observations and recommendations as a result of assisting the Crown Corporations Committee in its initial hearings with regional hospital corporations.