



Financial Assistance to Atcon Holdings Inc. and to Industry

**Presentation to Public Accounts and Crown
Corporation Committees**

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AUDITOR GENERAL
OF NEW BRUNSWICK



VÉRIFICATEUR GÉNÉRAL
DU NOUVEAU-BRUNSWICK

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Audit requested by Legislative Assembly

- June 2013 – unanimous motion
- Requested AG to:
 1. Audit all financial assistance given to Atcon
 2. Make recommendations to improve performance of Department



AG Authority for the Audit

- **12(1)** *On the request of the Legislative Assembly...*
 - *the AG may audit and report on any matter related to the financial affairs of the Province...*
 - *if, in the opinion of the AG, the assignment does not interfere with her primary responsibilities.*

Auditor General Act

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Significant investment by the Department of Economic Development ~\$1 Billion in financial assistance approved over 10 years

	Total 2003-2013
Loans	\$ 428.9
Loan Guarantees	336.7
Strategic Assistance	132.4
Other	54.8
Total	\$ 952.8



Financial assistance for economic development is a significant investment by the Province

	2013-14	2012-13
Economic Development (includes RDC)	\$ 150.8	\$ 200.4
Tourism, Heritage and Culture	41.9	36.6
Provincial Holdings	10.8	5.8
Invest NB	7.0	4.7
New Brunswick Immigrant Investor Fund (2009) Ltd	5.2	5.0
Provision Expense	5.4	5.8
Post-Secondary Education, Training and Labour	3.9	4.1
Kings Landing Corporation	3.5	3.7
Amortization Expense	2.9	3.0
Total	\$ 231.4	\$ 269.1

Who is Atcon?

Received PNB

Financial Assistance:

- Atcon Plywood Inc
- Atcon Industrial Inc
- Atcon Holdings Inc
- Atcon Group Inc
- Eastwood
- Nutritec Inc
- Arvin Special Machinery

Other:

- Atcon Property Holdings
- Atcon Veneer Products Inc
- Atcon Logistics Inc
- Atcon Construction Inc
- Atcon Management Services Inc
- Atcon Civil Ltd
- Others



What is a loan guarantee?

- Company obtains loan from bank
- If high risk – bank requires a cosigner
- Under *Economic Development Act* Province can approve a loan guarantee
- In the event company defaults,
 - bank calls the loan
 - province must pay \$
- Security - To mitigate risk, Province secures companies' assets



PNB's relationship with Atcon: significant investment, complex and spans many governments

1993-2008	May 2008	June 2009	March 2010	October 2010	Total Assistance 1993-2010
Assistance granted 17 times, total value \$13.9m in loans, LG and grants	\$13.4 m LG issued	\$50 m LG issued	PNB payout of \$50 m LG to Bank	PNB payout of \$13.4 m LG to GNWT	\$77.3 m in loans, LG and grants

LG – Loan Guarantee

Exhibit 2.4 (p. 29) condensed

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Audit Objectives

To determine whether:

1. government exercised due diligence in granting financial assistance to Atcon
2. government organizations coordinate their assistance to limit the exposure of the Province.
3. previous AG recommendations have been implemented
4. public reporting on the performance of the financial assistance program is done



Finding: Unusual circumstances regarding Atcon's eligibility for the \$50 million loan guarantee

Legislative Requirement:

1. Eligible industry
 - Construction industry eligible but NOT typically supported
2. Application
 - Application was NOT prepared by Atcon
3. Recommendation by New Brunswick Industrial Development Board (6 Deputy Ministers)
 - NBIDB recommendation was to REJECT application



Finding: If condition on \$13.4 million loan guarantee had NOT been removed, provincial exposure would have been significantly lower

- Given high risk of \$13.4 m loan guarantee, there was a condition prohibiting Atcon from further assistance until \$13.4 m guarantee expired
- This condition was subsequently removed
- Had it NOT been removed, Province's loss would have been much less (Exposure \$16.4 m versus \$72 m one year later when Atcon failed)



Finding: Cabinet approved \$50 million loan guarantee despite significant risks

HIGH RISK assessment by departmental staff

- “*Atcon’s profitability in recent years has been marginal*”;
- “*Based on this past performance, the company’s ability to repay any substantially increasing debt load is very questionable*”;
- “*Atcon has a dismal track record of meeting its payment obligations...*” and
- “*The company continues to embark on projects beyond its financial capabilities and then seeks provincial support after the fact*”.

Finding: Cabinet approved \$50 million loan guarantee despite significant risks

Date	Event	× rejected ✓ approved	BNB Staff	NBIDB	Cabinet
25-Mar-09	Application approved Cabinet		×	×	✓
13-Aug-09	Request: - take \$2 million for working capital from money intended for capital projects: and - Province to release 1st security interest on Atcon assets in favour of Bank of Nova Scotia.		×	×	✓
2-Sep-09	Department and Cabinet reject a restructuring request to release security.		×	Note 1	×
11-Sep-09	Cabinet reversed its September 2 decision.		×	Note 1	✓

Note 1: This request was not reviewed by NBIDB as the Board had rejected the previous two requests.

Finding: Significant emphasis was placed on vague job benefits

We found inconsistencies in the description of the reward:

- *“could result in the creation of new construction jobs for New Brunswick”*
- *“project (...) resulting in significant employment of NB residents.”*
- The reward was described as *“hopefully result in the maintenance of the company’s \$70 million payroll.”*



Finding: Analysis based on outdated financial information

- Cabinet approval was March 2009
- Financial analysis included:
 - Audited f/s for January 2006, 2007
 - Unaudited f/s for January 2008, 2009
- Department told us issuance of guarantee was conditional on receipt of audited 2009 f/s
- Unable to obtain satisfactory evidence that the audited f/s were received prior to the issuance of the guarantee



Finding: Cabinet approved release of 1st security position in favour of the bank, despite risks identified by staff

- *“Company is in a dire financial position”*
- *“The Company is on the verge of collapse”*
- *“Every step taken by the Province further erodes our security position, from bad to worse”*
- *“Agreeing to the request will weaken the Province’s security position by \$33 million in the near term, and will provide the bank full security for its operating loan.”*



Finding: Cabinet approved release of 1st security position in favour of the bank, despite risks identified by staff (continued)

- *“The Province would incur a loss, potentially in the \$50-\$71 million range, if the Company were to fail in the next 6 months.”*
- *“due to the extraordinary risk associated with this application.”*



Finding: Legislative authority to amend security was unclear

Regulation 82-197 of *Economic Development Act*:
“The Minister, where...

C. the security held by the Minister is not substantially affected by an amendment, ... may ..., adjust ... the terms and conditions of financial assistance provided to a person.”

- AG views amendment as substantial therefore decision did NOT comply with Regulation
- Executive Council Office has indicated they disagree with AG’s interpretation

AGNB Recommendation

- Propose an update to the Economic Development Act and Regulation to clarify the authority to amend security
- Department Response : “*The Economic Development Act will be repealed upon proclamation of the Opportunities New Brunswick Act. ONB will have full discretion with respect to modifying its security.*”



Finding: Minimal recovery against security held by the Province

- At the time of audit, less than 1% (\$400,000) recovered
- Ongoing issues:
 - Recovery on personal guarantee delayed
 - Province did not have title
 - Litigation against auditors unresolved



AGNB Recommendation

- When personal guarantees are provided ensure there is adequate evidence to support the value of the personal assets such that there is sufficient net worth to safeguard taxpayers' money.
- Department Response : “*We agree to be more diligent in this area.*”



Finding: Need to streamline provincial entities giving financial assistance

- Department of Economic Development
- Department of Agriculture, Aquaculture and Fisheries
- Department of Post-Secondary Education, Training and Labor
- Regional Development Corporation
- Provincial Holdings Ltd
- Invest NB
- NB Innovation Foundation



AGNB Recommendation

- Rationalize the number of provincial entities that provide financial assistance to industry.
- Department Response: “We will refer this recommendation to Jobs Board.”



Finding: No central monitoring to limit Province's exposure to a single company

- Significant exposure by a single company is a risk to the Province as default can result in significant financial loss to taxpayers
- Atcon total exposure was ~\$81 million reported by 6 agencies



AGNB Recommendation

- Establish a limit on the amount of assistance/level of provincial exposure that can be granted to a single company or group of related companies
- Department Response: “*This matter will be brought forth to the Board of Directors of Opportunities New Brunswick for their consideration*”



AGNB Recommendation

- Department implement a process whereby financial assistance to industry provided by all government departments/ agencies is monitored
- Department Response: “... We will seek to adopt a more formal process in the future.”



AGNB Recommendation

- Executive Council Office take responsibility for coordinating all departments/agencies that provide financial assistance to industry to implement the recommendations of this report
- ECO Response: “...agrees that it should maintain responsibility for overseeing and coordinating the activities of the various government departments and agencies as it relates to implementation of the recommendations of this report...”



Finding: Department has not implemented many of past AGNB recommendations regarding economic development

- 2010 AG Report: 29% implemented (2 of 7)
- 1998 AG Report: 69% implemented (20 of 29)
- Certain areas of weakness persist
- Similar recommendations made once again in our report



Finding: Impossible to assess impact of financial assistance provided

Despite significant investments each year:

- Department does not report actual performance results
- ONLY projected results are reported (jobs)
- Impossible to assess value/ impact of assistance
- No goals or objectives for financial assistance programs



Finding: Actual performance of program can and should be reported

Past review by Office of the Comptroller revealed poor value for money:

- ~\$300m in assistance - only 53% of jobs target achieved
- Actual cost/job - 86% higher than expected
- Large files (>\$5m) – cost/job was three times higher
- Of \$700m of financial assistance provided from 2001-2009 only 15% (\$102m) was deemed successful
- 41% (\$290m) was unsuccessful or doubtful



AGNB Recommendation

- Report both expected and actual results of job creation and job maintenance in their annual report
- Department Response: *“Jobs Board has as part of its mandate, the establishment of overarching job creation and other targets for GNB... Deputy-level members of Government’s More Jobs Theme Team will collaboratively track performance... Content from both of these reporting avenues are likely to be captured in the ONB annual report.”*



AGNB Recommendation

- Annually track and report the 10-year history of actual performance of assistance provided to industry.
- Department Response: “... *ONB officials would be pleased to follow up on this recommendation ...*”



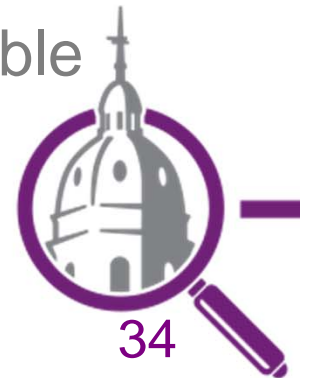
AGNB Recommendation

- Establish goals, objectives and measurable targets for its financial assistance to industry programs
- Department Response: *“The form any programs will take and the associated objectives of each is under development as part of the transition to the new Corporation”*



AGNB Recommendations

- 19 recommendations to address report findings:
 - 18 to Department – response generally favorable:
 - 15 Agree – Referred to new Opportunities NB or Jobs Board
 - 3 Agree – Already implemented
 - 1 to Executive Council Office – response favorable



Overall conclusions – Objective 1

1. Cabinet disregarded advice of senior public servants
2. Decision to amend security terms was the critical decision which cost taxpayers \$ millions
3. Cabinet displayed a very troubling disregard for taxpayers' money
4. Legislative authority to amend security unclear
5. Similar situation can happen again
6. Nothing we saw would support a conclusion that decisions were reasonable in the circumstances



Overall conclusions – Objectives

2,3,4

- No central monitoring of financial assistance to a single company
- Only 29% of 2010 AG recommendations have been implemented
- Department does not report performance results



AGNB closing comment

- Focus of our audit was on events surrounding government's decision
- We did not do:
 - *forensic audit*
 - *inquiry*
 - *put anyone under oath*
- Questions may remain
- Taxpayer cost already >\$70 million
- AGNB prepared to pursue matter further if requested by the Legislative Assembly



Acknowledgements

- Cooperation of both past and current management and staff of department
- AGNB TEAM



Q&A

