

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.