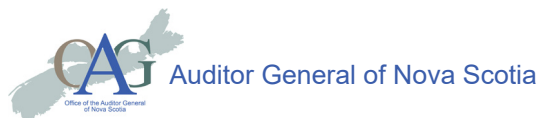


2022

Atlantic Provinces' Joint Follow-up of Recommendations to the Atlantic Lottery Corporation



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April 26, 2022

Dear Sirs:

We have the honour to submit herewith our Report to our respective House of Assembly or Legislative Assembly.

- As required under Section 15(1) of the New Brunswick Auditor General Act
- As required under Section 31.(1) of the Newfoundland and Labrador Auditor General Act, 2021, to be laid before the House of Assembly in accordance with Section 31.(2) of the Newfoundland and Labrador Auditor General Act, 2021.
- As required under Section 18(2) of the Nova Scotia Auditor General Act, to be laid before the House in accordance with Section 18(4) of the Nova Scotia Auditor General Act
- As required under section 13.1(2) of the Audit Act of Prince Edward Island, to be laid before the House in accordance with Section 16 of the Audit Act of Prince Edward Island

Respectfully,

Paul Martin, FCPA, FCA
Auditor General of New Brunswick

Janice Leahy, CPA, CA, CIA
Deputy Auditor General of New Brunswick

Denise Hanrahan, CPA, CMA, MBA, ICD.D
Auditor General of Newfoundland and Labrador

Sandra Russell, CPA, CA
Deputy Auditor General of Newfoundland and Labrador

Kim Adair, FCPA, FCA, ICD.D
Auditor General of Nova Scotia

Darren Noonan, CPA, CA
Auditor General of Prince Edward Island

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Table of Contents

1 Atlantic Provinces' Joint Follow-up of Recommendations to the Atlantic Lottery Corporation	7
Appendix I: Implementation Status of Recommendations to Shareholder Governments	13
Appendix II: Shareholder Government Responses to Recommendations Assessed as Not Completed	14
Appendix III: Limited Assurance Attestation Engagement Description and Conclusion	15

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Atlantic Provinces' Joint Follow-up of Recommendations to the Atlantic Lottery Corporation

Overall Results

- It's been five years since our October 2016 report, and the shareholder governments have not implemented four of our nine recommendations intended to improve governance and business agility of the Atlantic Lottery Corporation (ALC).
- The shareholder governments completed 56 per cent (5 of 9) of the recommendations as of December 31, 2021. All seven recommendations to the ALC Board of Directors and nine recommendations to ALC management were completed as of October 1, 2018.

Since the first follow-up report in June 2019, the four shareholder governments have completed three additional recommendations.

Shareholder governments have four recommendations outstanding.

Two recommendations made to shareholder governments were not completed:

- Periodically review the shareholder agreement and revise as warranted.
- Complete the ongoing review of the Council of Atlantic Premiers' pension plan and implement required changes.

It has been over a decade since the Shareholder Agreement has been reviewed and approved by all four shareholder governments. Failure to implement these recommendations may impact the sustainability and cost of the Atlantic Lottery Corporation (ALC) pension plan, and increases the risk that key terms and conditions do not reflect the current environment at ALC. ALC management told us more than \$87 million had been deducted from the profit distributed to the four Atlantic provinces to fund the pension solvency shortfall between 2012 and the end of December 2021, highlighting the importance of implementing plan amendments to address the sustainability and cost of ALC's pension plan.

Consistent with their response in our October 2016 Report, shareholder governments do not intend to implement two recommendations intended to improve governance:

- Authorize updated governance practices so that Board members are not elected officials nor employees of government.
- Change the role of public servants on the Board to be non-voting, ex officio members in accordance with best practice.

Failure to implement these recommendations risks impeding the Board's fiduciary duty to the corporation and its overall effectiveness in providing sound governance. Also noted, although the recommendation to adopt director term limits was adopted, it has not been applied to the ALC Chair who has held a position on the Board for over two decades.

As reported in our first joint follow-up report of recommendations to ALC, all seven recommendations to the ALC Board of Directors, and all nine recommendations to ALC management, were implemented by October 1, 2018.

We noted shareholder governments have continued to make progress toward implementing our recommendations. We continue to encourage the shareholder governments to continue to collectively work toward the implementation of the remaining recommendations to improve the governance and business agility of ALC.

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1 Atlantic Provinces' Joint Follow-up of Recommendations to the Atlantic Lottery Corporation

- 1.1 In October 2016, the Auditors General of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, collaborated on a joint audit focused on corporate governance and operations of the Atlantic Lottery Corporation (ALC).
- 1.2 The Auditors General first followed up on the status of implementing the 25 recommendations to ALC as of October 1, 2018, and released the results in June 2019. The Auditors General reported that 22 per cent (two of nine) of the recommendations to the four shareholder governments were completed, 100 per cent (seven of seven) of the recommendations to the ALC Board of Directors were completed, and 100 per cent (nine of nine) of the recommendations to ALC management were completed.
- 1.3 This report is the second joint follow-up report on the status of implementing the recommendations from the October 2016 Report. The four shareholder governments were asked to collectively assess the implementation status of the remaining seven recommendations last assessed as of October 1, 2018, as not completed. Further information on our approach to this engagement can be found in Appendix III.



Shareholder governments have four recommendations outstanding

- 1.4 The shareholder governments of New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, have completed 56 per cent (five of nine) of the recommendations as of December 31, 2021. Since the first joint follow-up report, the shareholder governments have completed three additional recommendations. The status of each recommendation to the shareholder governments is shown in Appendix I.
- 1.5 As of December 31, 2021, the shareholders collectively assessed two recommendations as not completed.
- 1.6 Consistent with their response to the recommendations in our October 2016 report, the shareholder governments also do not intend to implement or fully implement two of our nine recommendations (22 per cent).
- 1.7 We provide additional information in the following paragraphs for the two recommendations the shareholders have assessed as not completed, and the two recommendations the shareholders do not intend to implement or fully implement.



Shareholder governments did not complete two recommendations

- 1.8 As noted above, the shareholder governments collectively assessed two recommendations as not completed as of December 31, 2021.
- 1.9 The four shareholder governments collectively assessed recommendation 2.2 as not completed. We recommended the shareholder governments periodically review the Unanimous Shareholder Agreement (USA) and Corporate By-Laws and revise as warranted. The shareholder agreement is a key governance document that grants ALC with its authority and operating mandate, setting the tone for all other governance documents such as the letter of shareholder expectations and Corporate By-Laws. It has been over a decade since the USA has been reviewed and approved by all four shareholder governments. Not completing this recommendation increases the risk

that the Unanimous Shareholder Agreement may not reflect the risks and objectives of the shareholder governments.

- 1.10 In their summary of collective and individual actions taken as shown in Appendix II, the shareholder governments told us the shareholder provinces agreed to review the Unanimous Shareholder Agreement and Corporate By-Laws every five years. The shareholders said the USA review was carried out in 2016, but not approved. Although approval to enable signing was obtained in two of the shareholder provinces it remained as pending in two others. Noting the five-year review was soon due and given legislation changes in the shareholder provinces, the shareholders started a new review of the USA with an estimated target for completion by March 31, 2022. Once the new review is complete, the shareholder governments indicated approvals of any additional updates will be sought in each of the four shareholder provinces.
- 1.11 The four shareholder governments collectively assessed recommendation 3.2 as not completed. Atlantic Lottery employees participate in the defined benefit pension plan for Employees of the Council of Atlantic Premiers and Participating Employers (the Plan). We recommended the shareholder governments complete the ongoing review of the Plan and implement the required changes. Not completing this recommendation may impact the sustainability and cost of the Corporation's pension plan.
- 1.12 In our 2016 report, we highlighted the pension plan solvency shortfall which ALC was required to repay via deductions from each province's profit distribution. ALC management told us the most recent pension solvency payment occurred in March 2020 and that between 2012 and the end of December 2021, deductions from the profit of the four Atlantic province shareholders exceeded \$87 million.

Total Solvency Payments by Atlantic Lottery Corporation, by Province (2012 to December 31, 2021)					
	New Brunswick	Newfoundland and Labrador	Nova Scotia	Prince Edward Island	Total
Solvency Deficit 2012 to March 2019	\$20,900,022	\$20,600,034	\$26,600,028	\$10,599,966	\$78,700,050
Payments July 2019 to March 2020	\$2,273,491	\$2,240,859	\$2,893,534	\$1,153,058	\$8,560,942
Total Solvency Payments by ALC	\$23,173,513	\$22,840,893	\$29,493,562	\$11,753,024	\$87,260,992

Source: Provided by ALC management; unaudited

- 1.13 In their summary of collective and individual actions taken as shown in Appendix II, the shareholder governments said the Council of Atlantic Premiers Regional Treasury Board authorized the creation of a single Pension Committee to administer the Plan and implement amendments to the Plan to ensure its long-term sustainability and affordability. The shareholder governments said the Pension Committee was established in early 2021 and has begun implementing changes to the Plan, with participating employers, including ALC, provided updates as necessary. We continue to encourage the shareholder governments to complete implementation of Plan amendments to address the pension shortfall and to ensure the financial sustainability of the pension plan.



Shareholder governments do not intend to implement two recommendations to improve governance

- 1.14 As noted above, the shareholder governments do not intend to implement or fully implement two recommendations. In our October 2016 Report, the shareholder governments did not agree with one recommendation and part of one other.

- 1.15 The four shareholder governments collectively do not intend to fully implement recommendation 2.12 which recommended:
- updated governance structures and processes, including a competency-based Board selection process;
 - director terms greater than one year; and
 - Board members not being elected officials nor employees of government.
- 1.16 Atlantic Lottery Corporation By-Laws have been updated to require staggered three-year terms for directors. The four shareholder governments use competency-based processes to appoint eight independent, voting, provincial shareholder representatives to the ALC Board, while the remaining four positions are held by senior public servants.
- 1.17 Additionally, the Board of Directors appoints a Board Chair. We noted the current ALC Board Chair was appointed in June 2007, and previously served as Vice Chair of ALC since 2000. The Chair has been on the Board over two decades, 14 years as Chair and seven as Vice Chair. This is much longer than modern governance best practices would recommend. As to why the Chair is not part of the routine board rotation is unclear. Chair term limits are not addressed in the ALC By-Laws. Typical good governance practice would clearly define Chair rotation requirements.
- 1.18 We noted in Chapter 2 of our October 2016 Report that having elected officials or employees of government as Board members was not the recommended practice in the public sector; the dual role and expectations as both a Board member and a government employee may hinder the effectiveness of governance of the corporation. We provided an example in which the Board with government employee Board members unanimously approved By-Law amendments related to changes in the director appointment process, then those same four Board members, acting in their capacity as shareholder representatives, did not accept the changes they had just approved.
- 1.19 The four shareholder governments collectively do not intend to implement recommendation 2.13 which recommended changing the role of public servants (i.e., government shareholder representatives) on the ALC Board to be non-voting, ex officio members in accordance with best practice. As noted in their response in our October 2016 Report, the shareholder government representatives did not agree with this recommendation and did not intend to implement it.
- 1.20 Shareholder government representatives told us they believe it is in their best interest to continue to have government employees on the Board as voting directors. We recognize there is value in having public servants representing the governments on the Board. For complex areas such as gaming, they can speak to government priorities and address government concerns directly with the Board.
- 1.21 However, these roles should be separate from the role of a voting corporate director. The dual role poses a conflict between the fiduciary duty to the corporation and the policy interests of their employer. Having public servants as voting board members may place those directors in a position to approve a good corporate decision that may not be a decision they would support as a government representative, or alternatively, make a decision at the provincial gaming level that could negatively impact ALC.
- 1.22 The recommendations made collectively to the shareholder governments address important components of governance and help ensure that the shareholder agreement reflects the current environment at ALC. Although we recognize recommendations

to the shareholder governments may be more involved and time-consuming to implement, it is important these recommendations be collectively actioned by all shareholder governments in a timely manner to improve governance and business agility of ALC.

Appendix I

Implementation Status of Recommendations to Shareholder Governments

Nine Recommendations to the Shareholder Governments	Implementation Status as of December 31, 2021
2.1 The shareholder governments should complete an in-depth review of ALC's mandate that considers how the Corporation fits into each government's gaming policy and public policy objectives and the organizational structures required to achieve these. Based on this review, Atlantic Lottery Corporation's mandate should be updated as required.	Completed
2.2 Shareholder governments should periodically review the Unanimous Shareholder Agreement and Corporate By-Laws and revise as warranted.	Not Completed
2.3 Shareholder governments should routinely collaborate and give ALC regular and timely policy direction for ALC to use in its strategic and business planning process.	Completed
2.4 Shareholder governments should define and document their roles, responsibilities and authorities for oversight of ALC. Each shareholder government should clarify the relationships between the Board, the responsible Minister, and other government representatives.	Completed
2.5 Shareholder governments should define formal performance expectations for ALC that are clear and publicly communicated. These performance expectations should be updated annually as part of the shareholder governments' oversight and strategic direction.	Completed
2.7 Within the accountability framework, shareholder governments should clarify which level of government authority (Deputy Minister, Minister, Cabinet or Order in Council) ALC requires to enter into transactions.	Completed
2.12 Shareholder governments should authorize updated governance structures and processes to reflect best practices for the composition and appointment of Directors, including: <ul style="list-style-type: none"> • A Board selection process that is competency-based, professional, competitive, open, transparent and reflective of the skill requirements for the Board and the needs and practices of each shareholder; • Shareholders appoint voting Board directors for a fixed term greater than one year, subject to renewal; and, • Board members should not be elected officials nor employees of Government. 	Do Not Intend to Implement
2.13 Shareholder governments should change the role of public servants (i.e., government shareholder representatives) on the ALC Board to be non-voting, ex officio members in accordance with best practice.	Do Not Intend to Implement
3.2 The shareholder governments should complete the ongoing review of the Council of Atlantic Premiers pension plan and implement required changes.	Not Completed

Appendix II

Shareholder Government Responses to Recommendations Assessed as Not Completed (Unaudited – we provide no assurance on the responses)

Recommendation and Shareholder Governments' Collective Response as of December 31, 2021	Shareholder Governments' Individual Responses as of December 31, 2021
<p>2.2 Shareholder governments should periodically review the Unanimous Shareholder Agreement and Corporate By-Laws and revise as warranted.</p> <p>Shareholders' Collective Response: <i>The Shareholder Provinces have agreed to review the USA and Corporate By-Laws every five years.</i></p> <p><i>The Unanimous Shareholder Agreement (USA) was updated in 2016. Since that time, approvals to enable signing have been obtained in two of the Shareholder Provinces and remain pending in two of the Shareholder Provinces.</i></p> <p><i>Noting the five-year review was soon due, and in consideration of indemnity legislation passed in Shareholder provinces in 2020-21, the Shareholder Provinces commenced another review of the Unanimous Shareholder Agreement (USA). The estimated target date for completion of the current review is March 31, 2022. Thereafter, approvals of any additional updates made will be sought in each of the four provinces, timing of approvals will be dependent on provincial legislative approval processes.</i></p>	<p>New Brunswick: New Brunswick Lotteries and Gaming Corporation (NBLGC) board has approved the previous updates to the USA. Consideration and approval by Executive Council is required prior to signing an updated USA. Submission of the Memorandum to Executive Council will be held pending completion of the current review, approval of any amendments will then be sought.</p> <p>Newfoundland and Labrador: Consideration and approval by Executive Council is required prior to signing the updated USA. Submission of the Memorandum to Executive Council for decision is pending.</p> <p>Nova Scotia: Nova Scotia Gaming Corporation (NSGC) board has approved the previous updates to USA and the Minister has authorized NSGC's CEO & President to sign the updated USA. Further approvals will be sought if the current review results in any material amendments.</p> <p>Prince Edward Island: Cabinet authorized the signing of an updated version of the USA in 2019.</p> <p>The Prince Edward Island Lotteries Commission has since agreed in principle to further amendments to this agreement during the current review. At the conclusion of the current review, should there be unanimous support for changes to the 2019 version authorized by Executive Council, the revised document would be forwarded to Executive Council to seek authorization to sign a further updated agreement.</p>
<p>3.2 The shareholder governments should complete the ongoing review of the Council of Atlantic Premiers pension plan and implement required changes.</p> <p>Shareholders' Collective Response: <i>Employees and former employees of ALC are members of the Pension Plan for Employees of the Council of Atlantic Premiers and Participating Employers (the Plan).</i></p> <p><i>The Council's Regional Treasury Board authorized the creation of a single Pension Committee to administer the Plan and implement amendments to the Plan to ensure its long-term sustainability and affordability. The Pension Committee was established in early 2021 and has begun implementing changes to the Plan. Participating employers, including ALC, will be provided updates as necessary.</i></p>	<p>Individual shareholder responses not applicable. Refer to collective shareholder response.</p>

Appendix III

Limited Assurance Attestation Engagement Description and Conclusion

In January 2022, we completed an independent limited assurance attestation engagement on the status of audit recommendations included in our October 2016 joint audit Report on the Atlantic Lottery Corporation. Our objective was to provide limited assurance, as of December 31, 2021, on those recommendations assessed as completed, do not intend to implement, or action no longer applicable, to determine if the assessment was free from material misstatement. We did not perform any procedures, and provide no assurance, on recommendations noted in this Report as not completed.

The procedures performed in a limited assurance engagement vary in nature and timing from, and are less in extent than for, a reasonable assurance engagement. Consequently, the level of assurance obtained in a limited assurance engagement is substantially lower than the assurance that would have been obtained had a reasonable assurance engagement been performed.

The Atlantic Lottery Corporation shareholder governments were responsible for assessing their status of implementing recommendations of the Auditors General. For recommendations they assessed as completed, we substantiated the assessment through interviews and examination of documentation. We evaluated the implementation status using criteria based on whether the supporting information provided by the organization addressed the audit recommendation, and whether the information was relevant, complete, reliable, neutral, and understandable. Our work was based on qualitative characteristics of information as described in the Chartered Professional Accountants of Canada (CPA) Handbook.

For a recommendation assessed as 'do not intend to implement' or 'action no longer required,' we focused on the reasons why the entity chose not to implement the recommendation or why the entity believes the recommendation is no longer applicable. If the rationale appeared reasonable, we removed the recommendation from our statistics and will not conduct further follow-up work on it.

All work in this engagement was performed to a limited assurance level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3000 – Chartered Professional Accountants of Canada. We obtained sufficient and appropriate evidence on which to base our conclusions in New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island on February 18, 2022.

As auditors, we applied Canadian Standard on Quality Control 1, and, accordingly, maintained a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting our work, we complied with the independence and other ethical requirements of the relevant rules of professional conduct applicable to the practice of public accounting in Canada.

Conclusion on completed recommendations – Based on the limited assurance procedures performed and evidence obtained, no matters have come to our attention to cause us to believe the status of the recommendations reported as completed have been materially misstated. Additional information provided in this Report is not intended to take away from our overall conclusion.