

Chapter 3

Department of Post-Secondary Education, Training and Labour

Private Occupational Training Act

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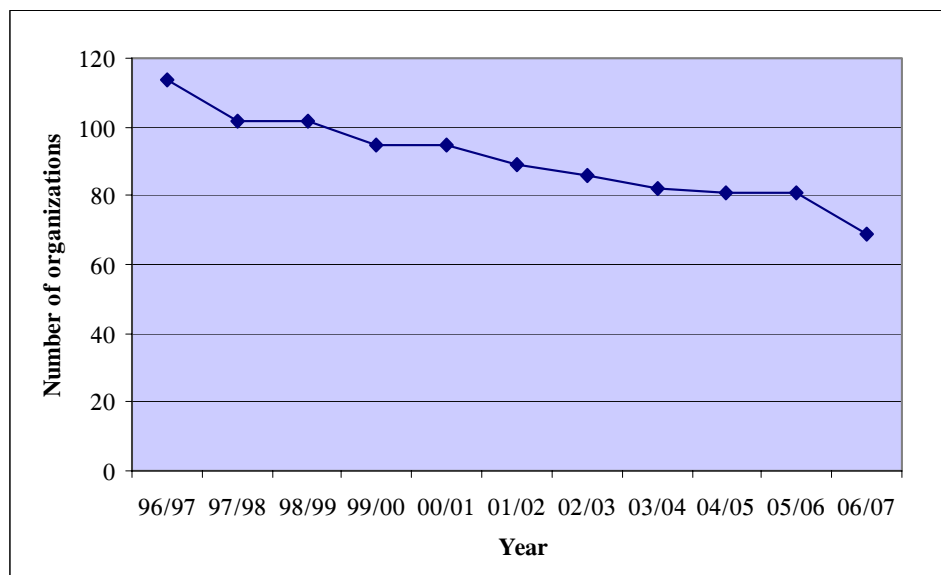
Department of Post-Secondary Education, Training and Labour

Private Occupational Training Act

Background

3.1 The Province provides certain protections to students attending registered private occupational training organizations under the *Private Occupational Training Act* (the Act.) As of 31 March 2007 there were 70 registered private occupational training organizations in New Brunswick.

Exhibit 3.1
Number of organizations registered



3.2 Exhibit 3.1 shows that the number of registered organizations has been declining over the past ten years. There were 114 registered in 1996/97 compared to 70 in 2006/07, a net decline of 44 organizations. Eleven of the organizations that closed in the last ten years did so unexpectedly resulting in the need for compensation pursuant to the Act.

3.3 Exhibit 3.2 shows the tuition fees protected under the Act, the number of students, and the average tuition per student for the last seven years. As seen in the exhibit, enrolment numbers declined significantly between 2001 and 2004 but then remained relatively stable for three years until increasing significantly to 3,736 in 2006/07. The average tuition charged by organizations over the last seven years was relatively stable.

Exhibit 3.2

Tuition fees protected under the Act

Year	Tuition fees protected	Number of students protected	Average tuition per student
2000/01	34,724,000	4722	7,354
2001/02	27,659,800	3832	7,218
2002/03	24,700,900	3568	6,923
2003/04	21,334,100	2901	7,354
2004/05	22,089,500	3178	6,951
2005/06	23,348,300	3077	7,588
2006/07	27,871,584*	3736	7,460

* based on unaudited student protection fees.

3.4 The Act defines a private occupational training organization as “a person or an organization, whether incorporated or not, that provides or undertakes to provide an occupational training program.” An occupational training program is defined as “any course or program of study provided to a person to enhance a person’s employability in an occupation, or to improve that person’s ability to carry out a present or future occupation, and for which tuition fees are paid to a training organization by the person or charged to a third party on the person’s behalf.”

3.5 The Act specifically excludes chartered universities, government owned training organizations such as New Brunswick Community Colleges, employer sponsored training, or any organization exempted by regulation (for example, at the time of the audit, regulation exempted all internet based training, correspondence training and training programs of less than 21 hours

of instruction.) Otherwise, all private training organizations are required by law to register and comply with the Act.

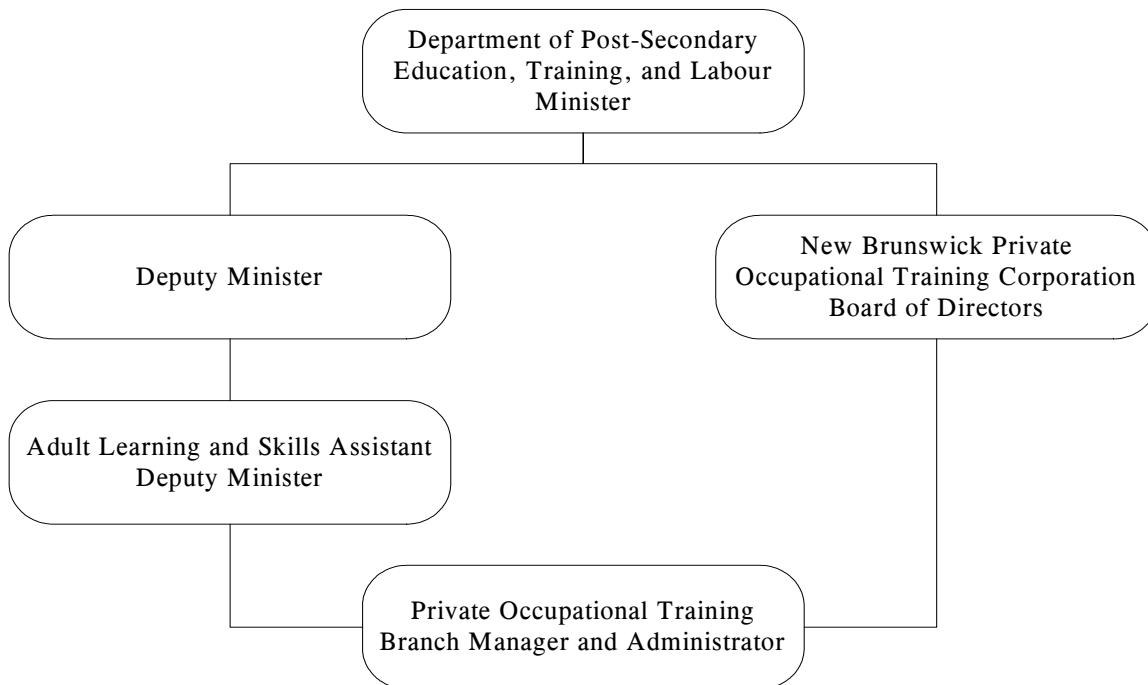
Legislative history

3.6 Regulation of private occupational training organizations is common to all jurisdictions in Canada. Regulation in New Brunswick dates back to 1954 when the *Trade Schools Act* was proclaimed. That Act was repealed and replaced with the *Private Occupational Training Act*. The last significant amendment to the Act occurred in 1996.

Organization

3.7 The Department of Post-Secondary Education, Training and Labour (the Department) is responsible for the administration of the Act. As part of changes to legislation in 1996, the New Brunswick Private Occupational Training Corporation (the Corporation) was incorporated and given certain responsibilities under the Act. Exhibit 3.3 shows the organization of the parties involved.

Exhibit 3.3
Organization chart



3.8 Under the Act, the Minister is responsible to:

- register training organizations, occupational training programs, instructors, agents, representatives and salespersons,
- inspect training organizations for compliance with the Act, and
- take action where non-compliance with the Act is discovered.

3.9 The Minister appoints a Board of Directors of the Corporation of between five and seven members. At least three must be operators of private occupational training organizations. The Minister appoints the chair and vice-chair from among the Board members.

3.10 The Act defines the purposes of the Corporation as follows:

- to act as administrator of the Training Completions Fund;
- to consult with government and the private occupational training sector on matters relating to private occupational training;
- to facilitate voluntary accreditation in the private occupational training sector; and
- to carry out such other purposes as may be prescribed by regulation (at the time of the audit no other purposes were prescribed).

3.11 In administering the Training Completions Fund, the principal activity of the Corporation is to:

- approve applications for tuition compensation from students, and
- invest funds in a prudent manner, as would a trustee.

3.12 Staff of the Private Occupational Training Branch of the Department perform all the day-to-day operations related to the Act. They fulfill duties of the Minister and provide administrative support to the Corporation.

Significance

3.13 We feel that the regulation of the private occupational training industry is of interest to both the Legislative Assembly and the people of New Brunswick. The *Private Occupational Training Act* creates a regulatory service for students which provides certain protections and increases the likelihood that an education, once initiated, will be successfully completed.

3.14 There have been 11 business failures since 1997, whereby organizations have closed prior to fulfilling their complete obligation to students.

Mandate

3.15 The specific mandate of the Private Occupational Training Branch (Branch) of the Department, as stated in departmental annual reports up to and including 2003-2004, was one of regulating “the private occupational training industry in order to provide effective consumer protection for students and support a vibrant, healthy private training industry.” This same wording was used in

subsequent annual reports except the word “effective” before “consumer protection” was removed. Furthermore the brochure, “Private Occupational Training Organizations - Be An Informed Consumer” made available by the Department to students, included the same mandate as the 2003-2004 annual report.

Scope

3.16 Our audit objective was:

To determine whether the Department of Post-Secondary Education, Training and Labour, and the New Brunswick Private Occupational Training Corporation, fulfill their mandate to provide effective consumer protection to students of private occupational training organizations in New Brunswick.

3.17 To focus our audit efforts, we determined that effective consumer protection should include the following criteria:

- a program(s) to protect all students enrolled in a private occupational training organization;
- protection of the quality of the education;
- protection of the financial investment of the student; and
- a performance measurement system to assess the effectiveness of the protection program(s).

3.18 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.

3.19 During the course of our work the Department expressed concern about two of the criteria. In the first criterion the Department objected to the word “all” stating that some organizations that provide training are exempt either in the General Regulation or by policy. In the second criterion, the Department stated that “*The Private Occupational Training Act* does not provide [the Department] with a mandate to assure the quality of the education provided by privately owned training organizations.”

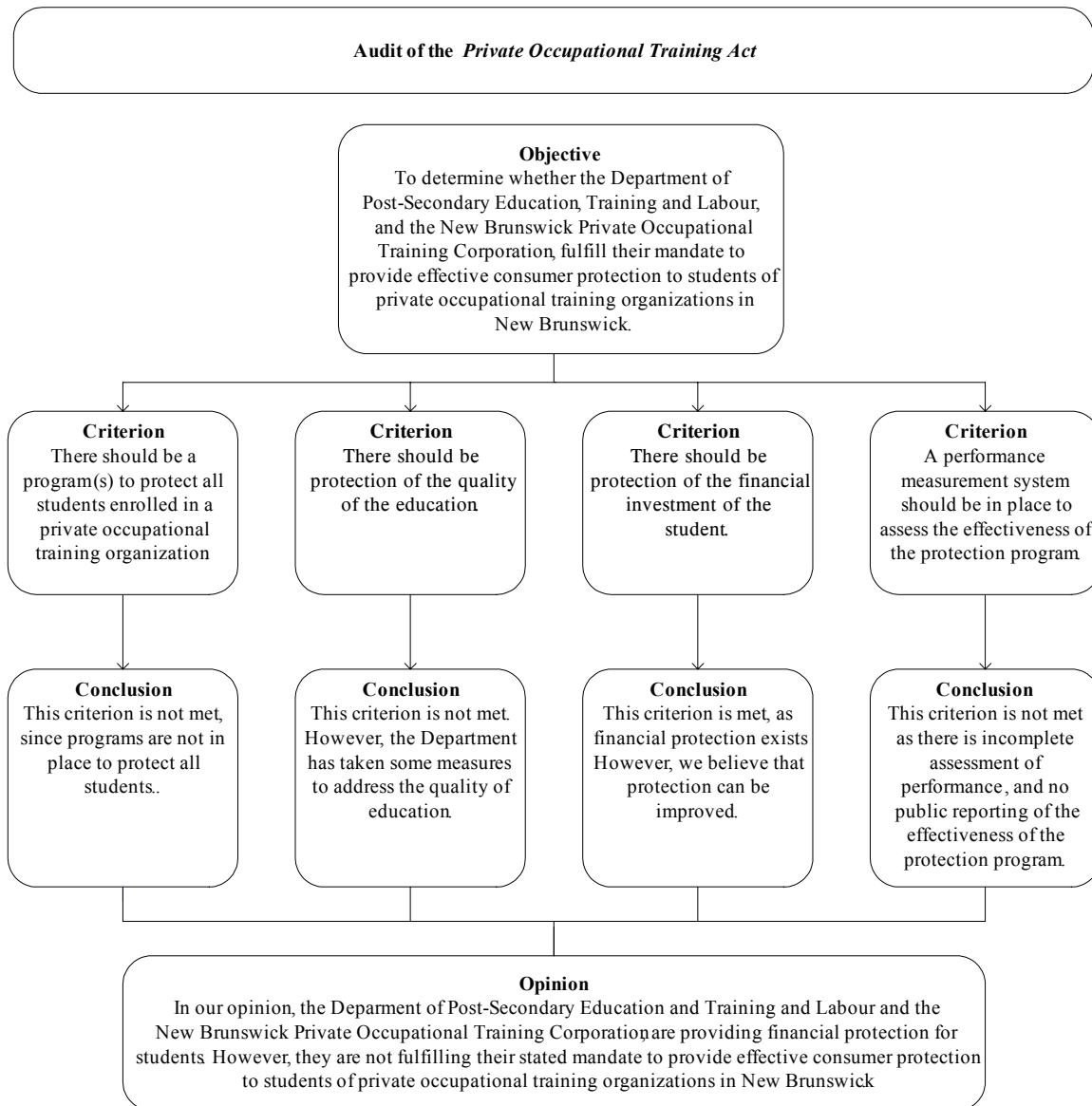
3.20 In discussing the criteria to be used on an assignment, the CICA standards explain when acknowledgement from users and managers cannot be obtained, “the practitioner should consider the effect, if any, on his or her work and report.”

3.21 We have considered the effect and have concluded that these criteria are valid. Our audit was intended to assess the Department’s achievement of its mandate not simply its compliance with its legislation.

Results in brief

3.22 The following exhibit summarizes our objective, criteria, conclusions and opinion.

*Exhibit 3.4
Audit objective, criteria, conclusions and opinion*



All students should be protected

3.23 Our first criterion was:

There should be a program(s) to protect all students enrolled in a private occupational training organization.

3.24 We found, through discussion with the Department, that its legislation does not require protection of all students enrolled in private occupational training organizations in New Brunswick. This reality however, is not communicated well in the mandate of the Branch which is “regulating the private occupational training industry in order to provide effective consumer protection for students and support a vibrant, healthy private training industry.” For clarity, the mandate of the Branch should identify which students are protected as opposed to a blanket statement of “protecting students” of private occupational training organizations in New Brunswick. Furthermore, we feel that the Department should be clear on its website and brochures who they intend to protect, and they should indicate which students are not protected.

Recommendation

3.25 We recommended the Department clearly disclose in its mandate which students are protected.

Departmental response

3.26 *The mandate of the Branch will be modified to clarify the extent of protection provided by the Training Completions Fund.*

Exemptions

3.27 Exempting certain organizations from the requirements of the Act does not necessarily negate all of the protection available to students attending those organizations. Although the tuition of students attending exempt organizations is not protected by the Act, the students can be protected in some cases through other regulations to which organizations must adhere.

3.28 In order to determine if there is protection of all students, we felt that it was necessary to review the reasonableness of those organizations exempt from the Act.

3.29 In addition to exempting chartered universities in Canada, public schools under any other Act of the Legislature and any courses offered by government entities, section 2.1 of regulation 84-207 under the Act exempts the following private organizations:

(a) a person or organization that provides only occupational training programs for the employees of that person or organization or for the members of an employees' or an employers' association;

(b) a body corporate that is governed by an Act of the Legislature when that body corporate is providing an occupational training program solely for members of that body corporate or for applicants for membership in that body corporate;

(c) a person or organization that provides only occupational training programs by correspondence;

(d) a person or organization that provides only occupational training programs on the Internet; and

(e) a person or organization that provides only occupational training programs of less than twenty-one hours of instruction.

3.30 We focused our work on three prominent types of private organizations that either are, or that the Department considers, exempt. Included are: New Brunswick internet training programs, religious training programs, and flight schools.

Internet schools

3.31 Through discussion with the Department and document review, we found that internet training programs are exempt under section 2.1(d) of the General Regulation. Regulating these programs would be complex and they were new when the Act was proclaimed in 1996. Since that time, internet training has advanced significantly and some other jurisdictions such as Manitoba and Ontario have brought students enrolled in these programs under the protection of their Acts.

3.32 Of interest is the recent closure of an internet based training organization in New Brunswick that closed without fulfilling its obligation to students. The organization did not provide sufficient refunds to the students affected by the closure. The students were not protected under the *Private Occupational Training Act*. If such protection did exist, there would have been a clear mechanism to assist the students affected by the closure. It should be noted however, that in this case, the Department took steps to offer assistance to affected students.

3.33 Another look at the exemption status of internet training is warranted. The risk to students of internet training organizations seems to be as high, or higher, than the risk to students of traditional training organizations.

Recommendation

3.34 We recommended the Department re-assess the exempt status of internet based private occupational training organizations to determine if they should continue to be exempt from the Act.

Departmental response

3.35 *The Private Occupational Training Act (POTA) General Regulation (paragraph 2.1(d)) specifically exempts organizations that provide only occupational training programs on the Internet. In accordance with this exemption the Department has not required internet based training organizations to register. The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government.*

Religious schools

3.36 Through discussion with the Department, we found that religious organizations were historically interpreted to be exempt from the Act as they were seen as organizations involved in training individuals to work in their own churches or organizations. The organizations were considered by the Department to be exempt under regulation 84-207 section 2.1(a) as shown above.

3.37 We believe it is not clear that religious organizations meet the criteria to be exempt under section 2.1(a).

3.38 We feel that it would be prudent for the Department to revisit its interpretation of whether religious organizations are exempt or whether students attending these schools should be protected under the Act. It is conceivable that students attending these organizations can be subject to lost tuition fees in the event that an organization closes without fulfilling its complete obligation to students.

Recommendation

3.39 We recommended, if religious schools are to continue to be considered exempt, that the Department amend the regulation to clarify their status.

Departmental response

3.40 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government.*

Flight schools

3.41 Through discussion with the Department, we found that flight schools have been historically highly regulated by the government of Canada. This was seen by the Department as sufficient regulation to negate the need to be registered under the *Private Occupational Training Act*.

3.42 We found that the Act does not provide an exemption for flight schools. We feel, therefore, that the Department should apply the provisions of the Act to those schools. If the Department believes that federal government regulation is resulting in effective consumer protection to students of flight schools, then a specific exemption should be included in regulation 84-207.

Recommendation

3.43 We recommended the Department apply the Act to flight schools.

Departmental response

3.44 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government.*

Pending changes to regulations

3.45 It should be noted that at the time of our audit, the Department was considering changes to the regulations under the *Private Occupational Training Act*. Since these changes were not adopted at the time of the audit, we made our conclusions and recommendations based on the regulations as they existed on 31 March 2007.

Conclusion

3.46 This criterion is not met since programs are not in place to protect all students.

Protection of quality

3.47 Our second criterion was:

There should be protection of the quality of the education.

3.48 The Department does not set curriculum standards for the private occupational training industry. However, some of the Department's activities do promote some aspects of quality.

3.49 The purposes of the activities relating to quality are subject to interpretation. We recognize that activities related to quality contribute to the protection of the financial investment of the students. The better the quality of the training organization, the lower the likelihood of financial failure and related compensation. In our opinion however, the Department's activities go beyond financial protection and extend into quality assurance.

How quality is protected

3.50 We found levels of quality assurance in the following five activities. Some of the activities are not specifically mandated by the Act and Regulations but have been adopted over time by the Branch.

Funding the New Brunswick Association of Career Colleges

3.51 One purpose of the Corporation as defined in the Act is to facilitate voluntary accreditation in the private occupational training sector. Although the Corporation is not formally involved, the Department is providing funding support for an industry driven quality assurance program through the New Brunswick Association of Career Colleges (NBACC).

3.52 NBACC is affiliated with the National Association of Career Colleges and has a purpose to foster “excellence in the private training sector.” Of the 70 schools registered under the Act as of 31 March 2007, 22 were members of the NBACC. Although only 31% of registered organizations are members of NBACC, approximately two thirds of all students enrolled in private occupational training organizations in New Brunswick attend the 22 member organizations.

3.53 The Department has committed one time support of up to \$132,350 to the Association towards the development of a quality assurance and instructor development program. The grant was given under the Employment Services Program – Labour Market Research and Analysis. In 2006-2007, \$80,000 was paid to the association and a final payment is contingent on the progress of the project.

3.54 It should be noted that only member schools of the NBACC will benefit from this program.

Control over the registration process

3.55 All private occupational training organizations in New Brunswick are required to be registered under the Act.

3.56 As part of this registration process,

- The Department collects course outlines to aid in assisting students who have complaints about courses in which they are enrolled.
- They obtain copies of licenses, or verification of licensing for all instructors who need to be licensed to teach courses. For example, they would verify licenses of all truck driving instructors, as section 90(1) & (2) of the *Motor Vehicle Act* requires truck driving instructors to be licensed.
- They consult with external regulators before registering schools which require external regulation. For example, the Branch would ensure before registering a Cosmetology school that the school was registered under *An Act to Incorporate the*

Cosmetology Association of New Brunswick. Similarly, before registering a school offering a real estate course the Branch would ensure that the school was authorized under the provisions of *An Act to Incorporate The New Brunswick Real Estate Association.*

3.57 The act of registering the organizations, in addition to the above activities, contributes to monitoring the quality of the education delivered by registered organizations.

Processing student complaints

3.58 The Department, although not specifically mandated through the Act and Regulations, has a complaint mechanism for students.

3.59 Students are able to file complaints. The Department requests that all complaints be submitted by a letter and copied to the school in question, before action is taken. The Department will investigate any formally filed complaints.

3.60 In 2006 there were three written complaints submitted to the Department and copied to the school under question. We reviewed correspondence on the three complainants and can conclude that the Branch is responding to complaints.

3.61 The existence of a complaint mechanism contributes to the quality of the education.

Existence and inspection of contracts

3.62 Section 6.2 of the Act requires that students and training organizations enter into contracts before the commencement of training. Section 9.1 of regulation 84-207 requires among other things that the following elements be included in these contracts:

- an outline of the content of the course;
- the competencies expected to be obtained from the course;
- the qualifications of the instructors;
- ratio of students to instructors;
- the equipment available for the program;
- the maximum class size;
- a statement that the course does not guarantee employment;
- a statement to the effect that students should ask potential employers of the value of the course and that the value of the course is determined by employers and not the government of Canada or the Province; and
- a statement that information should be available of the number of previous students who have obtained training related employment

and that information should be reviewed by the prospective student before signing the contract.

3.63 All of the points above contribute to the quality of the education.

3.64 The Private Occupational Training Branch of the Department has an inspection process whereby they inspect organizations for compliance with certain elements of the Act. Part of this inspection process is to ensure that the above mentioned contracts contain all of the elements outlined in Regulations.

3.65 We sampled 11 inspection reports. Included in the sample were 4 of the 20 inspections conducted in the fiscal year 2006/07 and 7 reports from previous years going as far back as 2003/04. In 6 of the 11 cases sampled, the Branch had found issues with the contracts between students and organizations and had discussed these issues with the organization under inspection. There was at least one case in the past where an organization's registration was suspended due to failing to adhere to the Act. That organization did not sign contracts with students.

3.66 The inspection of the elements of the contracts between students and organizations contributes to the quality of the education.

Instructor registration

3.67 The Act requires that instructors be registered. Further to this requirement, where necessary, the branch verifies instructor credentials prior to registration. For example this is done for Cosmetology training. The Branch also consults with the Apprenticeship and Certification Branch to verify credentials of instructors of programs of apprenticeable trades. However, in many other cases the credentials of instructors are not measured.

3.68 Verifying the credentials of instructors contributes to protecting the quality of education. We also note that whether credentials are measured or not, instructor registration can serve as a mechanism to control the quality of instructors, as an unqualified instructor may be less apt to teach if they know that they have to register with the Department and indicate their qualifications before they are eligible to do so.

Weaknesses with respect to quality protection

3.69 The above five activities, as discussed, contribute to protecting the quality of education received at private occupational training organizations. However, we also noted some weaknesses.

Inspections

3.70 We found shortcomings in the inspection's process around issues addressing the quality of education.

3.71 Inspections contribute to the quality of the education by verifying that student/organization contracts exist in accordance with the Act as discussed above.

3.72 We found however, that there was no written policy for the frequency of these inspections. Of the 70 registered schools as of 31 March 2007, at least 20 had been inspected within the past year and at least 2 schools had not been inspected since 2000. The Branch indicated that they want to inspect 100% of organizations in the coming fiscal year. We believe that a risk based approach would be appropriate for determining the number of inspections to complete.

3.73 The organizations that should be inspected annually are those that have the highest risk:

- of violating the Act with respect to contracts, and
- of not remitting fees to the Corporation.

3.74 To determine the organizations with the highest risk of violating contracts, the Corporation could use past inspections and pay closer attention to those organizations that violated the Act in the past. Also, student complaints could be used to identify potential problems with contracts.

3.75 To determine the risk of incomplete fee remittances, analytical review of financial statements could be performed to compare an expected amount of fees to be remitted to actual remittances. Such a review would include an investigation into any differences.

3.76 We also found overall, that there was no policy to guide the scope of inspections. Although a standard inspection form was used for all inspections, the form did not include all possible elements as described in section 7(1) of the Act. For example, inspection of the method of instruction as allowed per section 7(1)(a) of the Act, which would contribute to the quality of the education, is not being done.

3.77 We also found little monitoring of inspection reports. Reports are currently not being reviewed by anyone other than those performing the work.

Recommendation

3.78 We recommended the Department develop a policy to guide it with respect to the frequency, the scope, and the monitoring of inspections.

Department response

3.79 *The Department will develop a policy related to inspection of private occupational training organizations.*

3.80 In addition to the Department's current practice of inspecting all new registrants prior to issuing the initial certificate of registration, an inspection policy could include:

- inspecting all existing organizations at least once every five years; and
- after assessing the risk of each organization annually, inspecting all high risk organizations on an annual basis.

3.81 We also found that there may be potential efficiencies to be gained through improved coordination between the inspection procedures performed by the Private Occupational Training Branch and the Student Financial Services Branch.

3.82 Although both Branches have slightly different goals when performing their inspections, there are commonalities. For example, the Student Financial Services Branch and the Private Occupational Training Branch both look to ensure that contracts are present between students and private training organizations. We realize that Student Financial Services would be concerned only with those students who have student loans and may not inspect all aspects of contracts, but we remain confident that better coordination could lead to efficiencies within the Department as a whole.

Recommendation

3.83 We recommended the Department consider developing a single audit function to carry out the inspection duties of the Private Occupational Training Branch and the Student Financial Services Branch.

Departmental response

3.84 *As a result of government reorganization the Private Occupational Training Branch and the Student Financial Services Branch are both within the Department of Post-Secondary Education, Training and Labour which provides an opportunity to review current inspection processes.*

Advertising

3.85 Paragraph 15(4) of Regulation 84-207 states that no advertisement shall contain any reference or allusion to any department or agency of government.

3.86 The regulation about advertising is intended to protect students from false perceptions about private occupational training organizations.

3.87 We found that the monitoring of advertising has weaknesses.

3.88 We reviewed a sample of ten websites of private occupational trainers to determine if advertising restrictions were being followed. We found that five of the ten websites sampled had advertising violations making reference to a department of the government which could be potentially misleading to current and prospective students.

Recommendation

3.89 We recommended the Department improve its monitoring of the advertising of private occupational training organizations in New Brunswick.

Departmental response

3.90 *The Department has already taken steps to improve the monitoring of advertising by private occupational training organizations.*

Instructor registration

3.91 As mentioned earlier, the Act requires that instructors be registered, but in many cases the credentials of instructors are not measured or monitored as part of the registration process.

3.92 The registration of instructors has the potential to help ensure the quality of education. One potential use of instructor registration is as follows: the Branch could compare instructor qualifications reported by instructors on their registration forms to that which organizations record on their contracts with students. This practice could help to ensure that the courses are delivered by the staff with the qualifications promised in the contracts.

Recommendation

3.93 We recommended the Department clarify the purpose of instructor registration, and look for ways to use this process to ensure the instructors have proper qualifications.

Departmental response

3.94 *Registration of a teacher/instructor is required under the POTA subsection 3(2) "No person shall act as a teacher or instructor of an occupational training program unless that person and the training organization are registered under this Act." The requirement is clearly a simple registration requirement. The absence of intent by government to impose qualification standards on instructors in private occupational training organizations is clear. The intent of the instructor registration process is to ensure continuity of instruction.*

Other observations

3.95 There currently is no guarantee of access by students to their transcripts in the event that a school closes and a guarantee is not required under the Act or Regulations. We note however, that the quality and value of the education of past students can be somewhat diminished if they do not have access to their transcripts.

Recommendation

3.96 We recommended the Department implement procedures to ensure students will be able to access their transcripts in the event of school closures.

Departmental response

3.97 *When involved in an unexpected closure of a training organization the Department attempts to acquire all records of current students in order to facilitate securing appropriate completion of their training.*

3.98 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government.*

Overall observation

3.99 The Department communicates in its brochure, “Private Occupational Training Organizations - Be An Informed Consumer”, and on its website that it is not responsible for the quality of the education offered by private occupational training organizations. However, we observed five activities of the Department that contribute to the quality of education offered by private occupational training organizations.

Recommendation

3.100 We recommended the Department clarify its role and communication with respect to its activities relating to the quality of education delivered by private occupational training organizations.

3.101 Specifically, if these activities are intended to help ensure the protection of the student’s financial investment, the Department should clearly communicate the activities that it undertakes and their purpose.

Departmental response

3.102 *The scope of the registration process outlined in the POTA does not include assurance of the quality of education delivered by private occupational training organizations. Recognizing the importance of training organizations delivering quality training programs the Department is working with the New Brunswick Association of Career Colleges to assist them in developing an industry driven quality assurance process.*

3.103 *The Department will undertake to communicate, in any material directed toward the public, the limitations of its responsibilities related to the private occupational training organizations registration process.*

Conclusion

3.104 This criterion is not met. The Department informed us that monitoring quality was not part of its mandate. We included this criterion because we felt monitoring quality was part of ensuring effective consumer protection to students and because the Act requires certain activities that could be interpreted as quality assurance activities. We found that the Department has taken some measures to address the quality of education.

Protection of the financial investment of the student

3.105 Our third criterion was:

There should be protection of the financial investment of the student.

3.106 Between 1999 and 2006 there were nine registered private occupational training organizations that closed before fulfilling their full obligation to students. These closures impacted approximately 190 students. Thirty-five of the 190 (~ 18%) have never received the compensation available to them. Three of the 35 refused the compensation granted and the other 32 failed to submit claims for compensation.

3.107 In addition, as reported in the first annual report of the Corporation, there were two school closures between January 1, 1997 and March 31, 1998. The Branch was unable to provide information on these closures due to their file retention schedule.

3.108 Total payments for student compensation from 1997 to 2006 was approximately \$1.3 million disbursed from the Training Completions Fund.

3.109 We chose to examine the following aspects surrounding financial protection.

- scope of the financial protections available;
- how the financial protection is communicated;
- sufficiency of the protections in place;
- the procedures in place to ensure that all student protection fees are submitted;
- how the Training Completions Fund is managed; and
- how funds are disbursed in the event an organization does close.

Scope of financial protection

3.110 In 1996 the Training Completions Fund (the Fund) was established to protect the financial investment of students in the event of an unexpected closure of a Private Occupational Training Organization. The Fund was set up in response to a prominent failure within the Private Occupational Training Industry.

3.111 Each student enrolled in a registered private occupational training organization is required to submit through their school an amount equal to 1% of their tuition fees to the Fund. (These fees are known as Student Protection Fees.)

3.112 Under section 6.4 of the Act, among other things, the Fund is to be used to:

- finance equivalent training at another organization if a school closes, or
- refund students in the event that their school closes before their training is complete (if equivalent training is unavailable), or
- refund students in the event that their school fails to refund their tuition when required under regulation.

3.113 In addition to the Training Completions Fund, all newly registered private occupational training organizations are required to submit to the Minister security in the form of a bond or letter of credit in an amount determined by the Minister. The bond is to exist for the first two years of operation and can be used, pursuant to paragraph 4(7) of regulation 84-207, to reimburse the Training Completions Fund for any compensation it has granted to students of a training organization in default. The security is the first source of compensation if an organization closes within the first two years of operation.

3.114 A potential third level of protection is found in section 6.5 of the Act. The Minister may loan funds to the Corporation to carry out its purposes as proclaimed in section 6.4 of the Act as shown above.

Communication of the protections

Legislation compared to department information

3.115 The following financial protection is described in the brochure provided by the Department and on the website of the Private Occupational Training Branch of the Department:

“The Student Protection Fee provides you protection, which ensures you completion of training, or a full tuition refund, in the event of failure or closure of the registered private occupational training organization.”

3.116 Section 6.4(9)(b) of the Act states,

if there is insufficient money in the Fund to provide compensation in a case within paragraph (5)(a) or (b), the compensation provided shall

- (i) not exceed the amount of money in the Fund, and*
- (ii) be provided on a pro rata basis.*

3.117 In other words the Act says that the level of tuition insurance is dependent on the amount of money in the fund. There is a contradiction between the Act and the Department's communication that there is 100% protection of tuition fees through either refund or equivalent training available to students in the event of an unexpected closure.

Recommendation

3.118 We recommended the Department ensure that the protection it communicates is consistent with the provisions of the Act.

Departmental response

3.119 *The Department will undertake to communicate, in any written material directed toward the public, the limitations of the protection provided to students.*

Communicating the need to apply for compensation

3.120 The Act outlines the process by which a student can apply for compensation as follows:

6.7(1) A student, or a third party who has paid tuition fees on a student's behalf, may, on a form provided by the Corporation, apply to the Corporation for compensation under paragraph 6.4(5)(a) or (b).

3.121 In order to receive compensation students must submit a claim to the Corporation. In the event a school closes unexpectedly the following actions take place to communicate the need for students to apply for compensation:

- students are met with to discuss the protection available to them;
- claim for compensation forms are distributed or sent to all students involved;
- if necessary, the Student Financial Services and the Employment Programs and Services branches of the Department are contacted to help identify all students affected by the closure;
- follow-up calls are made to students who have not sent in their claims; and

- attempts are made to find new addresses and re-send claim forms when they are returned undelivered.

3.122 Other general means of informing students of the financial protection available (which should motivate students to seek out their refund or equivalent training as the case arises) include the contract between the student and the organization, the Branch website, and the brochure.

3.123 It was noted earlier that 32 of the approximately 190 students eligible for compensation did not apply for compensation.

3.124 This may not only be of concern to the affected students, but also to the Student Financial Services and Employment Programs and Services Branches. Upon closure of an organization, the Private Occupational Training Branch would contact both of the above branches to determine any students affected who had outstanding student loans or who had received Training and Skills Development grants.

3.125 When refunds are issued to students who have outstanding student loans, these refunds are paid to the Receiver General of Canada and attributed to the student's loan account. Similarly, if students have received Training and Skills Development grants, refunds are paid to the Minister of Finance of New Brunswick. In either case, the only way refunds can be paid is if the student applies for compensation. The Act currently does not give authority to disburse funds directly to the Receiver General or the Minister of Finance without an application from the student.

Recommendation

3.126 We recommended the Department implement legislative or regulatory measures so that the Receiver General of Canada and the Minister of Finance of New Brunswick are able to receive refunds directly from the Training Completions Fund, when applicable, without the need for affected students to apply for such compensation.

Departmental response

3.127 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government.*

3.128 We also found that there was no formal policy with respect to the coordination between the branches to identify which students had outstanding student loans or were grant recipients. It is important that refunds be disbursed appropriately.

Recommendation

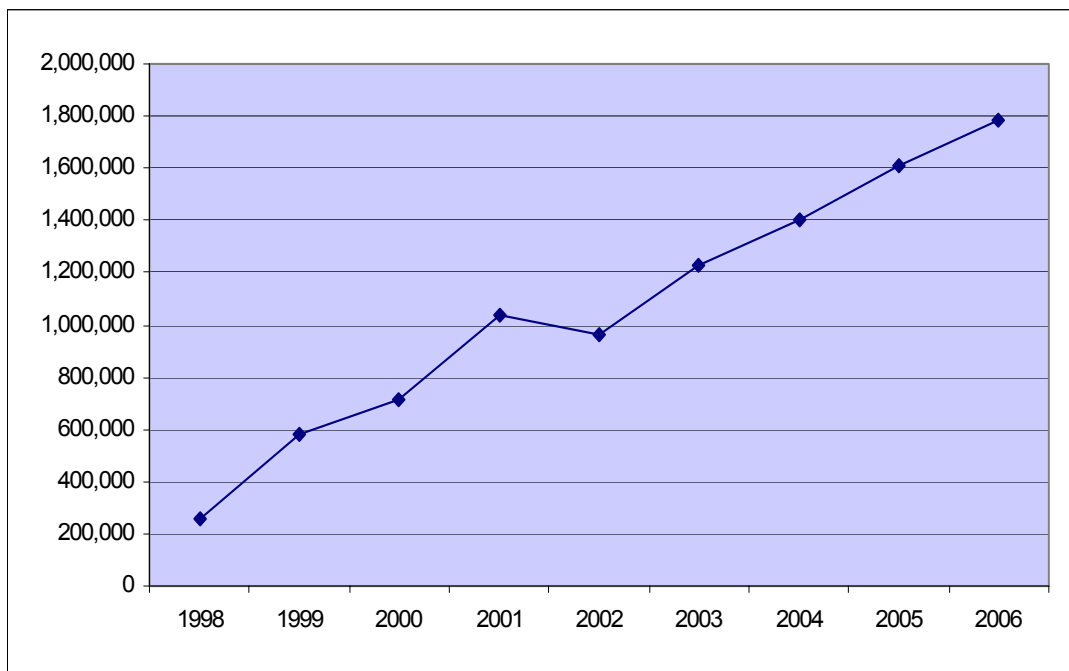
3.129 We recommended the Department develop policy and procedures to guide it in determining which of those students who are owed refunds have outstanding student loans or were grant recipients.

Departmental response

3.130 Existing procedures are in place to determine if students, affected by a closure, have outstanding student loans or were grant recipients. These procedures will be documented.

Sufficiency of the financial protections in place

3.131 Exhibit 3.5 shows the balance of the Training Completions Fund from 1998 to 2006. As of 31 March 2006 the fund had approximately \$1.8 million protecting approximately \$23 million in tuition for the fiscal year 2005/06.

*Exhibit 3.5**Balance of the Training Completions Fund*

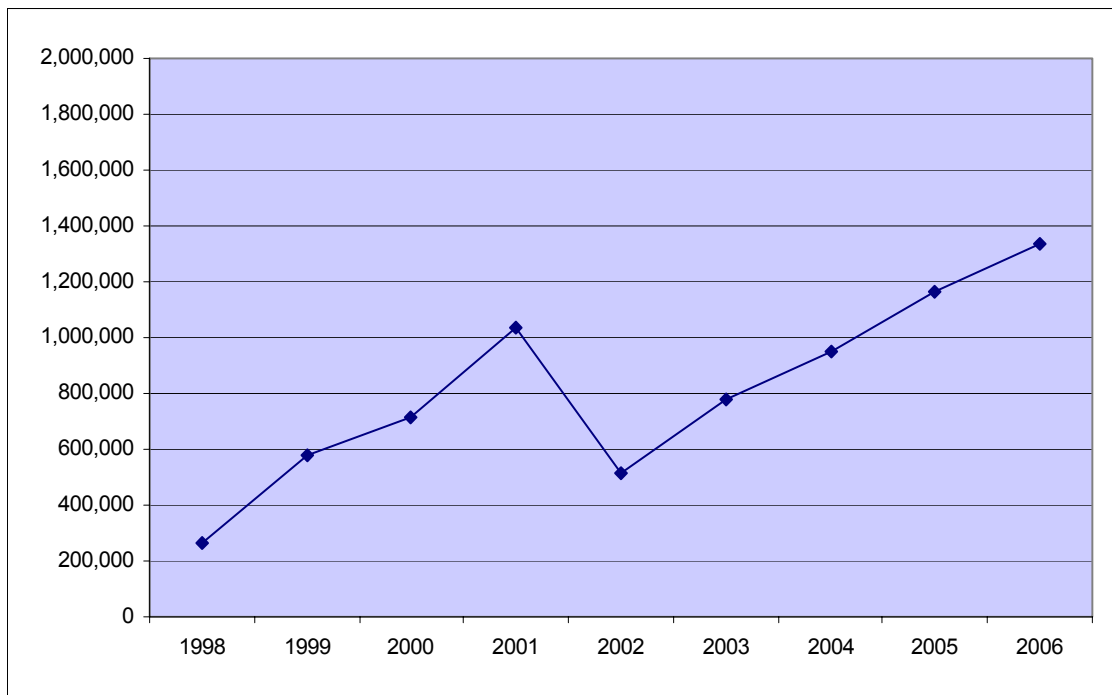
3.132 Since its beginning, there has never been a case where the fund has not been able to provide compensation to students in the event of a school closure.

Grant from the Province

3.133 In 2001-2002 ITI Information Technology Institute Incorporated closed unexpectedly resulting in a disbursement from the fund of over \$800,000. With no external help the fund would have decreased to approximately \$500,000. The Corporation did not

want the Fund to reduce to this level and requested funds from the Province to aid in compensating students. The Province, in turn, issued a grant to the Corporation in the amount of \$448,696. As seen in Exhibit 3.6, if the Corporation had not received this grant, we estimate that the Fund balance would still have increased to \$1.3 million as at 31 March 2006.

Exhibit 3.6
Fund balance if no provincial subsidy



3.134 We feel that the prudent approach, if and when assistance is needed, is to loan funds to the Corporation. Under section 6.5, the Act allows the Minister to loan funds to the Corporation to assist in fulfilling its purposes. If the Province had loaned \$448,696 to the Corporation as opposed to giving a grant of this amount, it appears that they would have been able to recover the full amount from the Fund as the balance of the Fund currently is \$1.8 million.

3.135 It is unclear why the Department felt it was necessary to provide a tax supported grant rather than a loan to the Fund which still had a positive Fund balance.

Security

3.136 Before the creation of the Training Completions Fund in 1996, all registered private occupational training organizations were

required to issue, in an amount determined by the Minister, security to the Department in the form of a bond or letter of credit. The security was to remain for the life of the organization.

3.137 After changes to legislation in 1996, only newly registered organizations are required to submit to the Department security in the form of a bond or letter of credit.

3.138 As mentioned in our discussion of the scope of protections, this security is to remain for the first two years of operation and then will be cancelled. The security is to be used for refunding tuition fees in the event that the organization closes within the first two years without fulfilling its obligations to its current students. Holding the security provides similar protection to that of the Training Completions Fund but compensation would be paid from the training organization's security in the event of a failure, as opposed to from the Training Completions Fund.

3.139 Two years of operations may not be sufficient to judge the ongoing financial and operational viability of an organization. Therefore we question whether the security should remain for a longer period of time.

Recommendation

3.140 We recommended the Department evaluate the viability of extending the security requirement beyond the current two year time period.

Departmental response

3.141 *Subsection 4(1) of the General Regulation requires that training organizations provide security for only the first two years of operation.*

3.142 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government*

Actuarial services

3.143 In 1996 upon initial set up of the Training Completions Fund an actuary was consulted to help determine the amount needed in the fund. No actuary has been consulted since.

3.144 In the actuary's initial report the following comment was made, "available data is so limited that a rigorous analysis of the arrangement is impossible." We feel that it may be beneficial to consult an actuary once again as there is now more data available given the passage of ten years and the failures of a number of private occupational training organizations.

Recommendation

3.145 We recommended the Department consult an actuary to assess the appropriateness of the 1% levy of tuition fees for the Training Completions Fund.

Departmental response

3.146 *The Department consulted an actuary prior to setting the 1% levy. Since that time, many other provinces that have established a Training Completions Fund, have determined that 1% is a sufficient amount to be required as a student protection fee. The cost of hiring an actuary to produce a second report could not be justified.*

Protection against shortfalls

3.147 If a larger school were to close unexpectedly there could be inadequate funds in the Training Completions Fund to refund or offer equivalent training to students. Since some failures cannot be prevented, the Department needs to have a plan in place to adequately fulfill its responsibility to protect the students' financial investment. We found that no plan currently exists.

3.148 In the past there appeared to be some confusion around when and how government is to get involved in assisting the Corporation. This is reflected in the Actuary's comments at the beginning of the Fund in 1996, and was seen again when the Province provided a grant to the Corporation in 2001.

3.149 In 1996, when the Actuary was initially consulted to help identify an optimal levy for student protection fees the following comments were included in his report.

"... I understand your description of the proposed arrangement, in the event of a deficit the shortfall would be advanced by government, subject to the advance being recouped from future revenues." and

the "... levy of 1% of tuition fees appears reasonable..., assuming that government will act as a guarantor in the event of temporary deficits."

3.150 Neither of the above statements is supported by the Act. The government is not mandated to be the guarantor and it is not required to provide funding if there is a shortfall in the Fund. In the case of a shortfall, the Act says the Minister "may" (not "shall") loan funds to the Corporation.

3.151 In the case of the 2001 grant, the grant was not required by the Act and therefore represented a one time solution rather than a

guaranteed means of supporting the Fund in the event of a large claim.

Recommendation

3.152 We recommended the Corporation have documented procedures to follow in the event of a large claim against the Fund.

3.153 The procedures could include for example:

- the process for a submission to the Minister for a loan to the Corporation (forms, timing for turnaround, names of contacts, etc.) and
- the process for a payout on a pro rata basis from the money available in the Fund.

Departmental response

3.154 *The POTA 6.4(9)(b) outlines the procedure to follow in case of insufficient money in the fund.*

3.155 *The Department will refer this recommendation to the Corporation*

Other jurisdictions

3.156 In review of a sample of other jurisdictions in Canada, we found that none required more than 1% of tuition to be submitted to their respective Training Completion Funds.

3.157 We noted that Ontario recently made changes to its regulatory regime with respect to its financial protections for students of private occupational training organizations. A review of this work may be beneficial for New Brunswick.

Completeness of the Training Completions Fund revenues

3.158 Earlier we identified the review and monitoring of student/school contracts as a key element of the inspection process. A second key element is the focus upon the collection of student protection fees from students for the Training Completions Fund.

3.159 We found that the following steps were currently being done by the Department with respect to the completeness of the Training Completions Fund:

- Inspectors examine all student files for smaller schools and a sample of files for larger schools. From the files they compile a list of students to compare to the list provided by the organization when remitting the student protection fees. The Department informed us of at least one case where this resulted in more fees being collected.

- If the Department is informed of a potential problem with respect to the completeness of student protection fees, they will compare student lists from the Student Financial Services and Employment Programs and Services branches to lists submitted by organizations on remittance of the fees.
- The Branch follows-up with the training organization if student protection fees are not remitted for a program that is registered.

Recommendation

3.160 We recommended the Department expand its inspection procedures with respect to the completeness of Training Completion Fund revenues.

3.161 For example, some procedures that could be done with respect to the completeness of Training Completions Fund revenues are:

- The expected amount to be remitted could be calculated based on tuition revenue reported in organization financial statements and compared to actual remittances.
- All schools registered who have not submitted student protection fees could be inspected to ensure no training is taking place and that no tuition fees have been collected.
- Yearly enrolment data for schools could be used to assess the reasonableness of student protection fees remitted.

Departmental response

3.162 *The Department will review its procedures for insuring completeness of Training Completions Fund revenues.*

Fund management

3.163 Exhibit 3.7 shows the estimated rate of return on the invested portion of the Training Completions Fund for the past nine years.

Exhibit 3.7

Rate of return for the Training Completions Fund

	2006	2005	2004	2003	2002	2001	2000	1999	1998
Rate %	2.05	2.50	2.76	1.96	6.07	3.84	4.62	2.53	1.20

3.164 We noted that there is no formal investment policy. Funds are invested in Guaranteed Investment Certificates with five year terms. The Corporation also has an agreement with the financial institution to withdraw funds without penalty from its investments provided that the funds are needed for emergency purposes.

3.165 We feel that the Fund can earn greater than 2% with relatively little added risk. One alternative could be an investment with the Province through the either the Department of Finance or the New Brunswick Investment Management Corporation.

Recommendation

3.166 We recommended the Corporation develop an appropriate investment policy and invest the funds accordingly.

Departmental response

3.167 *The New Brunswick Private Occupational Training Corporation is an entity that was established by the POTA (6.3(2)) to function outside of government. The Department will refer this recommendation to the Corporation.*

Disbursements from the Fund

3.168 There is no formal policy to determine whether the Corporation refunds students their tuition or offers them equivalent training at an alternative educational institution.

Process of determining equivalent training or refund

3.169 It was communicated to us that the first choice of the Corporation is to find equivalent training for students. This choice is seen as the best alternative as it generally results in the least amount of time to get students to a position of having employable skills.

3.170 When the process to find equivalent training is initiated we saw evidence in the minutes of the Corporation that requests for proposals are issued. Requests for proposals are used to assist the board in finding the best equivalent training possible for students given their location and the skills they are seeking.

3.171 If adequate equivalent training is not found then the Corporation will offer a refund to students.

3.172 We found that there was a case where a school closed and three students refused to accept the equivalent training that was offered. In this case the Corporation refused to offer these students refunds. One student opted to take employment and two others did not feel that the equivalent training opportunity was adequate. The Board of the Corporation felt that they had authority under the Act to choose which option, refund or equivalent training, was to be offered to the students.

3.173 We believe in these three cases that the Corporation's approach did not provide protection to the affected students.

Recommendation

3.174 We recommended the Corporation develop a policy to guide it in determining when to provide refunds to students who are subject to unexpected organization closures.

Departmental response

3.175 The Department will refer this recommendation to the Corporation.

Extent of refunds

3.176 Where a refund is issued in the event that equivalent training is not available, the Act under section 6.4(7)(b)(i)(ii) requires that the refund include the tuition fees of the last academic year for which they were paid, and such reasonable accommodation costs paid by the student as may be determined by the Corporation.

3.177 Tuition fees are defined in the Act as “the fees charged by a training organization to a person or to a third party on a person's behalf for an occupational training program, excluding enrolment fees, registration fees, non-refundable deposits and the costs of materials and supplies.”

3.178 In review of a sample of refunds we found that the tuition fees were refunded, but accommodation costs were not. Many students in our sample included accommodation costs on their claims, but were denied compensation for these costs.

3.179 As for tuition fees refunded, we found that there was some confusion as to what should be included in these fees. For instance, in one case the costs of books were refunded. It was not clear whether these costs should have been included in tuition fees but the fact that the school did not include the cost of books in its calculation of student protection fees suggests that these costs were not part of tuition fees and should not have been refunded.

3.180 The Department needs to decide whether tuition fees should include the costs of books and should develop a policy in this regard to enable it to apply the Act on a consistent basis.

3.181 The Department should also determine if it wants to continue to refund reasonable accommodation costs, and, if not, should consider having section 6.4(7)(b)(ii) removed from the Act.

3.182 We found no formal policy developed by the Corporation with respect to the extent of the coverage of refunds and that the Corporation reacts on a case-by-case basis.

Recommendation

3.183 We recommended the Department develop policy to clearly define the extent of refunds in the event that refunds are required.

Departmental response

3.184 *The Department will consider this recommendation when preparing proposed amendments to the legislation for consideration by government and in subsequent policy development.*

Timeliness of compensation

3.185 We looked at the timeliness of compensation for two of the eleven organizations that closed in the past ten years, and found that in both cases the equivalent training and, or refunds, were offered on a timely basis.

3.186 The first case, being the closure of Information Technology Institute Incorporated, resulted in no stoppage of training for those students who were to receive equivalent training. For those students who were to receive refunds, all initial refunds were disbursed within fifteen days of the submission of their claims.

3.187 The second case, being the closure of Multihexa, resulted in training being completed in a timely manner. Students initially were to complete their training by January of 2004 and the board of the Corporation reported in March of 2004 that all had completed their training.

Disbursements from the Training Completions Fund

3.188 Before disbursements can be made from the Fund, an invoice from an equivalent training organization or a claim for compensation from a student must be received. All cheques from the Fund require two signatures.

3.189 The financial statements including disbursements from the Fund are audited by an external auditor each year. Therefore, we did not test any disbursements from the Fund.

Conclusion

3.190 This criterion is met as financial protection exists. However, we believe that protection can be improved.

Performance measurement

3.191 Our final criterion was:

A performance measurement system should be in place to assess the effectiveness of the protection program(s).

3.192 The Department must be held accountable for results. It is important that the Legislature and the public have information

available to assess the effectiveness of programs administered by government.

3.193 The Private Occupational Training Branch's responsibilities for the fiscal year 2005-2006 were reported in the annual report of the Department. However, we found no reporting on the effectiveness of its program. There was no indication of whether or not the Branch met its responsibilities.

3.194 For example there was no reporting on:

- the number of private occupational training organizations registered, and whether or not all were registered;
- the number of school closures, and whether the Fund was used in each case;
- how many students received and did not receive refunds or equivalent training;
- how many student complaints were received and whether all of them were resolved; and
- the results of inspections and the number of inspections performed in the year compared to the number that were planned.

3.195 We found that the Branch had established performance indicators to measure performance against its objective. However, we noted that the indicators established did not encompass all of the stated responsibilities of the program and there was no external reporting of the performance indicators and results.

Recommendation

3.196 We recommended the Department develop a more comprehensive list of performance indicators.

Departmental response

3.197 *The Department will undertake a review of the current performance indicators for this program.*

3.198 We also found that the Branch had established a service guarantee with respect to its responsibilities, but again found no reporting on its performance with respect to the guarantee and found no indication that the Branch is measuring its performance against the guarantee.

3.199 An effective performance measurement system should assist the Branch to use its limited resources in the most economic and efficient manner and result in maximum effectiveness in carrying out its responsibilities.

Recommendation

3.200 We recommended the Department report on the effectiveness of the protection program for students enrolled in private occupational training organizations in New Brunswick through its annual report.

Departmental response

3.201 *The Department will undertake a review of the information contained in the annual report for this program.*

Expenses of the Private Occupational Training Branch

3.202 An appropriate performance management system should also include procedures to measure and evaluate the economy of operations.

3.203 As mentioned earlier in our report, the Private Occupational Training Branch of the Department is responsible for the day-to-day activities required of both the Minister and the Corporation. The associated costs in performing these duties is sustained by the Branch.

3.204 We found no evidence where the economy of operations of the Branch have been measured or evaluated. Therefore, we reviewed the financial resources consumed since 2001 to operate the Private Occupational Training Branch compared to the revenues received during this same period. The information is presented in Exhibit 3.8.

Exhibit 3.8

Private Occupational Training Branch fee revenues and ordinary expenditures 2001-2006.

	2006	2005	2004	2003	2002	2001
Revenue	16,300	16,500	17,000	15,900	18,100	15,521
Expenditures	106,670	108,282	132,064	123,826	116,920	110,296
Excess (deficiency) of revenue over expenditure	(90,370)	(91,782)	(115,064)	(107,926)	(98,820)	(94,775)

3.205 As seen in Exhibit 3.8, historically there has not been enough revenue collected to pay for the operations of the Branch.

3.206 The Branch had budgeted revenue of \$18,000 for 2006-2007. This revenue is generated from registration fees for both training programs and instructors.

3.207 The current registration rates were established in 1969 and have not changed since. The fee structure requires all organizations to submit a fee of \$25 for registration or renewal of registration. Registrations are to be renewed on an annual basis. The \$25 fee

covers the registration of the school and one occupational training program. For each additional training program registered, a fee of \$10 is to be collected to a maximum registration fee of \$250.

3.208 In addition, for registration or renewal of instructors the fee is \$25 per instructor.

3.209 As stated above, staff of the Branch, also perform administrative duties for the Corporation in addition to their departmental duties. A recovery from the Corporation for the cost of administering these duties does not exist. We feel that it would be reasonable for the Branch to recover some of its costs from the Corporation.

Recommendation

3.210 We recommended the Department amend the fee structure of the Branch with the objective of eventually making the Branch self sufficient.

Departmental response

3.211 *The fees for registration of training organizations, training programs and instructors were established by the POTA General Regulation. The Department will consider the recommendation to increase the current fees when preparing proposed amendments to the legislation for consideration by government.*

Conclusion

3.212 This criterion is not met as there is incomplete assessment of performance, and no public reporting of the effectiveness of the protection program.

General comments by the Department

3.213 In addition to addressing the specific recommendations in our report, as set out above, the Deputy Minister of the Department provided the following general comments:

The first observation concerns the inclusion of the New Brunswick Private Occupational Training Corporation (NBPOTC) in the scope of the audit. This concern was expressed by PETL staff at the initial audit meeting of our respective officials. The NBPOTC was established by the Private Occupational Training Act (Act) in 1996. The primary purpose assigned to the Corporation was “to act as administrator of the Training Completions Fund” (the Fund). The Fund is comprised of fees paid by students as a means of insuring that training completion or a refund will be available to them should the training organization that they enroll in close unexpectedly. Because this money is collected from students the

Government of the day determined it was best to establish the Fund outside of Government. Paragraph 6.3(2) of the Act specifically states that “The Corporation is not a Crown Corporation and is not an agent of Her Majesty in right of the Province.” Based on the source of revenue in the Fund and the establishing principle contained in the Act, I have ongoing concerns with the inclusion of the NBPOTC in the scope of this audit.

In addition, since the Fund was purposefully established outside of Government and based on the distinction that the Fund is comprised of student’s money, and the need to maintain these two premises, the suggestion that investment of moneys from the Fund could be made through the Department of Finance or the New Brunswick Investment Management Corporation appears misplaced.

The second observation relates to those recommendations in the audit report that would require changes to the Act and Regulations in order to be implemented or that relate to provision of levels of student protection clearly not contemplated by the Act. In connection with this point, the audit report states, “This audit was performed in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants...” The definition of value-for-money (performance) audits published by the Office of the Auditor General of Canada states, “Performance audits do not question the merits of government policies. Rather, they examine the government’s management practices, controls, and reporting systems based on its own public administration policies and on best practices.”

In the context of this definition of a performance audit, it appears that the criteria for the POTA audit, subsequently reflected in the audit report, are sufficiently broad to call into question the merits of Government policy and the legislation on which this program is based. More specifically, the criteria that I am referring to are the first and second on the list prepared by your office:

- *there should be a program(s) to protect all students enrolled in a private occupational training organization; and*
- *there should be protection of the quality of the education.*

The first criterion, above, indicates there should be a program to protect all students. The Act provides for a process for student financial protection; however certain types of training are exempted from this process in the Regulations. To meet the audit criterion would require a change in Government policy through a regulatory amendment. PETL would not otherwise have legal authority to provide the student financial protection required to meet the audit criterion. In short, audit report recommendations that would require legislative and/or regulatory amendment appear to question Government policy rather than the efficacy of PETL's implementation of Government policy.

With respect to the second criterion above (protection of the quality of the education), I believe it is apparent by the focus on financial protection of the student, as reflected in the provisions of POTA and also evidenced by Government's budgetary allocations to support the administration of the Act, that Government did not intend to provide protection to students in an area as broad and complex as the quality of educational services being offered by the private sector. The report indicates that PETL has undertaken limited program efforts that may exceed the requirements of the Act and concludes that these efforts contribute to protecting the quality of education. In addition, it is also concluded that published program information may lack specificity concerning the level of student protection afforded by POTA. However, I do not think that these two observations can be construed to support inclusion of such a broad audit criterion.