



# REPORT OF THE AUDITOR GENERAL

To the House of Assembly



On Reviews of Departments and Crown Agencies

For the Year Ended  
31 March 2008

## **Auditor General of Newfoundland and Labrador**

**Location:** 2<sup>nd</sup> Floor  
15 Dundee Avenue  
Mount Pearl, NL

**Mail:** P.O. Box 8700  
St. John's, NL  
A1B 4J6

**Telephone:** (709) 729-2695  
**Fax:** (709) 729-5970  
**E-Mail:** [auditorgeneral@gov.nl.ca](mailto:auditorgeneral@gov.nl.ca)  
**Web:** [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag)

### **Mission Statement**

*The Office of the Auditor General serves the House of Assembly by providing independent examinations of Government and its entities.*

*As legislative auditors, we audit financial statements and other accountability documents, evaluate management practices and control systems, and determine compliance with legislative and other authorities.*

*Our purpose is to promote accountability and encourage positive change in the stewardship, management and use of public resources.*



## Office of the Auditor General of Newfoundland and Labrador

### Head Office

15 Dundee Ave., Mount Pearl  
Box 8700 ♦ St. John's, NL ♦ A1B 4J6  
T: 709-729-2695 ♦ F: 709-729-5970  
Email: [adgopp@gov.nl.ca](mailto:adgopp@gov.nl.ca)

### Auditor General

John L. Noseworthy, CA  
T: 709-729-2700  
Email: [jnoseworthy@gov.nl.ca](mailto:jnoseworthy@gov.nl.ca)

### Regional Office

1 Union St., Corner Brook  
Box 2006 ♦ Corner Brook, NL ♦ A2H 6J8  
T: 709-637-2295 ♦ F: 709-637-2595

---

21 January 2009

The Honourable Roger Fitzgerald, M.H.A.  
Speaker  
House of Assembly

Dear Sir:

In compliance with the Auditor General Act, I have the honour to submit herewith, for transmission to the House of Assembly, my Report on Reviews of Departments and Crown Agencies of the year ended 31 March 2008.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Noseworthy".

**JOHN L. NOSEWORTHY, CA**  
**Auditor General**

## TABLE OF CONTENTS

<b>Chapter</b>		<b>Part</b>	<b>Page</b>
<b>1</b>	<b>Reflections of the Auditor General</b>		<b>1</b>
<b>2</b>	<b>Comments on Audits and Additional Examinations</b>		
	<b>Legislature</b>		
	• Update on the Review of Constituency Allowance Claims	2.1	19
	<b>Executive Council</b>		
	• Office of the Chief Information Officer	2.2	35
	<b>Department of Education</b>		
	• Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador	2.3	61
	• Monitoring Air Quality in Schools	2.4	91
	• Monitoring Private Training Institutions	2.5	135
	<b>Department of Environment and Conservation</b>		
	• Multi-Materials Stewardship Board		
	• Used Tire Recycling Program	2.6	161
	• Used Beverage Container Recycling Program	2.7	183
	• Newfoundland and Labrador Waste Management Trust Fund	2.8	209
	<b>Department of Fisheries and Aquaculture</b>		
	• Aquaculture Development	2.9	233
	• Aquaculture Inspections	2.10	255

## TABLE OF CONTENTS

<b>Chapter</b>		<b>Part</b>	<b>Page</b>
<b>2</b>	<b>Department of Government Services</b>		
	• School Bus Safety	2.11	287
	<b>Department of Human Resources, Labour and Employment</b>		
	• Provincial Nominee Program	2.12	317
	<b>Department of Justice</b>		
	• Newfoundland and Labrador Human Rights Commission	2.13	341
	• Fines Receivable	2.14	361
	<b>Department of Natural Resources</b>		
	• Oil Royalties	2.15	375
	• Seized Property	2.16	405
	• Inspection and Licensing of Slaughter Facilities	2.17	421
<b>3</b>	<b>Special Report</b>		441

**CHAPTER  
1  
REFLECTIONS OF THE  
AUDITOR GENERAL**



The following comments are made further to my reviews of various Departments and Crown agencies for the year ended 31 March 2008. The report covers a variety of matters and is provided to the Members of the House of Assembly for their consideration. The purpose of the Office of the Auditor General is “...to promote accountability and encourage positive change in the stewardship, management and use of public resources.” Corrective action on the issues identified in this report will further that goal.

### Monitoring Air Quality in Schools (Part 2.4)

Based on the results of annual school inspections, enhanced inspections undertaken in 2007 and tests associated with prior initiatives, there is evidence to suggest that there are issues in schools with regards to air quality.

The annual inspections performed at 270 schools during 2007 identified issues related to air quality at 150 schools and the enhanced inspections of 26 of the highest risk schools performed during 2007 identified issues related to air quality at all 26 schools inspected. Potential issues identified in both types of inspections included such things as: ventilation, mould and mildew, leaks and stained ceiling tiles.

Not all planned inspections and/or initiatives were completed:

- The required annual school inspections are not always completed - in 2006-07, 13 schools were not inspected. In fact, one school had not been inspected for over seven years.
- As of April 2007, 186 of 229 schools identified in 2004 as requiring an inspection for asbestos have never had assessments performed by the school district. Furthermore, the school districts did not have information to confirm which schools had been assessed.
- 43 schools in operation in 2007-08 have never been tested for air quality even though they were part of an initiative to do so in 1998. Furthermore, 177 schools in operation in 2007-08 have not been tested since 1998. The 1998 initiative identified significant issues related to air quality such as roof leaks, stained ceiling tiles and ventilation. There is currently no program to test air quality in schools on a periodic basis although inspections have identified issues related to air quality.

## Reflections of the Auditor General

Issues relating to air quality were not always addressed in a timely manner. Although issues relating to air quality were identified every year in annual inspections, quite often the issues were not addressed and recurred from year to year at the same school. For example:

- 26 of 150 annual inspection reports for 2007 identified the same issue(s) that had been identified in previous annual inspection reports, some as far back as 2004. These issues include mould and mildew problems, stained ceiling tiles, ventilation issues and leaks.
- Carpets and chalkboards continue to be used in schools although these were identified as contributors to dust and poor air quality in schools in the 1998 air quality testing. For example, for schools in operation in 2007-08, 42 still had either wall-to-wall carpets or pieces of carpet and 92 of 121 schools in the Eastern District still have some chalkboards.
- My review identified ventilation issues in 56 of the 283 schools open in 2006-07. Issues with mechanical ventilation systems include inoperable, unclean and blocked ventilation systems and poor ventilation in specific classrooms such as computer and chemistry labs, and industrial arts rooms. Furthermore, issues were identified with regards to natural ventilation including windows that could not be opened because they had been sealed shut, missing handles, missing or broken screens and classrooms without windows or other ventilation.
- A school which closed in August 2007 had a history of roof leaks, deteriorating windows, mould and poor ventilation dating back to 1995, none of which were adequately addressed.

There were a number of procedural and system issues with regards to monitoring issues related to air quality. For example, neither the Department of Education nor the school districts have policies and procedures to ensure issues related to air quality are monitored and followed up.

### School Bus Safety (Part 2.11)

There is still a concern about the high incidence of defects identified by Highway Enforcement Officers during school bus inspections and there is still no comprehensive school bus safety strategy plan in place. In addition:

During 2007-08, there were a total of 864 school bus inspections completed by Highway Enforcement Officers. During these inspections 867 defects were identified and 113 licensed school buses were placed out of service as a result of significant deficiencies including issues with brakes and exhaust. This is particularly significant considering that almost all school bus inspections are arranged by advance appointment. Private contractors accounted for 92 (81%) of the 113 licensed school buses placed out of service. This information indicates that it still remains likely that there are licensed school buses operating on the Province's highways that do not meet the required safety standards.

## Reflections of the Auditor General

The Motor Registration Division (MRD) of the Department of Government Services did not perform the required annual inspection for 3 of the 42 Official Inspection Stations operated by school bus operators for the 2008 year. These 3 inspection stations would be responsible for inspecting 76 licensed school buses.

Not all Official Inspection Stations have their annual license renewed as required by the *Official Inspection Station Regulations*. There were 7 instances during the 2007 and 2008 calendar years where a license renewal had not been made by the annual November 30 deadline of the preceding year. These 7 unlicensed Official Inspection Stations performed 54 licensed school bus inspections prior to renewing their license certificate.

Although the average age of the 1,007 licensed school buses in the Province at 31 October 2008 is 8 years, there are still a significant number of older licensed school buses operating in the Province. For example 360 (36%) were model year 1998 or older (10 years or older). The 360 licensed school buses are comprised of 323 (90%) operated by private contractors and 37 (10%) operated by school boards.

The specially designed brake meters used to test the braking efficiency of a school bus are still not always being recalibrated at least every two years as requested by the manufacturer.

MRD officials indicated that there is no overall policy and procedures manual to provide guidance on all areas of the school bus inspection program. A particular area of weakness noted was with planning and assignment of school bus inspections.

Contrary to MRD policy, for 3 school bus operators assigned a “conditional” safety rating, significant delays of 9, 8 and 5 years have occurred without a follow-up facility audit.

### Office of the Chief Information Officer (Part - 2.2)

My review indicated a number of areas where controls and practices could be strengthened.

Backup and recovery procedures have not been designed for all Government computer applications. Disaster Recovery Plans were in place for only 21 (4%) of the 559 applications. These 559 applications relate to non-mainframe services which include about 98% of all Government services. Data backups for OCIO managed servers are not kept in a fireproof environment, and backups are not tested in six month intervals from the date of first use. As a result there could be instances where either not all critical information is being backed up or storage media and devices may not be useable in the event of a fire or other disaster.

Charts of authority to identify who can access defined activities related to an application have not been developed for all applications. As at 31 March 2008, there were only 165 charts of authority completed out of a total of 427 applications supported by the OCIO. An additional 194 of the 427 were completed up to October 2008. As a result, there is an increased risk of unauthorized access to Government systems and data.

## Reflections of the Auditor General

As of 31 March 2008, there were no Service Level Agreements in place between the OCIO and client departments. As a result, roles and responsibilities of the OCIO and departments are not set out and there is no agreement with clients on security and disaster recovery processes, expectations, and reporting requirements.

Controls over the recording and monitoring of IT hardware are not adequate and the OCIO is not complying with Government's Financial Management Policy on IT asset inventory. Not all computers are scanned by the OCIO's LANDesk software; there are no periodic comparisons of physical quantities of IT assets to inventory records; there is no asset tracking for printers, keyboards, mouse or other smaller assets and these assets are not tagged, physically verified or electronically scanned; and the value of all IT assets on hand as of 31 March of the fiscal year is not reported to the Comptroller General, as required.

The OCIO does not have a system for monitoring software licensing and usage. Such a system could track software licenses and usage, compare licenses purchased with licenses in use and produce regular compliance reports. As a result, the existence and use of unlicensed software throughout Government could go undetected and there is a risk of purchasing too many software licenses.

### Provincial Nominee Program (Part 2.12)

Government is unable to determine whether the Provincial Nominee Program (PNP) has achieved its intended results and there were significant issues with regards to how the PNP was administered and monitored. In particular:

The Province does not know how many of the 530 individuals it nominated moved to Newfoundland and Labrador. As a result, it is not possible for the Province to make any conclusion about whether the PNP achieved its goals of attracting and retaining immigrants to the Province.

The Department does not know what, if anything, local businesses did with the investment provided by the nominee. From 1999 to November 2008, a total of 312 nominees either invested or indicated that they intended to invest a total of \$72.2 million in the local business community. There were very few, if any, requirements on local businesses with regards to how monies they received were to be used. For example:

- one business venture received approximately \$39.8 million from 150 nominees who contributed \$265,000 each. Although each nominee was to receive one share in the business venture which could be redeemed for an upscale chalet, the Department has no information as to how many nominees redeemed their share or how many ultimately received the chalet as outlined in the contract with the business venture.

## Reflections of the Auditor General

- one business venture received approximately \$9.8 million from 49 nominees who contributed \$200,000 each. Although the money was intended to establish an Internet business website “*to educate the investing public*”, the Department has no information about the status of the intended website.

Contrary to the requirements of the PNP, not all required documentation was on file to support the potential nominee assessment decisions.

The electronic database was incomplete in that not all potential nominee files were recorded and not all required applicant information was always entered into the database. As a result, the database does not readily provide useful PNP information for management purposes.

### Newfoundland and Labrador Waste Management Trust Fund (Part 2.8)

At 31 March 2008, the Multi-Materials Stewardship Board (MMSB) had significant funds of \$18.6 million of which \$12.5 million was included in its Trust Fund. There are issues at the MMSB regarding Board governance, the relationship between the Department of Environment and Conservation and the MMSB and with the Trust Fund. Issues included:

Contrary to good governance practice which requires that the same person not hold the offices of Chairperson and Chief Executive Officer simultaneously, at the MMSB one individual serves as both Board Chair and CEO.

The MMSB Strategic Plan for 2004-10 identified a number of significant concerns relating to the relationship between the Department of Environment and Conservation and the MMSB. However, when the 2004-10 Strategic Plan was revised for 2007-08 all references to issues between the Department and the MMSB were not brought into the new plan. This new plan was provided to Members of the House of Assembly for the first time as required under the *Transparency and Accountability Act*. The issues identified in the 2004-10 Strategic Plan are as follows:

- Achievement of the MMSB’s organizational objectives: the Plan indicated that the “*present reporting structure/relationship between MMSB and government is not conducive to the achievement of organizational objectives*”.
- Reporting lines between the Department and the MMSB: the Plan indicated that “*Over the past number of years there have been a number of occasions where the absence of clearly defined reporting lines between the senior staff at the MMSB and the Department of Environment has resulted in operational delays, inconsistencies in the interpretation of MMSB programs and policies and on occasion misinformation in the media and amongst members of Government and the general public.*”

## Reflections of the Auditor General

- Internal and external reporting: the Plan indicated that *“At the present time the reporting process appears to be inconsistent in some cases and non-existent in other cases. As a result, communication lines are being crossed and misinformation and or misinterpretation is the by product - both internally and externally”*.

The MMSB has significant funds in its accounts and in its Trust Fund which, at 31 March 2008 totalled \$18.6 million. The MMSB continues to have annual surpluses and as a result the funds on hand continue to increase. From 1997 to 2008 the MMSB had surpluses totalling approximately \$31.2 million of which \$25.2 million was transferred to the Trust Fund. Over the same period, only \$12.9 million was used to fund approved projects. Issues identified include:

The MMSB does not appear to be proactive and other than reviewing applications for funding, the MMSB does not itself identify or pursue any significant waste management initiatives. MMSB officials indicated that without clear policy direction from Government, as MMSB has requested, they were not in a position to proceed with significant waste management initiatives.

There is no established criteria as to how much or how often surplus funds will be transferred from the MMSB operations to the Trust Fund. Instead, the MMSB annual budget submission recommends an amount to be transferred for the Minister’s approval.

Contrary to the *Waste Management Regulations, 2003*, the MMSB Board did not review all applications and make recommendations to the Minister.

Although identified in our prior review in 2002, the MMSB still does not have a formal method of site inspections or other monitoring for funded initiatives from the Trust Fund.

There were issues with regards to the adequacy of supporting documentation and compliance with program guidelines regarding applications approved for funding for waste management committees. In addition, there was an instance where applicants appeared to be treated inconsistently.

### Used Tire Recycling Program (Part 2.6)

In my opinion, the MMSB has not been able to ensure that the objectives of the Used Tire Recycling Program have been met.

Since the Program’s inception in April 2002, there have been two failed attempts at contracting out the combined used tire collection, transportation, and processing/recycling functions with private operators. An additional attempt to attract a private operator to take over the processing/recycling side of the operations in 2005 was also unsuccessful.

## Reflections of the Auditor General

More than four years after MMSB took over the operations of the Used Tire Recycling Program as an interim measure, there is still no solution in place for the processing/recycling of used tires. Furthermore:

MMSB has a used tire recovery rate of only 57% for 2007-08. This is considerably lower than their current targeted recovery rate of 70% and the 80% that would be expected in a mature market. There have been no recent promotional efforts and only limited initiatives by MMSB to improve the recovery rate.

At 31 March 2008, there were 1.3 million tires in stockpiles (1.2 million at Placentia and .1 million at Bull Arm) awaiting a processing solution. Since 2002, MMSB has not been able to arrange a processing/recycling solution to deal with the mounting inventory of used tires in the Province. Also, there are safety concerns related to the interim storage of .1 million used tires at the Bull Arm site.

Since the inception of the Used Tire Recycling Program in April 2002 to 31 March 2008, MMSB had tire levy revenues totalling \$8,882,000 and expenses totalling \$8,858,000, resulting in a very small surplus of \$24,000. This shows that although there were 1.3 million unprocessed used tires in the Province at 31 March 2008, MMSB does not have the funds within this Program to pay for processing/recycling.

As a result of the continued maintenance of a large inventory of used tires pending a solution for used tire processing, MMSB has and will continue to pay significant interim contingency costs. For the period 1 June 2004 to 31 March 2008 the cost of storage of tires with a private contractor in Placentia was \$2.1 million. For 2008, storage costs totalled \$663,000. Given the steady increase in the tire inventory, and without a processing/recycling solution, storage costs will continue to increase and could reach \$850,000 for 2009 and more than \$1 million for 2010.

At 31 March 2008, MMSB was seeking Government approval for a proposed in-Province tire processing solution resulting in a tire derived aggregate for civil engineering applications. Under the plan, one time costs of at least \$5.7 million in total are estimated for processing existing inventory, transporting aggregate to civil engineering projects, and continued interim storage costs at Placentia.

### Used Beverage Container Recycling Program (Part 2.7)

The MMSB is not achieving its targeted recovery rates with regards to used beverage containers, there are questions around the financial viability of the Program if recovery rates increase and the numbers of containers not being returned for recycling is increasing. With regards to service contracts, there were instances of non-compliance with the *Public Tender Act* and deficiencies in how the MMSB monitors contract requirements. Weaknesses in internal controls in the Labrador operations resulted in overpayments totalling in excess of \$200,000 and the weaknesses have not been adequately addressed. In particular:

## Reflections of the Auditor General

In 2003, the target recovery rate was reduced to 70% from the 80% established in 2000. Furthermore, the actual recovery rates were well below the target at only 61% in 2002, have stagnated at 68% for the past three years, and have not increased significantly since 2003.

The number of used beverage containers “not” returned has increased in the past two years. In 2006, 62.2 million beverage containers were “not” returned for recycling; however, that number increased to 66.4 million beverage containers by 2008.

Officials indicated that one significant initiative that would help increase the recovery rate would be the introduction of curbside recycling; however, the MMSB is not currently participating in any curbside recycling initiatives.

MMSB officials indicated that if the recovery rates increased beyond 75%, the Program would not be financially viable. Currently, the Program generates a surplus as a result of the low recovery rates i.e. high unredeemed deposits.

Contrary to the *Public Tender Act*:

- 37 Green Depot Operator contracts which expired on 31 March 2005 continue to be extended monthly without any public tender call.
- 2 Green Depot Operator contracts were awarded in 2007 by way of a Request for Proposal without the required approval of Cabinet to be exempt from a call for public tenders. Furthermore, neither contract had an identifiable expiry date and may continue for an indefinite period.
- the Chief Operating Officer of the Government Purchasing Agency was not informed of the reasons why a tender was not invited so that the information could be tabled in the House of Assembly.

In 2006, MMSB identified that a number of net overpayments totalling \$212,081 occurred in the Labrador system between 2002 and 2005 as a result of weaknesses in controls. Although MMSB has strengthened controls in an attempt to address the weaknesses, there is still a risk for duplicate payments.

### Inspection and Licensing of Slaughter Facilities (Part 2.17)

The Department is not in full compliance with the *Meat Inspection Act and Regulations*. In particular, slaughter facilities were operating without a valid licence, and licences were being issued to slaughter facilities even though the facilities had deficiencies. There were also issues with follow-up inspections and inspection documentation. Issues are as follows:

There were 19 slaughter facilities that operated for a period of time in 2007 without a valid licence.

In 2007, the Department issued licences to 6 slaughter facilities even though deficiencies were noted during the inspection process. Deficiencies would include, for example, hand washing not available on the kill floor, immediate cooling of meat not available and facility cleaning not being performed with the appropriate chemicals. These deficiencies were deemed to be non-critical to immediate food safety; however, they are important and are expected to be corrected. One facility with six deficiencies identified in 2006, received a licence in 2007 even though three of the six deficiencies remained. Another facility with six deficiencies identified in 2006, received a licence in 2007 even though two of the six deficiencies remained.

The required annual slaughter facility inspections were not always completed on a timely basis. At October 2008, 9 of the 20 licensed slaughter facilities had not been inspected in over a year.

Follow-up inspections at slaughter facilities where deficiencies were identified were not documented. As a result, the Department could not demonstrate that the required corrective action was undertaken either within a reasonable period of time or within the time frame specified by the Department.

The Department has not entered into a Memorandum of Understanding with the Department of Government Services.

Inspection forms did not address all areas required under the *Regulations*.

### **Oil Royalties (Part 2.15)**

The Department has established a framework for determining whether oil royalties received by the Province are complete, accurate and established in accordance with the Hibernia Agreement and the *Royalty Regulations, 2003*. There are issues with the framework that could result in incorrectly reported oil royalties not being detected. Specifically:

#### **Hibernia Project**

Contrary to section 26.6 of the Hibernia Agreement, the Hibernia project operator has refused to provide the Department's audit team with access to any Internal Audit Reports and Plans, and the minutes of Hibernia Executive Committee meetings as requested.

The Department concluded that transportation costs reported by the project owners for 1997 to 2000 were not in accordance with the Hibernia Agreement and requested the project owners to re-file their royalty calculations. Although the issue was first raised in December 2004 and the project owners objected to the Department's position, the matter remains unresolved. Until the matter is resolved, the final impact on past and future royalties cannot be determined.

### **Terra Nova Project**

Contrary to the requirements of the *Royalty Regulations 2003*:

- the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*; and
- the 7 project owners have never provided actual transportation cost information with their annual reconciliations.

Without the determination of eligible transportation costs to be used in the calculation of royalties and with the continued use of estimates, the extent of variances remains unknown.

Contrary to the *Regulations*, the Minister did not assess the annual reconciliations within the required 60 days of receiving the annual reconciliation (i.e. 30 June).

### **White Rose Project**

Contrary to the requirements of the *Royalty Regulations 2003*:

- the transportation cost estimates (\$2.26, \$2.15, and \$2.22 per barrel) were not approved by the Minister; and
- the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*.

Without the determination of eligible transportation costs to be used in the calculation of royalties the Department cannot determine whether the actual costs included in the annual reconciliations are eligible.

Contrary to the *Regulations*, the Minister did not assess the annual reconciliations within the required 60 days of receiving the annual reconciliation (i.e. 30 June).

### **Audit and Monitoring Issues**

Contrary to the direction of Cabinet, the Department, commencing in October 2007, paid hourly rates in excess of the hourly rates stipulated in a consultant contract. Departmental officials indicated that credit will now be requested for these overpayments.

At October 2008, there were 87 annual royalty and eligible project cost submissions made by project owners for which the Department has not started any audit work, 19 for which audit work was in progress and 28 for which the audit was completed. No royalty or eligible project cost audits have been conducted on the Terra Nova or White Rose projects since production started in 2002 and 2005 respectively. Only the Hibernia project has had audits completed which resulted in the identification of issues and an additional \$8.66 million due to the Province.

### **Le Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador (Part - 2.3)**

I found instances of non-compliance with Government's policies with regard to human resources, purchasing and capital assets. In particular:

Non-compliance with Government's hiring and compensation policies included: job competition files were not always kept to evidence that the job competitions were fair and equitable; not all position classifications were approved by Treasury Board; and employee contracts were not always sent to the Department of Justice for review and approval.

Issues with compensation included employees paid at the wrong step level, paid excess termination benefits, excess vacation accruals, and paid in excess of the contract amount. Employee leave and overtime is not adequately monitored to ensure it is properly approved, accrued and taken.

Instances of non-compliance with the *Public Tender Act* and *Regulations* included six purchases over \$10,000 totalling \$77,745 which were not publicly tendered and nine purchases \$10,000 and less totalling \$42,196 which did not have three quotes or documentation that a fair and reasonable price was obtained.

There was inadequate documentation relating to a transaction with HuVo Inc., a company which is also a tenant of the School District. In April 2007, the School District purchased 14 computers totalling \$4,900 from HuVo Inc. without requesting quotes from this company and providing an explanation as to why the company sold the computers to the School District at the same cost that it paid to an Ontario company.

Travel claim issues included the use of incorrect mileage rates, the payment of a car allowance, and travel claim forms did not always have the time of departure and arrival. Relocation expenditure issues included no required agreements in place, employees were paid lump sum amounts that were not consistent with Government policy and these amounts were not included on the employees' T-4 slips.

Control over capital assets was inadequate in that capital assets were not tagged, not all assets were recorded in a ledger and no periodic inventory counts were performed.

### Fines Receivable (Part 2.14)

Collection efforts at the Department of Justice relating to fines receivable require improvement. The fines receivable balance has increased in each of the last five years and at 31 March 2008 totalled \$31.7 million, an increase of \$8.3 million (35.3%) since 2004. Furthermore, the Department estimates that it will only collect approximately \$6.6 million (20.7%) of what it is owed. Of the \$31.7 million in fines receivable, \$29.3 million is recorded in the Department's Ticket Management System (TMS) with the majority of the remaining \$2.4 million still in the Provincial Court.

Many of the accounts in the TMS are quite old: \$24.6 million (84.1%) have been outstanding for more than one year; \$13.7 million (46.7%) have been outstanding for more than five years; and only \$4.7 million could be considered current i.e. a year old or less.

Some of the accounts in the TMS have significant balances: 961 accounts were \$5,000 and greater and totalled \$9.8 million; 69 accounts had balances greater than \$20,000 and totalled \$2.17 million; and 2 of the 69 accounts related solely to court imposed fines over \$100,000 and totalled \$337,961.

Collection efforts could be improved, for instance:

Not all accounts are being registered in the Judgment Enforcement Registry and collection efforts have not been initiated on all accounts that have been registered. The Department is only registering accounts with balances greater than or equal to \$500.

Not all accounts are being registered with the Canada Revenue Agency (CRA). The Department is only registering accounts with balances greater than or equal to \$500.

Although the Crown can refuse to renew any instrument to an individual until all fines are paid, the only instruments currently considered are driver license renewals and vehicle registrations. However, there are many other Government instruments such as: hunting licenses, requests for birth certificates, MCP re-registration, and the registry of companies and deeds which could be used to encourage collections.

### Aquaculture Development (Part 2.9)

There were a number of issues that, although known by the Department, have not been addressed in a timely manner. Issues include, the lack of infrastructure to support the current or future aquaculture operations and the Department's failure to finalize the Aquaculture Health Management Plan. In particular:

The Department did not develop and implement an expanded aquaculture investment strategy as outlined in its Strategic Plan 2006-08.

### **Atlantic Salmon and Steelhead Trout (salmonids)**

There are issues such as the lack of legislation and the failure to update and complete management plans and codes of practice that are necessary to support an orderly and sustainable expansion. The *Aquaculture Act* and *Regulations* are not as extensive in comparison with the aquaculture legislation in other jurisdictions in Canada, and management plans and codes of practice for the aquaculture of salmonids, which site operators are required to comply with as a condition of their licence, are no longer current.

The Department indicated that, among other things, there are not enough properly located wharves dedicated to aquaculture on the south coast of the Province and new roads will be required to access new wharves.

### **Atlantic Cod**

The Department has done little to advance the development of Atlantic Cod Aquaculture in the Province. For example:

Construction of a commercial cod hatchery in Bay Roberts that was needed to advance the commercialization of full cycle cod aquaculture in Newfoundland and Labrador ceased in 2003 due to legal issues between private industry proponents.

The Department reported in its 2007-08 annual report that it did not meet its strategic goals in completing the strategic development, start-up and operation of a commercial scale Atlantic Cod demonstration farm because agreements had not been reached to determine private industry and Federal contributions.

### **Blue Mussels**

There is no management plan or code of practice to guide shellfish site operators in the aquaculture of shellfish in the Province. While the Department did prepare a draft document identifying investment initiatives required to expand the salmonid industry, no such document was prepared for Blue Mussels.

## **Aquaculture Inspections (Part 2.10)**

There were a number of issues with regards to the Department's aquaculture inspection activities. For example, not all aquaculture sites were inspected annually as required by policy, not all issues identified during inspections were followed up, the inspection reports did not address all inspection areas and documentation of inspection results requires improvement. In particular:

## Reflections of the Auditor General

The Department only completed 125 or 86% of the 146 annual inspections that were required in 2007. Furthermore, the Division indicated that it was not successful in inspecting all aquaculture sites in 2005 and 2006.

The Department does not know whether closed aquaculture sites have been returned to their natural state as required under the *Aquaculture Act* because the underwater camera and vessel sonar used to detect aquaculture gear in deep water or at the ocean floor are not effective.

Inspectors are not accurately completing Aquaculture Site Inspection and Directive Reports (Inspection Report). Furthermore, the Inspection Report is not adequate to support inspection activity.

Directives are not always included in the Inspection Report to site operators to correct identified hazards and deficiencies. Contrary to Department policy, hazards are not corrected immediately or mitigated until correction can occur, and follow-up inspections are not always carried out to ensure deficiencies have been corrected. At the time of my report, 16 of 30 aquaculture sites that had hazards identified during inspections in 2007, still had the same hazards noted in their 2008 annual inspection. One site was not inspected since hazards were identified in 2007.

There are no established guidelines for the amount of weight to be used by site operators in the weighing of nets secured to marine cages. There are no established standards for mooring systems to hold marine cages in place, and the Department has no mooring system inspection program.

There is no requirement that the Department carry out a subsurface dive inspection to ensure that site operators are maintaining cage systems in accordance with the Code.

The Department is not always carrying out the required number of annual cage system inspections as required under its Code of Containment. Staff are not accurately completing Cage System Audit Reports and the Cage System Audit Report is not adequate to support the cage system inspection activity.

Information recorded in the Aquaculture Licensing Information System database is neither complete nor accurate. Information entered into the system is not always captured and reports produced from the system do not always contain the information requested.

## Newfoundland and Labrador Human Rights Commission (Part 2.13)

There were a number of weaknesses related to how the Commission accepts, investigates and monitors complaints. Specifically:

## Reflections of the Auditor General

The Commission does not maintain either a manual or electronic database to record the receipt and track the final disposition of each complaint. As a result, information on the status of complaints is not readily available. Furthermore, this situation likely contributed to statistical inaccuracies in the Commission's annual report to the House of Assembly for 2008.

The Commission is not addressing complaints on a timely basis. Although for the period 1 April 2008 to 31 March 2011 the Commission has established a goal of 150 days from the time a complaint is received to the time the Commission approves a decision on the case, it was determined that investigations completed during 2008, on average, took 585 days (19 months) to complete this process. At 31 March 2008, 85 of the 184 outstanding complaints were from 2007 or before.

Other than occasionally obtaining a statement from a witness, investigations at the respondents' premises were rarely done. It was acknowledged that visits to the respondents' premises would provide additional evidence and better information in order to make final complaint determinations.

There were deficiencies in the Commission's activity plan and annual report for 2008. The activity plan had no goals, objectives and measures for two of its four lines of business, and the annual report did not provide historical or targeted information necessary for a reader to assess the Commission's performance.

### Seized Property (Part 2.16)

During enforcement activities Conservation Officers often seize property used in illegal activities. This property can include automobiles, all-terrain vehicles, firearms, ammunition, knives, backpacks and other miscellaneous items. Because the property can be used as evidence in court cases, it must be adequately recorded, stored and monitored. However, controls over seized property require improvement. Issues identified include:

The Department could not provide information on the total number of pieces of seized property in its possession because it does not maintain either a centralized manual or computerized system to record seized property.

Required documentation related to seizure of property was not always on file and the Department has not established a system that would provide a history of all seized property in inventory.

There are no periodic audits, inspections or managerial review of seized property. As a result, there is no check as to whether seized property is being adequately protected, and policies and procedures are being followed.

## Reflections of the Auditor General

There is no segregation of duties over seized property in that the Conservation Officer who seized the property is also responsible for its safekeeping. As a result, missing or inappropriate use of property may go undetected.

Seized property is not always adequately stored and protected from deterioration. As a result, property to be used as evidence may be compromised and the Department may be subject to liability if property deteriorates and has to be returned to owners.

The Department does not adequately document and promptly dispose of all forfeited property.

### Monitoring Private Training Institutions (Part - 2.5)

The Department of Education and many of the private training institutions are not in full compliance with the requirements of the *Private Training Institutions Act* and *Regulations*. Issues included:

Contrary to the *Regulations*, the Department has never completed a three year review of the programs offered by any private training institution.

Contrary to Departmental policy, annual compliance visits are not performed on all campuses.

Not all instructors at the private training institutions have been approved by the Department as required under the *Regulations*.

Not all approved instructors had completed all of the courses necessary to receive the required Post Secondary Instructor's Certificate.

Contrary to the *Act*, which requires registration renewal applications to be submitted on or before December 31 each year, the Department's Operations Manual (which is provided to all institutions) indicates that the renewal applications are to be submitted on or before January 31 of the following year.

Not all institutions submitted complete registration renewal information within the required deadline. As a result, many private training institutions in the Province were operating in contravention of the *Act* during a portion of the 2008 and 2007 calendar years because they did not have their completed registration renewal information submitted on or before 31 December 2007 or 31 December 2006 respectively.

Not all private training institutions are providing audited financial statements three calendar months after their respective year-end dates as required under the *Regulations*.

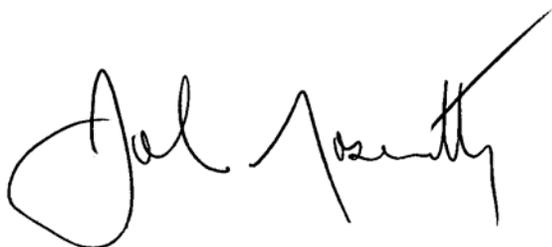
### Update on the Review of Constituency Allowance Claims (Part - 2.1)

The House of Assembly establishment concluded, based on legal advice, that it could recover only amounts relating to double billings. The Department of Finance is pursuing the recovery of excess constituency allowance claims. As a result, there was no action taken by the House of Assembly to recover other amounts identified as inappropriate in the report from the Office of the Auditor General in September 2007. Therefore, amounts recovered to date related to any inappropriate claims other than double billings have been made voluntarily by the Members of the House of Assembly.

In addition to the action taken by the House of Assembly, in May 2007 the Attorney General filed Statements of Claim on five former Members of the House of Assembly and the former Director of Financial Operations.

### Acknowledgements

I acknowledge the cooperation and assistance my Office has received from officials of the various Government departments and Crown agencies during the completion of our audits. I also thank my staff for their continued hard work, professionalism and dedication.

A handwritten signature in black ink, appearing to read "John Noseworthy". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

**JOHN L. NOSEWORTHY, CA**  
**Auditor General**



**CHAPTER  
2  
COMMENTS ON AUDITS AND  
ADDITIONAL EXAMINATIONS**



# Office of the Auditor General

Newfoundland and Labrador

## Highlights

Highlights of an update on the review of constituency allowance claims for the period from January 2006 to 30 September 2008.

### Why our Office Did this Review

The objective of this review was to determine the status of recoveries, including repayment and/or arrangements for repayment, related to inappropriate amounts identified in our previous reports on constituency allowance claims.

### What the House of Assembly Said

To provide balance to this report and to ensure full disclosure, the House of Assembly establishment was asked to formulate a response to our findings and conclusions. The House of Assembly establishment's response, verbatim, is included at the end of this report. Readers are encouraged to consider the House of Assembly establishment's comments in this regard.

Reviews of Departments and Crown Agencies

January 2009

Chapter 2, Part 2.1

### LEGISLATURE

Update on the Review of Constituency Allowance Claims

In January 2006, we started audit work at the House of Assembly establishment which was focused on constituency allowance claims by Members of the House of Assembly (Members). In July 2006, the Lieutenant-Governor in Council requested that we expand our review of constituency allowance claims for Members of the House of Assembly back to 1989-90. Overall, we identified excess constituency allowance claims totalling \$1.6 million, instances of inappropriate claims totalling \$2.2 million and instances of inadequate documentation totalling \$5.4 million.

### What We Found

The House of Assembly establishment concluded, based on legal advice, that it could recover only amounts relating to double billings. The Department of Finance is pursuing the recovery of excess constituency allowance claims. As a result, there was no action taken by the House of Assembly to recover other amounts identified as inappropriate in the report from the Office of the Auditor General in September 2007. Therefore, amounts recovered to date related to any inappropriate claims other than double billings have been made voluntarily by the Members of the House of Assembly.

In addition to the action taken by the House of Assembly, in May 2007, the Attorney General filed Statements of Claim on five former Members of the House of Assembly and the former Director of Financial Operations.

Our review indicated the following as at 30 September 2008:

**Double Billings:** Of the 88 Members with double billings totalling \$212,108, 14 still have outstanding balances totalling \$36,764 and only 4 of the 14 with outstanding balances totalling \$14,036 have made arrangements to repay. No interest is being charged on amounts owing.

**Special Payment of \$2,875:** Seven of the 46 Members who received the \$2,875 special payment in May 2004 have neither chosen to repay, nor make arrangements to repay the amount. Furthermore, the House of Assembly has not contacted the Canada Revenue Agency to determine whether the \$2,875 special payment should be considered a taxable benefit for the Members who have chosen not to repay the amount.

**Personal Items:** Of the 57 Members with expenditures related to personal items totalling \$161,947, only 3 with balances totalling \$67,703 have chosen to repay \$45,263 of the expenditures.

**Alcohol-only Purchases:** Of the 57 Members who claimed alcohol-only purchases totalling \$118,806, only 3 Members have chosen to repay their balances totalling \$35,942.

**Excess Discretionary Allowances:** Of the 33 Members who had excess discretionary allowances totalling \$201,219, none have chosen to repay their excess allowances.

**Inappropriate Vehicle Mileage:** Of the 4 Members with inappropriate vehicle mileage claims totalling \$57,872, none have chosen to repay their claims.

**Donations:** Of the 108 Members who claimed donations totalling \$1,471,108, only 1 Member chose to repay their donation claim totalling \$90.

**Travel Claim Inconsistencies:** One of the 2 Members, with inconsistencies between travel claims and other expenses totalling \$6,806, paid \$2,047 along with providing additional documentation to settle their total balance of \$3,166.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

---

### Background

---

In January 2006, we started audit work at the House of Assembly establishment which was focused on constituency allowance claims by Members of the House of Assembly (Members). This work resulted in a series of reports which were issued in June and July of 2006. The reports identified excess constituency allowance claims for certain Members and questionable payments to certain companies.

In July 2006, the Lieutenant-Governor in Council requested that we expand our review of constituency allowance claims for Members of the House of Assembly back to 1989-90. This review consisted of two phases:

#### Phase I

This was an expanded review of excess constituency allowance claims by Members of the House of Assembly back to 1989-90. This phase was completed and a report was issued in January 2007 identifying additional incidents of excess constituency allowance claims.

In total, 12 reports have been issued as follows:

- 9 identified excess constituency allowance claims from 1989-90 to 2005-06 totalling approximately \$1.6 million for five (5) Members of the House of Assembly (Ed Byrne, Randy Collins, Wally Andersen, Jim Walsh and Percy Barrett);
- 2 identified double billings (Kathy Goudie and John Hickey); and
- 1 identified questionable payments to certain suppliers (Zodiac Agencies, JAS Enterprises Limited, Cedar Scents International and Unique Keepsakes).

#### Phase II

This was a review of the appropriateness of constituency allowance claims by Members of the House of Assembly and the adequacy of supporting documentation for the period 1989-90 to 2005-06. This phase was completed and a report was issued in September 2007.

## Update on the Review of Constituency Allowance Claims

This report identified instances where we concluded that the type of claim under general acceptance would not be considered appropriate. Overall, we identified inappropriate claims totalling \$2.2 million as follows:

• Donations	\$1,471,108
• Alcohol-only purchases	\$118,806
• Double Billings	\$212,108
• Excess discretionary allowance	\$201,219
• Personal items	\$161,947
• Vehicle mileage	\$57,872

We also identified instances of inadequate documentation. In determining the general parameters of adequacy of documentation we considered what a “reasonable person” would consider as adequate documentation to support a claim. In total, we identified \$5.4 million where the documentation was not considered adequate. Claims of this nature fell into two categories:

• No documentation on file	\$883,360
• Inadequate documentation on file	\$4,484,997

## Audit Objectives and Scope

### Audit objectives

The objective of this review was to determine the status of recoveries, including repayment and/or arrangements for repayment, related to inappropriate amounts identified in our previous reports on constituency allowance claims.

### Audit scope

Our review covered the period from January 2006 to 30 September 2008 and included an examination of repayment documentation and a review of information provided by officials at the House of Assembly.

## Update on the Review of Constituency Allowance Claims

On 9 October 2008, we wrote the Speaker of the House of Assembly requesting information on the status, as of 30 September 2008, of recoveries relating to the \$2,875 special payment and double billings. In addition, we requested details of any payments or arrangements to repay made by Members or former Members, since our initial report in January 2007, in relation to excess constituency allowance claims or any other inappropriate claimed expenditures.

### Overall Conclusions

The House of Assembly establishment concluded, based on legal advice, that it could recover only amounts relating to double billings. The Department of Finance is pursuing the recovery of excess constituency allowance claims. As a result, there was no action taken by the House of Assembly to recover other amounts identified as inappropriate in the report from the Office of the Auditor General in September 2007. Therefore, amounts recovered to date related to any inappropriate claims other than double billings have been made voluntarily by the Members of the House of Assembly.

In addition to the action taken by the House of Assembly, in May 2007 the Attorney General filed Statements of Claim on five former Members of the House of Assembly and the former Director of Financial Operations.

Our review indicated the following as at 30 September 2008:

#### **Double Billings**

Of the 88 Members with double billings totalling \$212,108, 14 still have outstanding balances totalling \$36,764 and only 4 of the 14 with outstanding balances totalling \$14,036 have made arrangements to repay. No interest is being charged on amounts owing.

#### **Special Payment of \$2,875**

Seven of the 46 Members who received the \$2,875 special payment in May 2004 have neither chosen to repay, nor make arrangements to repay the amount.

Furthermore, the House of Assembly has not contacted the Canada Revenue Agency to determine whether the \$2,875 special payment should be considered a taxable benefit for the Members who have chosen not to repay the amount.

## Update on the Review of Constituency Allowance Claims

### **Personal Items**

Of the 57 Members with expenditures related to personal items totalling \$161,947, only 3 with balances totalling \$67,703 have chosen to repay \$45,263 of the expenditures.

### **Alcohol-only Purchases**

Of the 57 Members who claimed alcohol-only purchases totalling \$118,806, only 3 Members have chosen to repay their balances totalling \$35,942.

### **Excess Discretionary Allowances**

Of the 33 Members who had excess discretionary allowances totalling \$201,219, none have chosen to repay their excess allowances.

### **Inappropriate Vehicle Mileage**

Of the 4 Members with inappropriate vehicle mileage claims totalling \$57,872, none have chosen to repay their claims.

### **Donations**

Of the 108 Members who claimed donations totalling \$1,471,108, only 1 Member chose to repay their donation claim totalling \$90.

### **Travel Claim Inconsistencies**

One of the 2 Members, with inconsistencies between travel claims and other expenses totalling \$6,806, paid \$2,047 along with providing additional documentation to settle their total balance of \$3,166.

---

## Detailed Observations

---

This report provides an update on the status of repayment of the following items identified in our September 2007 report:

1. Double Billings
2. Special Payment of \$2,875
3. Other Inappropriate Claims
  - (a) Personal Items
  - (b) Alcohol-only Purchases
  - (c) Excess Discretionary Allowance
  - (d) Inappropriate Vehicle Mileage
  - (e) Donations
4. Excess Constituency Allowance Claims
5. Other Matters

## Update on the Review of Constituency Allowance Claims

### 1. Double Billings

**Overview** In September 2007, our *Report to the House of Assembly on a Review of Constituency Allowance Claims from 1989-90 through to 2005-06* identified 1,224 instances totalling \$212,108 where 88 Members submitted a claim and received reimbursement for an expenditure which appeared to have been previously claimed or claimed more than once on the same claim.

Information related to the double billings was provided (through the House of Assembly) to each Member and the Clerk of the House of Assembly to facilitate resolution of the double billing amounts.

We note that double billings by 5 Members of the House of Assembly totalling \$72,461 (Ed Byrne - \$19,461; Randy Collins - \$27,656; Wally Andersen - \$17,484; Jim Walsh - \$3,685; and Percy Barrett - \$4,175) are included in Statements of Claim filed for all amounts owed to the Crown and are now before the courts.

Details relating to the remaining outstanding double billings as at 30 September 2008 are shown in Figure 1.

**Figure 1**

#### Members of the House of Assembly Double Billings Balance Outstanding as at 30 September 2008

	Member	Total Double Billings	Repayments	Balance Outstanding 30 September 2008	Repayment Arrangements In Place
1	Jones, Yvonne	\$ 12,167	\$ 2,250	\$ 9,917	Payroll deductions of \$150 bi-weekly.
2	Shelley, Paul	9,109	0	9,109	-
3	Ramsay, William	5,658	0	5,658	-
4	McLean, Ernest	5,372	0	5,372	-
5	Hunter, Ray	3,664	1,927	1,737	Payroll deductions of \$100 bi-weekly.
6	Taylor, Trevor	2,467	400	2,067	\$100 payment deducted from expense claims.
7	Butler, Roland	1,515	1,200	315	Payroll deductions of \$50 bi-weekly.

## Update on the Review of Constituency Allowance Claims

	<b>Member</b>	<b>Total Double Billings</b>	<b>Repayments</b>	<b>Balance Outstanding 30 September 2008</b>	<b>Repayment Arrangements In Place</b>
8	Penny, Melvin	868	0	868	-
9	Sparrow, Anthony	852	0	852	-
10	Grimes, Roger	393	0	393	-
11	Murphy, Thomas	154	0	154	-
12	Reid, Art	136	0	136	-
13	Small, Harold	127	0	127	-
14	Flight, Graham	59	0	59	-
	<b>Total</b>	<b>\$ 42,541</b>	<b>\$ 5,777</b>	<b>\$ 36,764</b>	

Source: House of Assembly establishment

As Figure 1 shows, as of 30 September 2008, \$36,764 (17%) of the \$212,108 total double billings is still outstanding for 14 Members. Only 4 of the 14 Members with double billing balances totalling \$14,036 have made arrangements to repay their double billings.

The House of Assembly establishment concluded, based on legal advice, that it could recover amounts relating to double billings. As a result, the House of Assembly establishment wrote each Member in November 2007 requesting repayment of double billings. In addition, follow-up letters were also sent. The Department of Finance is pursuing the recovery of excess constituency allowance claims.

**No interest charged on amounts owing**

The double billing amounts were claimed by the Members during the period 1997-98 to 2005-06, and were reported to the Clerk of the House of Assembly in September 2007. No interest is being charged on the amounts owing.

## 2. Special Payment of \$2,875

**Overview**

In our January 2007 report to the House of Assembly on Constituency Allowance Claims, we reported that in May 2004 the Internal Economy Commission made a decision to pay each Member \$2,875 (\$2,500 plus \$375 HST). We noted that 46 of the 48 Members signed and submitted a Member's Constituency Allowance Expense Claim form and received the \$2,875 special payment.

## Update on the Review of Constituency Allowance Claims

As we reported, the Minutes of the Internal Economy Commission (IEC) meetings were so vague on this matter that it was not possible for the public to know that each Member was to receive this additional allowance of \$2,875 (\$2,500 plus \$375 HST). Subsequent to our report, all three political party leaders publicly indicated that they would encourage Members to repay the \$2,875 special payment amount.

Details relating to the special payment as at 30 September 2008 are shown in Figure 2.

**Figure 2**

**Members of the House of Assembly  
\$2,875 Special Payment  
Balance Unpaid as at 30 September 2008**

	<b>Member</b>	<b>Special Payment Amount Received</b>	<b>Amount Repaid as of 30 September 2008</b>	<b>Balance Unpaid as at 30 September 2008</b>	<b>Repayment Arrangements In Place</b>
1	Andersen, Wally	\$ 2,875	\$0	\$ 2,875	No
2	Barrett, Percy	2,875	0	2,875	No
3	Byrne, Ed	2,875	0	2,875	No
4	Collins, Randy	2,875	0	2,875	No
5	Goudie, Kathy	2,875	0	2,875	No
6	Grimes, Roger	2,875	0	2,875	No
7	Hodder, James	2,875	0	2,875	No
<b>Total</b>				<b>\$ 20,125</b>	

Source: House of Assembly establishment

As Figure 2 shows, at 30 September 2008, there were 7 Members who have neither chosen to repay, nor make arrangements to repay the amount.

## Update on the Review of Constituency Allowance Claims

### Allowance should be taxable

In our January 2007 report to the House of Assembly on Constituency Allowance Claims, we also noted that officials from the Office of the Comptroller General had requested information from the House of Assembly about the nature of the \$2,875 payment to determine whether, for income tax purposes, the allowance would be taxable. For income tax purposes, if the amount was considered taxable, Government would be required to issue a T-4 or T-4A slip. However, the House of Assembly establishment has the option of seeking a ruling from the Canada Revenue Agency requesting that the allowance be deemed as non-taxable.

The Deputy Minister of Finance, in a letter dated 16 August 2007, indicated that the Internal Economy Commission (IEC) is the employer in this case and it would be their determination as to whether they considered the amount to be an allowance that is not taxable or taxable. He also indicated that it would be the IEC's decision if they wished to seek a ruling from the Canada Revenue Agency.

We found that the House of Assembly establishment did not request a ruling on whether the special payment would be considered as a taxable benefit. As a result, it has not been determined whether a T-4 or T-4A should be issued to the 7 Members who have not repaid the special payment.

---

### 3. Other Inappropriate Claims

---

#### Overview

In our 2007 report, we identified several items that, in our opinion, would not be considered appropriate within the definition of expenditures required in the performance of constituency business. These items were categorized as follows:

- Personal Items
- Alcohol-only Purchases (not including alcohol with meals)
- Excess Discretionary Allowance
- Inappropriate Vehicle Mileage Claims
- Donations

Details on each category are contained in the following sections:

---

### 3A. Personal Items

---

#### Introduction

Claims for personal expenditures include items which, in our opinion, were for the personal use and/or consumption of a Member without significance to their constituency responsibilities.

Items claimed included such purchases as:

- artwork;
- airfare for spouse and children;
- sports and entertainment;
- clothing; and
- electronics.

Our review indicated that, of the 115 Members reviewed, 57 had claims of a personal nature totalling \$161,947. Of the 57 Members, 9 accounted for over \$131,000 (81%) of the total claims, with one Member (Paul Dicks) accounting for \$62,712 (39%) of the total claims.

---

Three Members (Paul Dicks, Kelvin Parsons and Kathy Goudie) have chosen to repay a portion of the personal items claimed by them.

- **Paul Dicks - \$62,712**

Paul Dicks repaid \$1,537 relating to a claim for an undisclosed item purchased from an out-of-Province jewellery store. He also repaid \$42,927 of the \$59,753 that had been claimed for artwork purchases. The remaining balance of \$16,826 related to a receipt issued by Government in 2001.

We found there was a receipt from the Central Cashier's Office of the Office of the Comptroller General dated 27 April 2001 which indicated that Paul Dicks paid \$16,826 for "*sale of furniture*". The amount was recorded in the 2000-01 Public Accounts as related revenue under the Building Utilities and Maintenance category of the Department of Transportation and Works.

## Update on the Review of Constituency Allowance Claims

However, no one was able to provide details of how the \$16,826 was determined, what the amount related to or why it was recorded as revenue at the Department of Transportation and Works.

- **Kelvin Parsons - \$2,110**

Kelvin Parsons repaid \$534 for items that were identified as being of a personal nature.

- **Kathy Goudie - \$2,881**

Kathy Goudie repaid \$265 for an item that was identified as being of a personal nature.

As of 30 September 2008, none of the remaining 54 Members had chosen to either repay, or make arrangements to repay, any of the amounts they had claimed for personal items totalling \$94,244.

---

### 3B. Alcohol-only Purchases

---

#### Introduction

Alcohol-only purchases include purchases at liquor stores or convenience stores, but do not include any alcohol that would have been included with meals.

Our 2007 report indicated that 57 of the 115 Members reviewed claimed alcohol-only purchases totalling \$118,806. One Member (Paul Dicks) accounted for \$34,145 (29%) of this total.

Three of the 57 Members have chosen to repay their alcohol claims - Paul Dicks (\$34,145), William Matthews (\$1,264) and Robert Mercer (\$533).

As of 30 September 2008, none of the remaining 54 Members had chosen to either repay, or make arrangements to repay, any of the amounts they had claimed for alcohol-only purchases totalling \$82,864.

---

### 3C. Excess Discretionary Allowance

---

#### Introduction

A discretionary allowance is a non-taxable amount that is provided to a Member without the requirement that the Member provide details of whether the allowance was spent, or how it was spent. In other words, the Member was not required to provide proof of the expenditure.

For the period 1996-97 to 1998-99 the annual amount was capped at \$2,300 (including HST) for each Member. During the period 1999-00 to 2003-04 the annual amount was increased to \$5,520 (including HST). In 2004-05 the discretionary allowance was discontinued.

We determined that an excess discretionary allowance occurred when a Member received reimbursement for claims that exceeded the annual maximums. In 2007 we reported that of the 115 Members reviewed, there were 33 Members who had claimed excess discretionary allowances totalling \$201,219. The excess claims of four Members totalled \$176,657 (Jim Walsh - \$77,650; Randy Collins - \$52,567; Wally Andersen - \$35,460; and Lloyd Snow - \$10,980), and accounted for 88% of the total excess amount.

---

As at 30 September 2008, none of the Members had chosen to either repay, or make arrangements to repay, the excess discretionary amounts claimed.

---

### 3D. Inappropriate Vehicle Mileage

---

#### Introduction

The purpose of paying an individual for the use of their private vehicle is to reimburse for the capital and operating costs incurred when usage of the vehicle is for other than personal reasons. However, when that vehicle is leased and the applicable monthly payments are being claimed by a Member, it would not be considered appropriate that the Member also claim for use of the vehicle based on the kilometers driven.

In 2007 we identified six Members who claimed for lease payments on their constituency allowances, four of whom also submitted vehicle usage claims for kilometers driven on constituency business. These four Members had inappropriate vehicle usage claims totalling \$57,872 (Kathy Goudie - \$19,325; Paul Shelley - \$15,302; Trevor Taylor - \$6,854; and Wallace Young - \$16,391).

---

As at 30 September 2008, none of the Members had chosen to either repay, or make arrangements to repay, the inappropriate vehicle mileage claimed.

---

### 3E. Donations

---

#### Introduction

Over the 17 year period from 1989-90 to 2005-06, 108 Members claimed donations totalling \$1,471,108. While the constituency allowance was never clearly intended for such a purpose, the provision of donations to individuals and groups was a common practice amongst Members.

In addition to donations to various registered charities, donations were also provided for many other purposes such as:

- sports and school activities;
  - festivals and other community events;
  - donations to local fire departments and other community organizations;
  - transportation costs for individuals (including transport of human remains);
  - clothing;
  - eyeglasses, medical devices and ambulance;
  - small appliances and other household goods;
  - birth/baptism/marriage certificates, replacement of Social Insurance Number card and passports;
  - educational support;
  - other goods and services such as legal fees, excavating services and furnace repairs; and
  - raffle tickets claimed after the draw date.
- 

As at 30 September 2008, only one Member (Aubrey Gover) had chosen to repay their donation claim totalling \$90. None of the remaining 107 Members had chosen to either repay, or make arrangements to repay, donations claimed.

---

### 4. Excess Constituency Allowance Claims

---

In January 2006, we commenced a review of allowances and assistance paid to Members of the House of Assembly. As a result of our review, we identified instances of excess constituency allowance claims by five (5) Members of the House of Assembly during the period 1997-98 to 2005-06 totalling \$1,586,573 (Ed Byrne - \$467,653; Randy Collins - \$358,598; Wally Andersen - \$344,465; Jim Walsh - \$298,571; and Percy Barrett - \$117,286). These matters were reported to the Lieutenant-Governor in Council in accordance with Section 15 of the *Auditor General Act*.

In our 31 January 2007 report to the House of Assembly, we recommended that all excess constituency allowance claim amounts relating to the five Members should be recovered.

---

We note that Statements of Claim have been filed against the five former Members and the former Director of Financial Operations and are now before the courts. The Statements of Claim include a request to the courts for judgment interest. The Department of Finance withheld any severance and similar amounts due upon termination of applicable Members.

---

### 5. Other Matters

---

#### **Conflict between travel and other documents**

In the September 2007 report, we identified issues with two Members regarding inconsistencies between travel claims and other expenses as follows:

- Kelvin Parsons - \$3,166

For three trips totalling \$1,848 the Member indicated that the trips never took place and that mileage claims had been submitted in error.

For three trips totalling \$1,318 the Member indicated that he travelled by air from St. John's to his District but claimed the equivalent of driving from St. John's to his District instead of claiming the airline ticket.

Kelvin Parsons repaid \$2,047 along with providing additional documentation to settle his total balance of \$3,166.

## Update on the Review of Constituency Allowance Claims

- William Matthews - \$3,640

In 19 instances totalling \$3,640 the Member claimed receipts from restaurants in one location which were dated during a period where private vehicle mileage claims submitted by the Member indicated he was on travel status in another location.

The Member has neither chosen to repay, nor make arrangements to repay, the amount.

---

## House of Assembly Establishment's Response

---

### **1. Double Billings**

*The information below updates the Figure 1 data for the period October 1, 2008 to January 12, 2009:*

1. *Jones, Yvonne - \$9,917 repayment - paid in full*
2. *Shelley, Paul - \$1,000 repayment and four monthly payments of \$150 each in post-dated cheques also received*
3. *Ramsey, William - no repayment*
4. *McLean, Ernest - \$2,000 repayment and agreement to pay \$500 monthly until paid in full*
5. *Hunter, Ray - \$600 repayment by payroll deductions*
6. *Taylor, Trevor - \$200 repayment from expense claims*
7. *Butler, Roland - \$300 repayment by payroll deductions*
8. *Penney, Melvin - no repayment*
9. *Sparrow, Anthony - \$150 repayment and agreement to pay \$150 quarterly until paid in full*
10. *Grimes, Roger - discussions ongoing, no repayment*
11. *Murphy, Thomas - \$154 repayment, paid in full*
12. *Reid, Art - \$136 repayment, paid in full*
13. *Small, Harold - \$127 repayment, paid in full*
14. *Flight, Graham - no repayment*

*As of January 12, 2009, only four former Members have not made repayment arrangements. Collection efforts are continuing respecting these four individuals.*

*We also note that Jim Walsh has repaid \$3,000 of the \$3,685 identified as double billings.*

## Update on the Review of Constituency Allowance Claims

*We have received legal advice that interest on outstanding balances may only be imposed based on a contract, statutory authority or court judgements, none of which apply in these instances.*

### **2. Special Payment of \$2,875**

*The information in Figure 2 is still current as of January 12, 2009.*

*The House of Assembly will seek a ruling from the Canada Revenue Agency as to whether such a payment constituted a taxable benefit.*

### **3. Other Inappropriate Claims**

*The information in Section 3 is still current as of January 12, 2009.*

---

## Update on the Review of Constituency Allowance Claims



## Highlights

Highlights of a review of the Office of the Chief Information Officer within the Executive Council for the period 1 April 2007 to 31 March 2008.

### Why our Office Did this Review

The objective of our review was to assess whether the Office of the Chief Information Officer's management practices and controls were adequate.

### What our Office Recommends

Following are highlights of recommendations included in the Report that the OCIO should address. The Department should ensure that:

- Disaster Recovery Plans are in place for all Government supported applications;
- there is a well defined process in place to ensure that clients identify and store on OCIO managed servers, all information considered critical for their continued operation;
- a process to modify access privileges is well defined;
- Service Level Agreements are in place between the OCIO and clients;
- a competitive bidding process is in place for the assignment of work to vendors under professional services agreements;
- there is compliance with the Government's financial management policy on IT asset management;
- the Information Management Policy Framework is developed, approved and communicated;
- the *Financial Administration Act* is complied with;
- operational plans are in place for all divisions;
- the system for reporting on business objectives is adequate; and
- an information management training plan is developed and implemented.

### What the OCIO Said

To provide balance to this report and to ensure full disclosure, the OCIO was asked to formulate a response to our findings and conclusions. The OCIO's response, verbatim, is included at the end of this report. Readers are encouraged to consider the OCIO's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

Chapter 2, Part 2.2

### EXECUTIVE COUNCIL

Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) was established in April 2005, bringing together the information technology operations of Government into a central organization. The OCIO supports more than 100 commercial software applications and over 500 custom built applications. These applications are on over 600 servers and delivered to 6,300 personal computers. The OCIO had expenditures of \$61.1 million in 2007-08.

### What We Found

We identified a number of concerns at the OCIO as follows:

**Backup and Recovery:** There could be instances where either not all critical information is being backed up or storage media and devices may not be useable in the event of a fire or other disaster.

**IT Security:** The OCIO has not established charts of authority for all applications which it supports. As at 31 March 2008, there were only 165 charts of authority completed out of a total of 427 applications supported by the OCIO. An additional 194 of the 427 were completed up to October 2008. As a result, there is an increased risk of unauthorized access to Government systems and data.

**Service Level Agreements:** As of 31 March 2008, there were no Service Level Agreements in place between the OCIO and client departments. As a result, roles and responsibilities of the OCIO and departments are not set out and there is no agreement with clients on security and disaster recovery processes, expectations, and reporting requirements.

**Professional Services Contracts:** In relation to three long-term professional services agreements covering the period 1 April 2007 to 31 March 2010, there was, among other findings, no competitive bidding process in place to ensure the most qualified vendor performed the work at the lowest cost.

**IT Hardware and Software:** Controls over the recording and monitoring of IT hardware are not adequate and the OCIO is not complying with Government's Financial Management Policy on IT asset inventory. In addition, the OCIO does not have a system for monitoring software licensing and usage. As a result, the existence and use of unlicensed software throughout Government could go undetected and there is a risk of purchasing too many software licenses.

**Information Management:** Although the OCIO's 2007-08 Annual Report to the House of Assembly indicated that its Information Management Policy Framework was adopted in 2007, we found that, as at October 2008, the Information Management Policy Framework was still only in draft form.

**Purchasing:** The OCIO violated the *Financial Administration Act* in that there were 5 instances totalling approximately \$651,800 where goods and services were ordered and received without the prior issuance of a purchase order and the prior recording of the commitment in Government's financial management system.

**Planning and Reporting:** There were no operational plans for four of the OCIO's five divisions. In addition, the required quarterly monitoring reports are not always prepared.

**Training Plan:** Although the OCIO has a goal to improve information management practices in Government through the development and delivery of information management training, a training plan has not yet been developed.

### Background

---

**Overview** The Office of the Chief Information Officer (OCIO) was established in April 2005, bringing together the information technology operations of Government into a central organization.

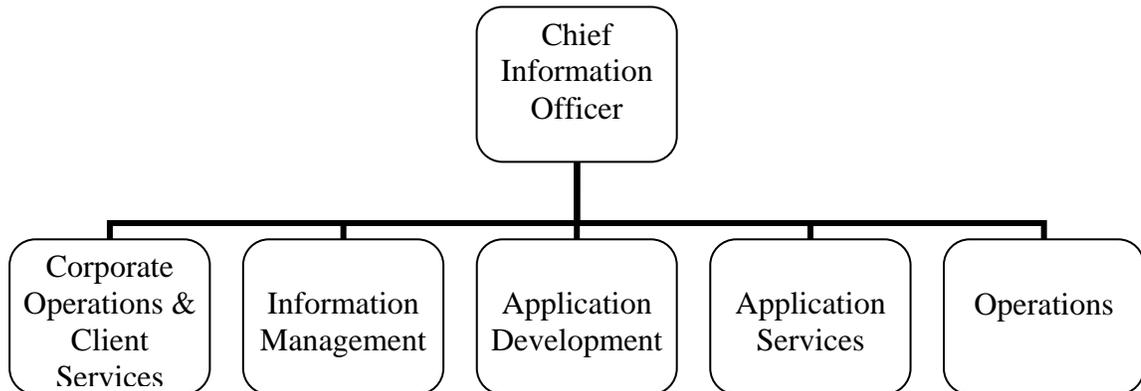
The OCIO operates as an entity within the Executive Council and is governed by the *Executive Council Act*. The OCIO is responsible for:

- information technology and information management coordination, planning, budgeting and policy development;
- developing and operating computer systems and infrastructure for Government departments, as well as agencies, boards and commissions that are directly supported by the administrative support services of departments;
- expenditures and procurement of information technology goods and services;
- managing information technology agreements and contracts;
- providing consultative services, particularly in the area of information management; and
- working collaboratively with the private information technology sector to maximize opportunities while meeting the business needs of Government.

The OCIO is made up of five branches (divisions) as shown in Figure 1.

**Figure 1**

**Office of the Chief Information Officer  
Organization Chart**



There are approximately 280 employees (204 permanent) working with the OCIO, with the majority located in St. John's area. There are also employees in Happy Valley-Goose Bay, Corner Brook, Stephenville, Grand Falls Windsor, Gander and Clarenville.

The OCIO supports more than 100 commercial software applications and over 500 custom built applications. These applications are on over 600 servers and delivered to 6,300 personal computers.

---

**Expenditures**

A summary of the expenditures relating to OCIO for the last three fiscal years is provided in Figure 2. As Figure 2 shows, expenditures have increased from \$36.8 million in 2005-06 to \$61.1 million in 2007-08, an increase of \$24.3 million or 66%.

**Figure 2**

**Executive Council  
OCIO Expenditures  
Years Ended 31 March  
(000's)**

<b>Expenditures</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Administrative Support	\$ 4,473	\$ -	\$ -
Office of the Chief Information Officer	32,333	-	-
Administration, Strategy and Policy	-	\$ 3,195	\$ 5,819
Application Management	-	15,158	19,979
Infrastructure Services	-	20,325	29,254
Application Management (capital)	-	5,874	2,281
Infrastructure Services (capital)	-	2,544	3,796
<b>Total Expenditures</b>	<b>\$36,806</b>	<b>\$47,096</b>	<b>\$61,129</b>

Source: Public Accounts of Newfoundland and Labrador

---

## Audit Objectives and Scope

---

**Audit objectives**      The objective of our review was to assess whether the Office of the Chief Information Officer's management practices and controls were adequate.

---

**Audit scope**      Our review included an examination of the OCIO within the Executive Council. Our review covered, primarily, the period 1 April 2007 to 31 March 2008 and was completed in November 2008.

Our review included interviews with key personnel within the OCIO and compliance testing in various areas.

---

### Overall Conclusions

The Office of the Chief Information Officer (OCIO) was established in April 2005, bringing together the information technology operations of Government into a central organization. The OCIO supports more than 100 commercial software applications and over 500 custom built applications. These applications are on over 600 servers and delivered to 6,300 personal computers. The OCIO had expenditures of \$61.1 million in 2007-08.

We identified a number of concerns at the OCIO as follows:

#### Backup and Recovery

There could be instances where either not all critical information is being backed up or storage media and devices may not be useable in the event of a fire or other disaster. This situation results because of the following issues:

- There were no Disaster Recovery Plans in place for 538 (96%) of the 559 Government supported applications. Disaster Recovery Plans were in place for only 21 (4%) of the 559 applications. These 559 applications relate to non-mainframe services which include about 98% of all Government services. As a result, Government systems, data, and services may not be available in the event of a disruption, emergency or disaster.
- Data backups for OCIO managed servers are not kept in a fireproof environment as required by OCIO policy.
- Backups were not tested in six month intervals from the date of first use as required by OCIO policy.
- There are no documented procedures to direct the daily backup of computer systems and storage of backup media. OCIO officials indicated that several documents are in draft form.
- There is no well defined process in place to ensure that clients identify and store on OCIO managed servers, all information considered critical for their continued operation. OCIO clients are responsible for ensuring that they place information in need of backup services on OCIO managed servers.

- The listing of OCIO supported applications provided at 31 March 2008 was not accurate. As a result, there may be computer applications in use in various locations that have not been identified and are not supported by the OCIO. Therefore, the confidentiality, integrity of systems and data related to these applications may not be adequately protected.

### **IT Security**

The OCIO has not established charts of authority for all applications which it supports. These charts of authority are necessary to identify who can access defined activities related to an application. As at 31 March 2008, there were only 165 charts of authority completed out of a total of 427 applications supported by the OCIO. An additional 194 of the 427 were completed up to October 2008.

As a result, there is an increased risk of unauthorized access to Government systems and data.

### **Service Level Agreements**

As of 31 March 2008, there were no Service Level Agreements in place between the OCIO and client departments. As a result, roles and responsibilities of the OCIO and departments are not set out and there is no agreement with clients on security and disaster recovery processes, expectations, and reporting requirements. OCIO officials informed us that as of October 2008 there were 29 Service Level Agreements at different stages of development, sixteen (16) of which were ratified.

There were 18 Planning and Service Delivery Committees established in 2007-08 and OCIO officials indicated there were concerns with 14 of the Committees. These concerns included such things as a lack of understanding of the Committee mandate, areas of focus, Committee membership and frequency and scheduling of meetings. As a result, there is no clear understanding of the role and responsibilities of the OCIO and clients, and the Planning and Service Delivery Committees are not functioning as intended.

### **Professional Services Contracts**

In 2006-07, the OCIO entered into three long-term professional services agreements covering the period 1 April 2007 to 31 March 2010. We identified the following:

- There was no competitive bidding process in place to ensure the most qualified vendor performed the work at the lowest cost.

Officials informed us that during 2007-08, the work under these contracts was assigned through a method of rotating the work through each of the three vendors. As a result, the OCIO did not make any determination of which vendor had the lowest cost, best timeline, and best resources to perform the work. In 2007-08 these three contractors received a total of \$24.3 million in contract work.

- There were instances of non-compliance with the framework in that not all required monthly status reports and project closure reports were prepared.
- Work is sometimes started by contractors before a signed legal agreement detailing the required work and other specifics, is in place.
- There is no formal evaluation of vendor performance under Service Level Agreements. As a result, OCIO is unable to determine if the vendors are performing up to expectations.

### **IT Hardware and Software**

Controls over the recording and monitoring of IT hardware are not adequate and the OCIO is not complying with Government's Financial Management Policy on IT asset inventory as evidenced by the following:

- Not all computers are scanned by the OCIO's LANDesk software;
- There are no periodic comparisons by OCIO officials of physical quantities of IT assets to inventory records;
- There is no asset tracking for printers, keyboards, mouse or other smaller assets. These assets are not tagged, physically verified or electronically scanned; and
- The value of all IT assets on hand as of 31 March of the fiscal year is not reported to the Comptroller General, as required.

The OCIO does not have a system for monitoring software licensing and usage. Such a system could track software licenses and usage, compare licenses purchased with licenses in use and produce regular compliance reports. As a result, the existence and use of unlicensed software throughout Government could go undetected and there is a risk of purchasing too many software licenses.

### **Information Management**

Although the OCIO's 2007-08 Annual Report to the House of Assembly indicated that its Information Management Policy Framework was adopted in 2007, we found that, as at October 2008, the Information Management Policy Framework was still only in draft form.

Officials informed us that the OCIO is working toward implementation of several industry best practices including ISO standards for records management and that, although not incorporated now, these standards are expected to be incorporated into OCIO's Information Management Policy Framework.

### **Purchasing**

The OCIO violated the *Financial Administration Act* in that there were 5 instances totalling approximately \$651,800 where goods and services were ordered and received without the prior issuance of a purchase order and the prior recording of the commitment in Government's financial management system.

### **Planning and Reporting**

There were no operational plans for four of the OCIO's five divisions. Such plans help ensure that resources are deployed in the most effective manner to achieve goals and objectives. In addition, the required quarterly monitoring reports are not always prepared. For example, during 2007-08, due to the ongoing budget process, it was not feasible to implement the third quarter status report.

### **Training Plan**

Although the OCIO has a goal to improve information management practices in Government through the development and delivery of information management training, a training plan has not yet been developed. Without a training plan, the OCIO cannot demonstrate its progress in providing information management training as identified in its Business Plan.

## Detailed Observations

---

**Findings** Findings from our review are reported in the following sections:

1. Backup and Recovery
  2. IT Security
  3. Service Level Agreements
  4. Professional Services Contracts
  5. IT Hardware and Software
  6. Information Management
  7. Purchasing
  8. Planning and Reporting
  9. Training Plan
- 

### 1. Backup and Recovery

---

**Background** OCIO policy states that Disaster Recovery Plans must be in place, regularly updated and readily available for restoration rehearsals and operational execution. A rehearsal restoration must occur at a minimum of every two years to verify the quality of the backed up information and disaster recovery procedures. Therefore, clients need to identify their Disaster Recovery Plan requirements to ensure OCIO can develop adequate plans to restore their systems.

The OCIO is also responsible for the proper backup of all business information residing on Government servers. The purpose of backups is to safeguard information and to reduce downtime in the event of a problem with a computer or server. Regular backups enable OCIO to restore information compromised by a disaster.

Adequate training should be provided to ensure the plans will work as required. Plans should also identify who can activate the plan, identify staff roles and responsibilities and include documentation on systems and recovery processes.

Our review identified that the OCIO does not have Disaster Recovery Plans in place for all clients and there are issues with information backup procedures. Furthermore, IT security policies are not well defined, communicated and monitored. Our findings are as follows:

### **Disaster Recovery Plans are not in place**

As of October 2008 the OCIO was responsible for providing support for 468 client applications. An additional 91 applications were identified by officials of OCIO as supported by Government Departments. These 559 applications relate to non-mainframe services which include about 98% of all Government services. Our review indicated that the OCIO did not have Disaster Recovery Plans in place for all client applications.

Disaster Recovery Plans were in place for only 21 (4%) of the 559 applications. There were no Disaster Recovery Plans in place for 538 (96%) of Government supported applications.

As a result, Government systems, data, and services may not be available in the event of a disruption, emergency or disaster.

---

### **Information backup and recovery issues**

Contrary to OCIO backup policy which states that storage media or devices should be placed in fireproof containers, wherever possible, we found that data backups for OCIO managed servers are not kept in a fireproof environment.

Contrary to OCIO backup policy which indicates that all OCIO managed servers have backups tested in six month intervals from the date of first use, backups were not tested with this frequency.

Officials informed us that there was no documented set of procedures to direct the daily backup of computer systems and storage of backup media. OCIO officials indicated that several documents are in draft form.

There is no well defined process in place to ensure that clients identify and store on OCIO managed servers, all information considered critical for their continued operation. OCIO clients are responsible for ensuring that they place information in need of backup services on OCIO managed servers. OCIO officials informed us that the OCIO managed servers are backed up.

As a result of these issues, there could be instances where either not all critical information is being backed up or storage media and devices may not be useable in the event of a fire or other disaster.

---

### **Database of supported applications neither complete nor accurate**

The listing of OCIO supported applications provided at 31 March 2008 was not accurate. A new list was provided as of October 2008 and there were a number of changes to the March 2008 information as a result of work completed by OCIO officials in August 2008 to correct/validate the status of applications in the portfolio. For example:

- 39 applications were added - 19 were already in the portfolio but were incorrectly designated as being inactive, non-supported or decommissioned while the remaining 20 were added when the OCIO became aware of them; and
- 16 applications were removed from the list as they were no longer identified as being supported by the OCIO.

OCIO officials indicated that there could be other computer applications used in Government, not on the list. The list included only those that the OCIO was aware of.

As a result, there may be computer applications in use in various locations that have not been identified and are not supported by the OCIO. Therefore, the confidentiality, integrity of systems and data related to these applications may not be adequately protected.

### **Recommendations**

OCIO should ensure:

- Disaster Recovery Plans are in place for all Government supported applications;
- data backups for OCIO managed servers are kept in a fireproof environment as required;
- backups are tested in six month intervals from the date of first use as required;
- there are documented procedures to direct the daily backup of computer systems and storage of backup media;

- there is a well defined process in place to ensure that clients identify and store on OCIO managed servers, all information considered critical for their continued operation; and
- the database of OCIO supported applications is complete and accurate.

## 2. IT Security

Charts of authority, procedures for modifying access privileges and passwords are examples of safeguards which should be in place to help mitigate the risk of unauthorized access to Government systems and data.

### **Chart of authorities not in place for all applications**

The OCIO has not established charts of authority for all applications which it supports. These charts of authority are necessary to identify who can access defined activities related to an application. As at 31 March 2008, there were only 165 charts of authority completed out of a total of 427 applications supported by the OCIO. An additional 194 of the 427 were completed up to October 2008.

### **Process to modify access privileges not well defined**

In October 2008, officials informed us that a process was implemented in early 2008 to modify access privileges to network resources. Since this process was implemented, the OCIO has deactivated 3,695 accounts. We were informed that the OCIO was addressing a backlog of work in this area together with developing appropriate guidelines and policies to be used.

### **No comprehensive password policy in effect**

The OCIO does not have a comprehensive policy to ensure that password management best practices are in place. For example, there is no policy related to the approval of access to Government information and IT assets. The OCIO has several policies in place relating to passwords, such as, all Government computers are required to have a strong password authentication and passwords are required to be changed every 30 days. However, these policies do not adequately address responsibilities relating to password management and use. Officials informed us that several policy and guideline development activities were in place to solidify policies in this area but are not yet finalized.

As a result, there is an increased risk of unauthorized access to Government systems and data.

### Recommendations

OCIO should ensure that:

- charts of authority are established for all applications which the OCIO supports;
- a process to modify access privileges is well defined; and
- there is a comprehensive password policy in effect.

### 3. Service Level Agreements

#### Service Level Agreements with clients not in effect

Service Level Agreements set out the roles and responsibilities of the OCIO and the client for the delivery of IT services. The Agreements describe the services to be provided by OCIO, service availability requirements, service delivery requirements, service delivery targets and the term of the agreement. For example, clients need to clearly identify and communicate their security and disaster recovery requirements so that this can be adequately reflected in the Service Level Agreements.

As of 31 March 2008, there were no Service Level Agreements in place between the OCIO and client departments. As a result, roles and responsibilities of the OCIO and departments are not set out and there is no agreement with clients on security and disaster recovery processes, expectations, and reporting requirements. OCIO officials informed us that as of October 2008 there were 29 Service Level Agreements at different stages of development, sixteen (16) of which were ratified.

#### Planning and Service Delivery Committees not operating effectively

Officials informed us that current service levels are informally monitored through the Departmental Planning and Service Delivery Committees. These Committees are comprised of both OCIO and departmental representatives and are there to provide strategic business direction for a department's IT initiatives, and to monitor the delivery of these services. Each Committee sets its own meeting frequency; however, the Committees should meet at least quarterly.

Our review indicated that not all Committees were operating effectively. There were 18 Committees established in 2007-08 and OCIO officials indicated there were concerns with 14 of the Committees. These concerns included such things as a lack of understanding of the Committee mandate, areas of focus, Committee membership as well as frequency and scheduling of meetings.

As a result, there is no a clear understanding of the role and responsibilities of the OCIO and clients, and the Planning and Service Delivery Committees are not functioning as intended.

---

### Recommendations

OCIO should ensure that:

- Service Level Agreements are in place between the OCIO and clients to clearly outline security and disaster recovery processes, expectations, and reporting requirements; and
- Planning and Service Delivery Committees are functioning as intended.

---

## 4. Professional Services Contracts

### Background

In 2006-07, the OCIO entered into three long-term professional services agreements. The Request For Proposal (RFP), under which these agreements were entered, provided long-term agreements to simplify the process by which professional services could be obtained for, but not limited to, consulting, project management, analysis, design, project benefits evaluation, privacy assessment, development and support. The three vendors selected through the RFP were Xwave (a division of Bell Aliant), MTS Allstream, and Deloitte Consulting Inc.

The contracts covered the period from 1 April 2007 to 31 March 2010 and indicated the annual minimum value of work to be given to each vendor. Figure 3 outlines information on the guaranteed annual minimal value of work along with the actual value of work for 2007-08.

**Figure 3**

**Professional Services Contracts  
Minimum Value and Actual Payments**

<b>Contractor Name</b>	<b>Minimum Annual Value</b>	<b>Actual Payments 2007-08</b>
Xwave	\$4,000,000	\$13,091,000
MTS Allstream	4,000,000	9,385,000
Deloitte Consulting Inc.	1,000,000	1,857,000
<b>Total</b>	<b>\$9,000,000</b>	<b>\$24,333,000</b>

Source: OCIO records and Government's Financial Management System

As part of our review we examined the assignment and management of work to these vendors and identified the following issues:

**Process for assignment of work to vendors not competitive**

There was no competitive bidding process in place to ensure the most qualified vendor performed the work at the lowest cost. Officials informed us that during 2007-08, work under these contracts was assigned through a method of rotating the work through each of the three vendors.

As a result, the OCIO did not make any determination of which vendor had the lowest cost, best timeline, and best resources to perform the work.

**Project Management Framework**

The OCIO has developed a Project Management Framework for getting work completed under the RFP. The Framework requires that a project be developed, either through a request from a department or through the OCIO's own initiative. A work offer is prepared for the project which outlines what is required and this is sent to the prospective vendor. If the vendor accepts, the project manager must begin preparing the project charter.

The project charter will outline the objectives, the proposed solution, identify the different stages, the goals of each stage if necessary, anticipated project timeline, and anticipated project costs. The charter is signed off by the sponsoring department, project manager and OCIO executive.

Once the project has been accepted, each month a status report is required to be submitted, detailing the progress of all parts of the project, along with updates on cost and time and prospective issues. The OCIO project management office will then compile all status reports into a corporate summary which is to be distributed to senior management.

Once a project is complete, a Project Closure Report is required to be completed. This report gives the final outcome of the project, final cost and timeline, along with reasons for variance and learning points from the project.

---

### **Non-compliance with management framework**

We reviewed 7 work offers relating to the 3 service level agreements to determine whether there was compliance with the project management framework. Our review indicated instances of non-compliance as follows:

- 1 of the 7 projects did not have all of the required monthly status reports. In this case there were no project status reports for June, July and August 2007; and
  - 3 of the 4 completed projects did not have the required project closure report.
- 

### **Contracts signed after work commenced**

In addition to project work, the three vendors perform resource based services such as the provision of operational support and technical documentation for Government. Our review of 4 contracts for resource based services identified the following:

- 1 operational support contract was signed in July 2007; however, work had commenced in April 2007; and
- 1 operational support contract was signed in May 2007; however, work had commenced in April 2007.

As a result, work is sometimes started by contractors before a signed legal agreement, detailing the required work and other specifics, is in place.

---

### **No formal evaluation of vendors**

There is no formal evaluation of the vendor performance under Service Level Agreements. A formalized approach to vendor evaluation should be in place to provide feedback from all parties affected in order to determine if the vendors are performing up to expectations. An evaluation should be performed to determine if projects were completed on time, on budget, and to satisfaction of the project sponsor.

As a result, OCIO is unable to determine if the vendors are performing up to expectations.

---

**No written policy to monitor external service providers**

There is no well defined policy on the monitoring of service providers and their IT security procedures.

A formal policy should be developed and implemented regarding arrangements with external service providers. The policy should allow for monitoring of the service providers with access to sensitive information and provide for the review of security procedures by Government staff. Performance expectations, security requirements, penalties for non-performance and the ability to audit should be included.

OCIO officials informed us that, although there is a security clause in all professional services contracts, they are currently working on an updated confidentiality/security clause for the three major professional services vendors.

As a result, external service providers may not be in compliance with Government security requirements.

---

### **Recommendations**

OCIO should ensure:

- a competitive bidding process is in place for the assignment of work to vendors under professional services agreements;
- compliance with the project management framework;
- contracts are in place before work is started;
- a formal evaluation of vendor performance under Service Level Agreements is in place; and
- a written policy is in place to monitor external service providers and their IT security procedures.

---

## 5. IT Hardware and Software

---

### Requirements of the Financial Management Policy Manual

For purposes of inventory management, capital assets which are valued below specified dollar thresholds and are not capitalized must be inventoried and accounted for in the same manner as materials and supplies. Thresholds vary from \$15,000 (computer hardware) to \$100,000 (computer software) depending on their category.

An inventory system and procedures that provide for accounting and control of items should be place in all Government departments. Departments are responsible for ensuring that: the inventory system provides accurate information for financial reporting and forecasting of inventory; periodic comparisons of physical quantities on hand to inventory records to detect inventory losses are conducted; and the value of inventory on hand as of 31 March of the fiscal year is reported to the Comptroller General for Public Accounts purposes.

---

### Non-compliance with the financial management policy

The OCIO uses the LANDesk Management Suite for the management and control of Government's personal computers. In addition to LANDesk, the OCIO uses Excel spreadsheets to track secure IT assets such as servers, server chassis and racks, switches, routers and other core networking devices.

Our review identified the following issues:

- Not all computers are scanned by LANDesk. Officials indicated that, at any given time, approximately 7-8% of IT assets were not scanned because: employees are in an area without network connectivity; employees being on longer than normal periods of leave, therefore scans are not initiated at boot up; mobile workers may spend large amounts of time outside of the office and not connected to the Government network; and assets that have been taken out of service for repair or replacement;
- There are no periodic comparisons by OCIO officials of physical quantities of IT assets to inventory records;
- The value of all IT assets on hand as of 31 March of the fiscal year is not reported by the OCIO to the Comptroller General, as required; and

- There is no asset tracking for printers, keyboards, mouse or other smaller assets. These assets are not tagged, physically verified or electronically scanned.

As a result, controls over the recording and monitoring of IT assets are not adequate and the OCIO is not complying with Government's Financial Management Policy on IT asset inventory.

### Monitoring of software licensing compliance not adequate

The OCIO does not have a system for monitoring software licensing and usage. Such a system could track software licenses and usage, compare licenses purchased with licenses in use and produce regular compliance reports.

As a result, the existence and use of unlicensed software throughout Government could go undetected and there is a risk of purchasing too many software licenses.

### Recommendations

OCIO should ensure:

- compliance with the Government's financial management policy on IT asset management; and
- a system for monitoring software licensing and usage is in effect.

## 6. Information Management

### Information management policy framework still only in draft

A goal of the OCIO, as outlined in its Business Plan for 1 April 2006 to 31 March 2008, was to improve information management practices in Government by developing policies, procedures and standards. By 31 March 2007, the OCIO was to have increased awareness of information management and by 31 March 2008, the OCIO was to have improved information management practices in Government.

The objective of an Information Management Policy Framework is to enable the management of information, regardless of physical format, from its creation, through its use, to its final disposition and to provide timely access to information to support decision-making and business efficiency.

The Framework is to apply to all the information holdings of Government and to all employees, contractors of the Government of Newfoundland and Labrador who receive, create or manage information. The Framework is expected to provide the context for the development of Government information management policies, directives, standards and business rules.

We found that the Information Management Policy Framework is still not complete. Although the OCIO's 2007-08 Annual Report to the House of Assembly indicated that the OCIO Policy Framework was adopted in 2007, we found that, as at October 2008, the Information Management Policy Framework was still only in draft form.

### **Record management standards not in effect**

Officials informed us that the OCIO is working towards implementation of several industry best practices including ISO standards for records management.

One of these standards includes determining requirements for retrieving, using and transmitting records between business processes and other users and how long they need to be kept to satisfy those requirements. Another standard includes preserving records and making them accessible over time, in order to meet business requirements and community expectations. Records should be retained only as long as needed or required. Departments will also have to comply with ISO standards in developing their information management programs. These standards provide for a standard approach to the characteristics of records, the design and implementation of records systems, records management processes and controls, monitoring and auditing, and training.

We identified the following:

- Officials at OCIO informed us that they are only beginning to plan for retention schedules because to-date the emphasis has been on developing and implementing information classification plans;
- The OCIO has not begun to transfer records to the Provincial Archives. Officials indicated that once it begins work on retention schedules it will work closely with the Provincial Archives to develop archival appraisal of its records; and

- OCIO officials indicated that, although not incorporated now, these standards are expected to be incorporated into OCIO's information management policy framework.

As a result, current information management standards require improvement.

---

### Recommendations

OCIO should ensure:

- the Information Management Policy Framework is developed, approved and communicated; and
- compliance with records management standards.

---

## 7. Purchasing

### Contravention of the *Financial Administration Act*

The OCIO is required to follow Government purchasing policies and procedures, including the *Financial Administration Act*, in the acquisition of goods and services. An integral part of the purchasing policies and procedures necessary for financial management control purposes is the requirement to encumber funds and issue purchase orders in advance of purchases.

We reviewed 25 purchases at the OCIO and identified 5 instances totalling approximately \$651,800 where goods and services were ordered without encumbering funds as required under the *Financial Administration Act*. Contrary to sound financial management practices, purchase orders were prepared after the date of the related invoices.

Our review indicated the following:

- 1 instance where a purchase order was issued 12 days after the invoice for architectural services for renovations totalling \$74,960;
- 1 instance where a purchase order was issued 101 days after the invoice for software support and maintenance totalling \$56,100;

- 2 instances where purchase orders were issued 53 days and 23 days after their respective invoices for mainframe processing services totalling \$353,614; and
- 1 instance where a purchase order was issued 49 days after the invoice for office furniture totalling \$167,148.

---

### Recommendation

The OCIO should ensure compliance with the *Financial Administration Act*.

---

## 8. Planning and Reporting

---

### Background

Division operational plans should contain information specific to each division. These plans should contain goals, objectives, measures, and indicators for the goals and objectives, actions necessary and reporting requirements.

Division operational plans would enable OCIO to focus its activities towards achieving strategic goals and objectives. These plans are necessary to determine whether OCIO Business Plan objectives are being met and are a necessary part of a good system of accountability.

Our review indicated the following issues with planning and reporting:

---

### Operational plans not in place for all divisions

There were no operational plans in place for four of the OCIO's five divisions. The Information Management Division was the only division that had a detailed operational plan.

---

**System for reporting on business objectives not adequate**

Reporting requirements were not well defined. There were no established standards for such things as:

- who is responsible for reporting;
- nature and content of the reports;
- frequency of reporting;
- deadline for report preparation and submission; and
- who is to receive and review the reports.

Officials indicated that all data is gathered on a quarterly basis through one-on-one interviews or the completion of status reports by the assigned person (Executive Director, Director or Manager). Subsequent contact with assigned directors and managers may also occur when additional information or clarification is required. The reports are then compiled and submitted to senior management for approval.

**Reports are not always prepared**

Quarterly monitoring reports are not always prepared. We were informed that during 2007-08, due to the ongoing budget process, it was not feasible to implement the third quarter status report. Officials also informed us that all other quarterly reports were completed through meetings or mail attachments.

As a result, the OCIO cannot demonstrate that they had a plan that focuses its activities towards achieving its long term goals and objectives, reporting requirements are not well defined and required monitoring reports are not always prepared.

---

### Recommendations

OCIO should ensure:

- operational plans are in place for all divisions;
- the system for reporting on business objectives is adequate; and
- the required reports are prepared.

### 9. Training Plan

#### Information management training plan not in place

In its Business Plan for April 1, 2006 to March 31, 2008, which has been tabled in the House of Assembly, the Office of the Chief Information Officer outlined its goals and objectives. A goal of the OCIO is to improve information management practices in Government through the development and delivery of information management training. To help meet this objective, a training plan, addressing all training requirements for OCIO services to Government, should be prepared.

Officials of the OCIO indicated that a training plan has not yet been developed; however, they have developed training materials and delivered training in some areas such as TRIM and records retention scheduling. Without a training plan, the OCIO cannot demonstrate its progress in providing information management training as identified in its Business Plan.

#### Recommendation

OCIO should ensure that an information management training plan is developed and implemented.

### OCIO's Response

*The Office of the Chief Information Officer (OCIO) was officially created in April 2005 and the information technology employees in government departments were finally brought together as one unit in September of that year. While over the past three years the OCIO has made significant progress, there however remains much work to be done to modernize government's technology infrastructure and applications.*

*Prior to the creation of the OCIO in 2005, the mandate for information management (IM) was vested in the Provincial Archives under the Archives Act. Creation and resourcing of the OCIO has greatly increased the profile of IM with the result being that departments are now beginning to seriously address their IM requirements. Because of the OCIO, IM advice and support is now available to departments, a standard IM assessment tool has been developed and information protection guidelines and standards have been developed, communicated and implemented in an effort to ensure that government records will be more properly managed in the future.*

### **1. Backup and Recovery**

*The Office of the Chief Information Officer (OCIO) concurs with the recommendations of the Auditor General. In fact, an initiative is currently underway to develop Disaster Recovery Plans for all mission-critical applications. However, the OCIO is confident that should a disaster occur while formal disaster recovery plans are being developed, emergency computers and access to applications could be put in place in a very timely Manner.*

*Under the Management of Information Act, departments are responsible for managing their own information. While the OCIO advises departments on proper information management practices, it is up to individual departments to determine what information they should be backing up, based on their individual business requirements and relevant legislation. OCIO can only ensure backup of information placed on OCIO managed servers. The OCIO will remind departments of their responsibility under the Act.*

*Due to advances in technology deployed by the OCIO, we will be requesting revisions to the Backup Policy. Tape integrity checking is an automated process that occurs daily in the Enterprise Storage Backup System currently used by the OCIO. There is no longer a need to test tape integrity on a six month interval. Future plans will also eliminate the need for the fire proof containers. Upgrades to the current storage media are planned before December 31, 2009.*

*The OCIO maintains and uses several draft documents that direct the daily backup of computer systems and storage of backup media. We will endeavor to finalize the documents in the near future.*

### **2. IT Security**

*The Office of the Chief Information Officer (OCIO) concurs with the recommendations of the Auditor General and is continuing to ensure that Charts of Authorities and the appropriate policies are put in place to control access to all government systems. Significant progress has been made in this area over the past year.*

### **3. Service Level Agreements**

*The Office of the Chief Information Officer (OCIO) is continuing to work towards finalizing Service Level Agreements (SLA) with all departments by March 31, 2009. As well, significant progress has been made to ensure the roles and responsibilities of Planning and Service Delivery Committees have been established and/or clarified and that the Committees are functioning as intended.*

### **4. Professional Services Contracts**

*The Office of the Chief Information Officer (OCIO) has now implemented a competitive bidding process between the three consortia which will be used for the assignment of new work under these agreements. Given that these companies were chosen as a result of a competitive bidding process, value, quality and experience were considered at that time. In many cases, the work is best suited to a particular vendor or the work may be ongoing from a previous engagement and the current vendor is better qualified to continue the assignment.*

*As well, a formal evaluation of the vendor performance was completed in October 2008 and is planned to be completed annually for the duration of the contracts.*

*To help ensure project reporting is done on the required monthly basis, we have adjusted the process to ensure managers review the reports required under the project management framework. The OCIO will also pursue implementation of the other recommendations of the Auditor General.*

### **5. IT Hardware and Software**

*The Office of the Chief Information Officer (OCIO) will endeavor to comply with governments financial management policies in the future. As well, efforts are ongoing to improve the monitoring of software licensing and usage.*

*Tracking of assets such as printers, keyboards, mice and other smaller assets would require more staff dedicated to this function. The OCIO has decided that this is not a justifiable allocation of resources as the dollar value of these items has reduced significantly over the years.*

### **6. Information Management**

*While the Information Management Policy Framework was implemented internally and is being used to guide Office of the Chief Information Officer (OCIO) Information Management Branch work, it was not sent for formal approval by Treasury Board to be implemented across Government due to plans to amend the Management of Information Act and the Rooms Act that would substantially change the document. It was decided that it would be best to wait until those legislative amendments had been implemented and then to make the necessary changes to the Policy Framework and send it for formal approval to Treasury Board. The Acts have recently been amended and thus the Policy Framework will be revised and forwarded for approval. The ISO standard for records management is used as a guideline for developing policies and standards.*

### **7. Purchasing**

*The Office of the Chief Information Officer (OCIO) will endeavor to ensure compliance with the Financial Administration Act.*

### **8. Planning and Reporting**

*The Office of the Chief Information Officer (OCIO) will endeavor to improve its operational planning and reporting.*

### **9. Training Plan**

*The Office of the Chief Information Officer (OCIO) received approval in the 2008/09 for an Information Management training officer position. This position has just recently been classified and recruitment will begin shortly. It will be responsible for developing information management training plans.*

---



## Highlights

Highlights of a review of the Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador the period from July 2006 to June 2008.

### Why our Office Did this Review

The objectives of our review were to determine whether compensation and hiring practices were in accordance with Government policy; purchase of goods and services were approved, monitored, and complied with the *Public Tender Act* and *Regulations*; and capital assets were monitored and controlled.

### What our Office Recommends

The School District should ensure that:

- job competition documentation is compiled and retained in accordance with Government policy;
- employee positions and classifications are approved by Treasury Board;
- employees are compensated in accordance with Government policy or approved contracts;
- employee leave and overtime are properly approved, documented and monitored.
- it complies with the *Public Tender Act* and *Regulations*;
- its travel and relocation policies comply with Government policy;
- expenditures are always approved, supported and accounted for;
- policies and procedures for the identification, recording, controlling and monitoring of capital assets are developed and implemented; and
- capital assets are tagged, information is recorded in a capital asset ledger, and capital assets are periodically inventoried and reconciled to financial records.

### What the School District Said

To provide balance to this report and to ensure full disclosure, the School District was asked to formulate a response to our findings and conclusions. The School District's response, verbatim, is included at the end of this report. Readers are encouraged to consider the School District's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

Chapter 2, Part 2.3

### DEPARTMENT OF EDUCATION

Le Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador

The School District is one of five school districts in the Province. The School District provides educational services to 223 students located in five schools and, during 2007-08, employed approximately 77 instructional and administrative staff on a full or part-time basis. All school districts are required to comply with Government's personnel, compensation, purchasing and public tendering policies.

### What We Found

As a result of our review, we identified instances of non-compliance with Government's policies with regard to human resources, purchasing and capital assets. Details of our findings are as follows:

#### Human Resources

The School District did not always comply with Government's hiring and compensation policies. For example:

- we reviewed four job competitions and found that the required files were not there for three of the competitions and the file for the fourth competition was incomplete. As a result, the School District could not demonstrate that the job competitions were fair and equitable as required by Government policy; and
- we reviewed four employee positions to determine whether Treasury Board approved the position classification and found that there was no Treasury Board approval for these four positions.

#### Goods and Services

- *Public Tender Act:* The School District did not always comply with the *Public Tender Act* and *Regulations*. We identified six purchases over \$10,000 totalling \$77,745, which were not publicly tendered and nine purchases \$10,000 and less totalling \$42,196, which did not have three quotes or documentation that a fair and reasonable price was obtained.
- *Inadequate Documentation:* We identified that there was not adequate documentation relating to a transaction with HuVo Inc., a company which is also a tenant of the School District. In April 2007, the School District purchased 14 computers totalling \$4,900 from HuVo Inc. We found that no quotes were obtained for this purchase. In addition, an official at the School District provided an invoice from an Ontario company indicating that HuVo Inc. purchased the computers from that company in February 2007 and sold them to the School District at exactly the same price. However, no explanation was provided as to why the transaction occurred in this way.
- *Travel and Relocation:* We identified a number of issues relating to travel claims. For example, there were 16 instances where an incorrect mileage rate was used on a travel claim and one instance where a car allowance was paid. In addition, travel claims did not always have the time of departure and arrival, and the travel claims were not always approved. We also identified issues with relocation expenditures. For example, none of the 18 employees reviewed had the required agreements in place and the School District's policy for paying employees lump sum payments was not consistent with Government policy – 15 of the 18 received lump sum payments. Lump sum payments were not included on the employees' T-4 slips.

#### Capital Assets

The School District does not adequately control capital assets. In particular it does not tag its capital assets or record all capital assets in a ledger. In addition, no periodic inventory counts were performed and not all capital assets were reconciled to the financial records. As a result, missing assets may not be detected.

---

## Background

---

### Overview

As part of the Province's reorganization of the school districts in 1997, in May 2007, the Province established the Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador (the School District) - the Province's 11<sup>th</sup> School District. The mandate of the School District is to administer all matters pertaining to the day-to-day operations of French language schools within the Province.

---

### Figure 1

**Centre Scolaire et Communautaire des Grands-Vents  
(Location of Conseil Scolaire Francophone Provincial de Terre-Neuve-et-Labrador)  
Ridge Road, St. John's**



The School District provides educational services to 223 students located in five schools throughout the Province - one in St. John's, two in Western Newfoundland (Cape St. George's and Mainland), and two in Labrador (Happy Valley-Goose Bay and Labrador City). During 2007-08, the School District employed approximately 77 instructional and administrative staff on a full or part-time basis. The School District is governed by a Board of Directors elected under the *School's Act, 1997*.

### Financial Overview

Figure 2 summarizes the financial position of the School District.

**Figure 2**

### Conseil Scolaire Francophone Provincial Financial Position As at 30 June

	2007	2008
<b>Assets</b>		
Current Assets	\$ 776,388	\$ 683,481
Long Term Assets	2,000	6,000
Capital Assets	8,000,770	7,813,387
<b>Total Assets</b>	<b>\$ 8,779,158</b>	<b>\$ 8,502,868</b>
<b>Liabilities</b>		
Currents Liabilities	\$ 304,481	\$ 295,380
Long Term Debt	2,000	6,000
Severance/Vacation Pay	462,056	593,671
Deferred Revenue	111,054	11,495
<b>Total Liabilities</b>	<b>879,591</b>	<b>906,546</b>
<b>Equity</b>		
Accumulated Operating Deficit	(94,731)	(220,946)
Investment in Capital Assets	7,980,798	7,796,268
Reserve	13,500	21,000
<b>Total Equity</b>	<b>7,899,567</b>	<b>7,596,322</b>
<b>Total Liabilities and Equity</b>	<b>\$ 8,779,158</b>	<b>\$ 8,502,868</b>

Source: Audited financial statements

Figure 3 provides a breakdown of the School District's revenue and expenditures for 2007 and 2008.

**Figure 3**

**Conseil Scolaire Francophone Provincial  
Revenue and Expenditures  
Years Ended 30 June**

	2007		2008	
	\$	%	\$	%
<b>Revenue</b>				
Provincial	\$4,473,536	75%	\$4,977,336	78%
Federal	1,359,007	23%	1,310,403	20%
Ancillary Services	130,019	2%	128,366	2%
Miscellaneous	28,083	-	13,360	-
<b>Total Revenue</b>	<b>5,990,645</b>	<b>100%</b>	<b>6,429,465</b>	<b>100%</b>
<b>Expenditure</b>				
Instruction	3,854,011	64%	4,399,172	67%
Operations and Maintenance	696,142	12%	694,598	11%
Depreciation	566,742	9%	507,228	8%
Administration	429,059	7%	451,432	7%
Pupil Transportation	321,530	5%	336,135	5%
Ancillary Services	135,087	3%	159,615	2%
<b>Total Expenditure</b>	<b>6,002,571</b>	<b>100%</b>	<b>6,548,180</b>	<b>100%</b>
<b>Surplus/Deficit</b>	<b>\$ (11,926)</b>		<b>\$(118,715)</b>	

Source: Audited financial statements

## Audit Objectives and Scope

**Audit objectives**

The objectives of our review were to determine whether:

- compensation and hiring practices were in accordance with Government policy;
- purchase of goods and services were approved, monitored, and complied with the *Public Tender Act* and *Regulations*; and
- capital assets were monitored and controlled.

**Audit scope** Our review was completed in December 2008 and covered the period from July 2006 to June 2008. Our review included an examination of policies and procedures, Board minutes, and financial reports, an analysis and sampling of expenditures, and interviews with School District officials.

---

### Overall Conclusions

The Conseil Scolaire Francophone Provincial (the School District) is one of five school districts in the Province. The School District provides educational services to 223 students located in five schools and, during 2007-08, employed approximately 77 instructional and administrative staff on a full or part-time basis. All school districts are required to comply with Government's personnel, compensation, purchasing and public tendering policies.

As a result of our review, we identified instances of non-compliance with Government's policies with regard to human resources, purchasing and capital assets. Details of our findings are as follows:

#### Human Resources

The School District did not always comply with Government's hiring and compensation policies. For example:

We reviewed four job competitions and found that the required files were not there for three of the competitions and the file for the fourth competition was incomplete. As a result, the School District could not demonstrate that the job competitions were fair and equitable as required by Government policy.

We reviewed four employee positions to determine whether Treasury Board approved the position classification and found that there was no Treasury Board approval for these four positions.

We reviewed two employee contracts and found that they had not been provided to the Department of Justice for review and approval as required by Government policy.

We reviewed the compensation of 11 employees and identified issues with four as follows: one was paid at the wrong step level, one was paid excess termination benefits, one had excess vacation accruals, and one contractual employee was paid in excess of the contract amount.

The School District is not adequately monitoring employee leave and overtime to ensure it is properly approved, accrued and taken. We reviewed the leave and overtime of five employees and identified five issues with three employees as follows: two did not have the required leave approval form on file, two took leave, however; it was not deducted from the accrued leave and one employee's overtime was not approved in advance.

### **Goods and Services**

#### *Public Tender Act*

The School District did not always comply with the *Public Tender Act* and *Regulations* and Government's travel rules and relocation policies. For example:

We identified six purchases over \$10,000 totalling \$77,745 which were not publicly tendered and nine purchases \$10,000 and less totalling \$42,196 which did not have three quotes or documentation that a fair and reasonable price was obtained.

#### *Inadequate Documentation*

We identified that there was not adequate documentation relating to a transaction with HuVo Inc., a company which is also a tenant of the School District.

In April 2007, the School District purchased 14 computers totalling \$4,900 from HuVo Inc. We found:

- no quotes were obtained for this purchase; and
- an official at the School District provided an invoice from an Ontario company indicating that HuVo Inc. purchased the computers from that company in February 2007 and sold them to the School District at exactly the same price. However, no explanation was provided as to why the transaction occurred in this way.

#### *Travel and Relocation*

We identified a number of issues relating to travel claims. For example, 16 instances where an incorrect mileage rate was used on a travel claim and one instance where a car allowance was paid. In addition, travel claims did not always have the time of departure and arrival, and the travel claims were not always approved.

We identified issues with relocation expenditures. For example, none of the 18 employees reviewed had the required agreements in place and the School District's policy for paying employees lump sum payments was not consistent with Government policy – 15 of the 18 received lump sum payments. In addition, the lump sum payments were not included on the employees' T-4 slips.

### Capital Assets

The School District does not adequately control capital assets. In particular it does not tag its capital assets or record all capital assets in a ledger. In addition, no periodic inventory counts were performed and not all capital assets were reconciled to the financial records. As a result, missing assets may not be detected.

---

## Detailed Observations

---

This report provides detailed audit findings and recommendations in the following sections:

1. Human Resources
  2. Goods and Services
  3. Capital Assets
- 

### 1. Human Resources

---

#### Overview

During the fiscal year 2007-08, the School District spent approximately \$3.43 million in salaries (\$2.76 million in instructional salaries and \$0.67 million in administration and janitorial/maintenance salaries). The *Schools Act, 1997* requires the School District to adopt personnel policies that follow the personnel administration procedures of the Province. The Director and Assistant Director of Finance and Administration are responsible for administration of the School District's human resources.

---

#### Detailed findings

Our review included an examination of employee competitions, classifications, compensation and leave records to determine if the School District was complying with Government's personnel policies. Our review identified that the School District is not complying with Government's personnel policies.

---

**Competition files not compiled and retained**

The Merit Principle, championed by the Public Service Commission (PSC), requires that candidates be assessed with fairness and equity so that jobs will be awarded to the candidates most suitable for a position. Government's policy states that staffing action documentation on job competitions must be compiled and retained. Our review of four job competitions since 1 April 2006 identified the following:

- one competition file was provided. A review of this file identified that the job advertisement, all applications, interview notes, and rankings were not on file; and
- three competitions files could not be located.

---

**Positions not classified by Treasury Board**

A review of four non-management/non-union employee positions was conducted to ensure the positions were classified in accordance with Treasury Board rules. Treasury Board approval is required for any change in the number of permanent positions and classification changes can only occur after Treasury Board approval is provided.

Our review identified the following:

- None of the four non-management/non-union employees examined had their positions classified and approved by Treasury Board. The School District classified three employees' positions and pay scales based upon the NAPE agreement and one employee position and pay scale based upon the Hay rating scale.
- Effective 1 September 2005, one employee's position was reclassified and the salary increased by two pay scales, resulting in additional annual salary of \$2,457 at that time. This reclassification was not approved by Treasury Board.

---

**Employee contracts not approved by Department of Justice**

The hiring of employees under contract is required to comply with Government's personnel policies. Employment contracts should be forwarded to the Department of Justice for review. Our review included an examination of two contractual employees.

The School District has a standard employment contract that it uses; however, it has not been provided to the Department of Justice for review and approval as required to ensure the contracts meet standards established by Government. For example, a review of the contracts identified that neither of the contracts had a termination clause. We note that one of the contracted employee

positions was terminated in May 2007 and is currently being challenged. Without proper employment contracts in place, the School District's or the employees' rights under the contract may be in question.

---

**Compensation not in accordance with Government policy or contracts**

A review of compensation provided to four non-management/non-union employees, five unionized employees and two contractual employees identified instances where compensation practices were inconsistent with Government policy or the approved employment contract. Our review identified the following:

- One employee was due a step progression in October 2008; however, as at December 2008, the employee's step level had not been increased. As a result, the employee was underpaid \$203.
  - The former Director, who resigned their position on 1 December 2006, was provided with a salary continuance until 28 February 2008 through the Department of Education's teachers' payroll system. On 15 March 2007, the Department paid the former Director \$4,617 for 12 ½ days of accrued leave; however, our review indicated the former Director was paid \$2,293 for accrued leave during the period of notice when the employee did not work. This is not provided for under Government policy.
  - One employee, who was new to Government, was hired under a contract and provided with seven weeks paid vacation. However, under Government's paid leave policy, employees with less than nine years service would be entitled five weeks paid leave. We note that the employee was paid \$4,411 in May 2007 for 14.4 days of unused vacation pay based upon the contract terms; however, based upon Government policy, the employee should only have been paid \$2,628. As a result, the employee was overpaid \$1,783.
  - One employee was contracted for three years to work during the school year with specific dates of employment identified in the contracts. A review of the employee's compensation identified that the employee was paid \$917 for work performed during the summer of 2007 and \$2,600 for work performed during the summer of 2008 that was outside of the specific dates in the contract. A School District official stated the additional work was verbally agreed upon.
-

### **Leave and overtime not properly approved and monitored**

Employees are required to complete and submit absence reports monthly which record leave and overtime. Leave is compiled and reported on a leave summary report.

A review of leave and overtime for five non-management/non-union employees was conducted to determine whether leave and overtime was properly approved, accrued and monitored. Our review identified issues with the documentation, approval and accrual of leave and overtime as follows:

- The School District does not approve leave and overtime once it is earned or taken. Instead, employees submit an absence report that records the dates and details of leave taken, overtime hours worked and overtime hours taken in lieu of overtime. Although the Assistant Director of Finance approves the absence report, it does not provide a timely verification of leave taken or overtime worked and taken.
- A review of employee leave summary reports for 2006 to 2008 identified two employees' leave that was not supported with an absence report. Specifically, one employee had two instances totalling 28.75 days, while the other employee had two instances totalling 10 days.
- The School District is neither approving overtime prior to the overtime being worked nor approving leave taken in lieu of overtime pay prior to the leave being taken. Our review identified that during the period August 2006 to December 2008, one employee accrued 674 hours in overtime, took 360 hours off in lieu of overtime pay, and had a balance remaining of 314 hours. The employee maintained a record of overtime worked and taken and provided absence reports for approval; however, these reports were neither timely nor approved in advance. For example, one absence report that was provided in December 2008 covered the period February 2008 to December 2008.
- A review of employee absence reports identified two employees' annual leave that was not recorded on the employees' leave summary reports. One employee's annual leave of 11.25 hours and one employee's annual leave of 97.5 hours were not recorded. Without an adequate recording of leave, the School District cannot monitor leave balances to ensure employee entitlements are accurate.
- The School District accrues leave for its four non-management/non-union employees in accordance with the NAPE collective agreement with separate accruals for annual and sick leave, and access to family responsibility leave. However, Government policy states that the paid leave program should apply to management/non-union employees.

---

## Recommendations

The School District should ensure:

- job competition documentation is compiled and retained in accordance with Government policy;
  - employee positions and classifications are approved by Treasury Board;
  - employees are compensated in accordance with Government policy or approved contracts; and
  - employee leave and overtime are properly approved, documented and monitored.
- 

## 2. Goods and Services

---

### Overview

For the year ended 30 June 2008, the School District spent approximately \$1.8 million (\$2.2 million - 2007) on goods and services. Our review of purchasing identified issues in the following areas:

- A. *Public Tender Act*
  - B. Travel and Relocation
  - C. Other Expenditures Issues
- 

### 2A. *Public Tender Act*

### Introduction

Whenever the School District acquires goods and services, it must comply with the requirements of the *Public Tender Act* (the *Act*) and the *Public Tender Regulations, 1998* (the *Regulations*). Figure 4 summarizes the requirements of the *Act*.

---

Detailed findings

Figure 4

**Conseil Scolaire Francophone Provincial  
Public Tender Act Requirements**

When goods and services cost ...	Or a public work costs ...	Then the Board must ...
More than \$10,000	More than \$20,000	Invite tenders
\$10,000 and less	\$20,000 and less	<ul style="list-style-type: none"> <li>• Obtain quotations from at least three legitimate suppliers, or</li> <li>• Establish for the circumstances a fair and reasonable price.</li> </ul>

The *Act* provides exceptions where tenders may not be required. In such cases, the School District must inform the CEO of the Government Purchasing Agency who must submit a report to the House of Assembly.

In a sample of 13 purchases over \$10,000 and a sample of 29 purchases under \$10,000 we identified issues in the following areas:

- Goods and services greater than \$10,000
- Goods and services \$10,000 and less
- Tendering process

**Goods and services greater than \$10,000**

Non-compliance with the *Public Tender Act*

Our review included a sample of 13 purchases greater than \$10,000 totalling \$498,734 for the period 1 July 2006 to 30 June 2008 to assess the School District's compliance with the *Act* and *Regulations*. Our review identified the following:

- 7 purchases totalling \$420,989 were tendered in accordance with the *Act*; and
- 6 purchases totalling \$77,745 were not tendered as required by the *Act*; (1 purchase not tendered was exempted; however, the Government Purchasing Agency and therefore the House of Assembly was not informed).

Figure 5 provides details of the 6 purchases not tendered.

**Figure 5**

**Conseil Scolaire Francophone Provincial  
Items not Tendered**

Invoice Date	Amount (net of HST)	Description
29 June 2006	\$ 14,375	Library software updates & maintenance – Form B not completed
Sept 2006 to June 2008	11,245	Renewal of bus contract with route changes
13 September 2006	10,102	Conference equipment
2 October 2006	10,760	21 airplane tickets
26 May 2007	11,498	Bar coding books
29 June 2007	19,765	Five smart boards
<b>Total</b>	<b>\$ 77,745</b>	

**Goods and services \$10,000 and less**

**Quotes are not  
always obtained**

Our review included a sample of 29 purchases that were \$10,000 and less totalling \$157,118 for the period 1 July 2006 to 30 June 2008. Our review identified the following:

- 9 purchases totalling \$42,196 did not have the required 3 quotes or documentation that a fair and reasonable price was obtained;
- 3 purchases totalling \$11,576 were deemed to be sole supplier purchases;
- 1 purchase totalling \$1,247 was made under standing offer agreement; and
- 16 purchases totalling \$102,099 had the required 3 quotes.

## Tendering process

### Tender documentation and controls deficient

Our review also identified issues with the tendering process as follows:

- The School District did not always obtain all required documentation to ensure suppliers met the tender specifications. For example:
  - information such as driver licenses, driver records and certificates of conduct, vehicle inspection slip, vehicle insurance and vehicle registration were not obtained for a 2006-07 bussing contract;
  - a vehicle inspection slip was not obtained for one vehicle for a 2007-08 bussing contract; and
  - workers' health and safety clearance letters were not obtained for the second and third years of a 2006-07 snow clearing contract.

Without obtaining the required tender information, the School District cannot determine if all the tender specifications were met.

- The School District did not always comply with the *Act* and *Regulations* in processing the tenders. For example:
  - tenders were not kept in a locked box until opened;
  - envelopes were not date- or time-stamped; and
  - documentation was not kept on witnesses of tender opening.

As a result, the integrity and security of tender bids may be compromised.

---

## 2B. Travel and Relocation Expenses

---

### Introduction

For the period 1 July 2006 to 30 June 2008, the District spent \$504,280 on travel and relocation. Figure 6 provides a summary of the School District's travel expenditures.

**Figure 6**

**Conseil Scolaire Francophone Provincial  
Travel Expenditures  
Years Ended 30 June**

<b>Expenditure</b>	<b>2007</b>	<b>2008</b>
Board & employee travel	\$237,216	\$225,117
Relocation	28,647	13,300
<b>Total travel expenditures</b>	<b>\$265,863</b>	<b>\$238,417</b>

Source: School District financial records

**Detailed findings**

Our review included an examination of 179 travel claims and expenses from 1 July 2006 to 30 June 2008. Our review identified issues in the following areas:

- Compliance with Government’s travel rules
- Supporting documentation
- Relocation expenses
- Other travel issues

**Compliance with Government’s travel rules**

The School District did not always comply with Government’s travel rules. Our review identified the following:

**Travel expenditures not paid in accordance with Government policy**

- Employees were not always claiming mileage based on the approved rates. For example, 16 travel claims submitted by staff had incorrect mileage rates charged and this was not adjusted. Travel claims should be reviewed to ensure the proper mileage rate is claimed.
- The School District is providing one employee with an annual car allowance and the payment of mileage. During 2007-08, the employee was paid \$1,936. (\$1,680 allowance and \$256 in mileage). Since October 2005, Government has not provided car allowances to employees who require the use of their personal vehicles for work.

Instead, Government provides for a higher mileage rate up to the first 9,000 kilometres. Based on Government policy, the employee should only have received \$357 from private vehicle mileage and, as a result, was overpaid \$1,579.

**Expenses paid  
not claimable  
under  
Government  
policy**

- Government travel policy provides a \$5 daily incidental allowance when employees are on overnight travel status. The School District policy provides the daily incidental whether the employee is on overnight status or not.
- The School District reimbursed employees certain expenses that were not claimable under Government Policy. Specifically:
  - the School District paid a car rental agency \$30 relating to an employee's traffic violation;
  - during the fiscal year 2006-07, one Board member was reimbursed \$1,331 for child care expenses in order to attend Board meetings. In addition, this was not reported as a taxable benefit as required by the Canada Customs and Revenue Agency;
  - during the fiscal years 2006-07 and 2007-08, one employee was reimbursed \$1,064 for internet charges at their personal residence. In addition, this was not reported as a taxable benefit as required by the Canada Customs and Revenue Agency; and
  - one assistant director was reimbursed \$832 annually for professional accounting (CGA) fees without Treasury Board approval. In addition, this was not reported as a taxable benefit as required by the Canada Customs and Revenue Agency.

---

### Supporting documentation

In order to ensure travel expenses claimed are for legitimate business purposes, it is important that expenses be adequately supported. Supporting documentation should not only include proof of payment but the details of the expenditure claimed.

Our review identified the following instances where documentation to support the travel expenses claimed was inadequate:

### Documentation not always provided

- Travel claims submitted by employees did not indicate the time of departure and arrival on the travel claims. As a result, our review could not determine if the correct meal rates were being claimed.
- \$2,978 was paid to two employees and one Board member without receipts to support the expenses claimed. Specifically, \$1,209 was for non-travel items that were reimbursed months later because the School District had already paid the supplier directly, \$1,064 related to internet charges claimed by one employee and \$635 related to child care for one year for one Board member.
- Travel claims did not always have the appropriate documented approval information. For example:
  - 17 of 179 travel claims reviewed were not approved;
  - 24 of 179 travel claims reviewed had inappropriate approvals; for example, all 16 of the Director's travel claims were approved by the Assistant Director of Finance without any documentation that the Director's travel had been approved by the Board;
  - 56 of 179 travel claims did not have the date of approval; and
  - out-of-Province travel did not have the required documented prior approval.

---

### Relocation Expenditures

From September 2006 to June 2008, the School District paid relocation costs totalling \$41,947 to 18 employees.

Government policy requires relocated employees to enter into a two-year return in service agreement with the employer in return for reimbursing relocation expenses. If an employee leaves prior to the end of the two-year period, the employee is required to repay a portion of the relocation costs based upon the number of months not worked.

Furthermore, Government policy states that where employees can demonstrate that savings will be realized by the School District, a lump sum taxable payment of up to \$5,000 may be provided for relocations within Labrador and within the Island portion of the Province, and up to \$10,000 for relocations between Labrador and the Island portion of the Province. In these cases, employees waive all claims to moving expenses associated with the relocation to their new location.

Our review of relocation expenses identified the following issues:

**Return in service agreements not in place**

- 18 employees did not enter into a return in service agreement as required.
- The School District's policy is to recover relocation expenses if a relocated employee leaves within three months of hire. Two employees, who were reimbursed \$9,512 in relocation expenses, terminated their positions subsequent to the School District's three-month service period and were not required to repay any of the relocation. However, in accordance with Government policy, the School District should have recovered a proportion of the relocation paid as the employees terminated their position within two years.

**Relocation lump sum payments not in compliance with Government policy**

- The School District's relocation policy is not consistent with Government in that it provides, depending on the employee's position, location and number of dependents, lump sum payments of \$1,000 to \$4,500 and equivalent airfare or mileage. Government's policy provides for \$5,000 for relocations within Labrador and within the Island portion of the Province, and up to \$10,000 for relocations between Labrador and the Island portion of the Province. In these cases, employees waive all claims to moving expenses associated with the relocation to their new location.
- Prior to the introduction of its relocation policy, the School District was inconsistent in how it reimbursed employees for their relocation. For example, from September 2006 to November 2006, five employees were paid lump sums plus other claimed expenses, two employees were paid lump sums and three employees were reimbursed for claimed expenses with no lump sums.
- No documentation was provided to demonstrate that savings were realized by providing lump sum payments totalling \$29,225 to the 15 relocated employees for the fiscal years 2006-07 and 2007-08.

- 5 of the 15 employees were paid other expenses such as meals, hotels and moving company expenses totalling \$9,474 from September 2006 to October 2006, in addition to receiving lump sum payments of \$9,700.
- The School District did not include the lump sum amounts as a taxable benefit for the 15 employees.

---

### Other Travel Issues

Our review of the School District's travel expenditures identified a number of other issues as follows:

#### **Input tax credit not consistently claimed**

- The *Excise Tax Act* permits the School District to assume that mileage and meal allowances paid to employees include the HST, which is eligible for a rebate.

Our review indicated that the School District did not claim the 71% rebate on the HST for mileage, meals, incidentals, and non-travel expenses on travel claims.

---

#### **Travel claims used to process non-travel expenses**

- The School District is processing non-travel expenses through the travel claims process. Our review identified approximately \$9,003 in non-travel expenses such as supplies, postage, minor equipment, computer hardware and software and gifts that were included on seven employees' travel claims. One employee accounted for \$3,404 of the total identified.

Purchases claimed through travel claims have already been made directly by the employee, and as such, normal purchase approval processes are circumvented. Expenses of this nature should be processed through regular purchase procedures.

---

#### **Vehicle rental insurance costly**

- The School District pays for certain travel items such as hotels, airfare, and car rentals directly to the vendor or through its corporate credit card. As such, employees do not claim these expenses on their travel claims. Our review of vehicle rentals identified that employees are required to accept insurance on the vehicle rental. During the fiscal years 2006-07 and 2007-08, the School District paid \$9,499 to its vehicle rental vendor for insurance coverage. School District officials stated the corporate credit card does not provide coverage on vehicle rentals.

---

## 2C. Other Expenditure Issues

---

Our review identified instances where expenditures were not always being adequately procured, approved or monitored as follows:

**Bussing and snow-clearing contracts not properly monitored**

- A review of the 10 bussing contracts and five snow-clearing contracts identified the following:
  - 1 bussing contract and four snow-clearing contracts were overpaid \$224 and \$501, respectively, since July 2006 as the contract payments were not reduced when the HST was reduced in July 2006 and January 2008;
  - 3 bussing contracts were for a six-year term even though the Department of Education's maximum term is five years; and
  - 1 bussing contract that was entered into in September 2005 for one year was renewed in September 2006 for three years at a reduced daily rate due to route changes; however, the School District did not maintain documentation to support the changes.

---

**Inadequate documentation**

A review of expenditures identified a lack of documentation relating to payments to HuVo Inc., a company which is also a tenant of the School District.

In April 2007, the School District purchased 14 computers totalling \$4,900 from HuVo Inc. We found that:

- no quotes were obtained for this purchase;
  - an official at the School District provided an invoice from an Ontario company indicating that HuVo Inc. purchased the computers from that company in February 2007 and sold them to the School District at exactly the same price. However, no explanation was provided as to why the transaction occurred in this way; and
  - the invoice from HuVo Inc. did not include the computers serial numbers. Without computer serial numbers, the School District was unable to readily identify the computers.
-

### Recommendations

The School District should:

- comply with the *Public Tender Act and Regulations*;
- ensure that its travel and relocation policies comply with Government policy; and
- ensure that expenditures are always approved, supported and accounted for.

## 3. Capital Assets

### Overview

As at 30 June 2008, the School District reported capital assets at a cost of \$12.3 million and a net book value of \$7.8 million. In order for the School District to control and monitor its capital assets, it must ensure that policies and procedures are documented and communicated to staff, and assets are identified and recorded when purchased, periodically inventoried, and reconciled to financial records.

### Figure 7

**Conseil Scolaire Francophone Provincial  
Capital Assets  
As at 30 June  
(\$ Millions)**

Description	2008			2007
	Cost	Amortization	Net book value	Net book value
Buildings	\$ 11.1	\$ 3.8	\$ 7.3	\$ 7.5
Furniture and Equipment	1.2	0.7	0.5	0.5
	<b>\$ 12.3</b>	<b>\$ 4.5</b>	<b>\$ 7.8</b>	<b>\$ 8.0</b>

Source: Audited financial statements

Our review identified issues in the following areas:

### Controls not adequate

- The School District has no documented policies and procedures covering the acquisition, disposal and monitoring of capital assets. As a result, the School District is not providing adequate guidance to staff for recording and monitoring capital assets. For example, our review identified that there were obsolete and broken computers and accessories stored at the district office. A School District official indicated this equipment was not disposed of because there were no policies and procedures covering this process.
- Physical identification methods such as tagging are not used to identify the furniture and equipment as School District property. Without unique identification, the School District cannot confirm whether all assets are recorded and accounted for.
- There is no capital asset ledger or listing to record and monitor furniture and equipment, other than computer equipment. As a result, the School District cannot determine if all furniture and equipment is accounted for. In addition, without a ledger, the School District cannot reconcile the value of its capital assets to its financial records.
- Details of computer equipment such as description, location, accessories and assigned staff are recorded on a listing of this equipment; however, the listing does not record information such as serial number, date of purchase or cost of the computer equipment.

As part of our review we attempted to locate and examine a sample of 20 computers recorded on the March 2008 computer equipment listing. Our review identified the following:

- 11 computers were found in the location or with the employee recorded;
- 5 computers were found in another location or with another assigned employee; and
- 4 computers could not be located as they were identified as being transferred to another school or employee. The School District did not maintain a transfer form for recording and approving transfers of computer equipment. A School District official stated that beginning in the 2008-09 school year transfers of computers were recorded.

- Furniture and equipment, other than computer equipment, are not periodically counted or inventoried and, as a result, assets could be missing and not be detected.

### Recommendations

The School District should:

- develop and implement policies and procedures for the identification, recording, controlling and monitoring of capital assets; and
- ensure capital assets are tagged, information is recorded in a capital asset ledger, and capital assets are periodically inventoried and reconciled to financial records.

## School District's Response

### *Introduction*

*The Conseil scolaire francophone provincial de Terre-Neuve-et-Labrador (Francophone School Board of NL - the CSFP) has reviewed the report published by the Auditor General. We offer the following commentary concerning his findings and recommendations.*

*The CSFP recognizes the validity of the majority of the remarks contained in the Auditor General's report. Globally the CSFP sees in the report a need for the CSFP to establish closer ties with the departments and agencies identified as our partners by the Auditor General. Open and productive discussions with these partners with regard to the needs of the CSFP, be it human resources, professional development or advice on procedures and policies, are fundamental to our growth. The CSFP's strategic plan 2008-2011 is aligned with this thinking. It has been mandated by its stakeholders to develop a communication plan to foster its relationship with internal and external stakeholders.*

*The remarks that follow are more specific answers to the various comments noted in the Auditor General's report. By these comments, the CSFP wishes to stress its continued commitment to comply with requirements of Government in regard to human resource management, purchasing and the control of capital assets.*

### **Human Resources**

*Competition files: The CSFP will develop procedures to ensure that all relevant information for its job competitions is properly filed for future reference.*

*Positions: The CSFP will prepare job descriptions for the four positions in question and submit them to the Job Classification Committee before April 30, 2009.*

*September 2005 Reclassification: Subsequent to the classification of the given position by Treasury Board, the CSFP will determine, if necessary with the assistance of specialists in Government, the appropriate course of action to address this situation.*

*Department of Justice review of employee contracts: The CSFP will seek advice from the Department of Justice for all existing and all future employment contracts.*

### **Compensation practices**

*Employee underpayment - \$203: Error corrected in December 2008.*

*Payment of accrued leave to former Director: The CSFP had understood that accrued leave accumulated during the period of notice was eligible for payment and acted in good faith with the former director and the DOE to achieve the most harmonious separation possible. In light of the AG's comments, it will revisit this issue with representatives of the DOE to ascertain whether this agreement should be reviewed.*

*Paid leave benefit and Government policy: The CSFP will ensure for appropriate follow-up.*

*Verbal contract: The requested work was performed and full value was received for the extra compensation provided. None-the-less, the CSFP acknowledges that such arrangements do not constitute good management practice. The CSFP will ensure that all future amendments to employment contracts will be documented in the employee file.*

*Support for leave and overtime: The CSFP will develop a procedure to better track leave and overtime. Pre-approval forms will be developed through consultation with Government.*

*Leave and overtime - leave summary reports for two employees: Though not documented, the leave in question was approved. The CSFP recognizes, however, that appropriate support of the accounting records must be generated. The CSFP will ensure that appropriate documentation displaying management approval of all leave is kept.*

*Timeliness and advanced approval of overtime - Major overtime was required due to persistent heavy service demands on the given employee; this was the only employee available to perform this work. Furthermore, the employee did significant extra overtime while on travel status so as to reduce the significant costs incurred travelling the long distances between board's schools and the board office. The CSFP recognizes that approval documentation was unsatisfactory in this case and accepts that documentation displaying pre-approval of overtime is necessary. The CSFP will implement an overtime authorization form immediately.*

*Annual leave and documentation supports: Though not documented, the annual leave in question was approved. Accurate figures of accumulated leave are also maintained by the accountant through the accounting system. The CSFP recognizes, however, that appropriate support of the accounting records must be generated. The CSFP will ensure that appropriate documentation displaying management approval of all leave is kept.*

*Collective agreement benefits for non-management/non-union staff versus paid leave: The CSFP had thought that this approach was acceptable. However, in light of the AG's comments, the CSFP will consult with Government to review the recommendation of the AG so as to determine whether steps need to be taken to bring board practice in line with Government policy.*

### **Goods and Services**

*Public Tender Act: The CSFP acknowledges the valid points raised by the AG in regard to purchasing procedures. The CSFP commits to work with Government to address weaknesses in its procedures in this area. The board is committed to respecting the principal of the attainment of a fair and reasonable price for goods and services as mandated by the Public Tender Act. Also, in the future, the CSFP will inform GPA via their Form 'B' of all purchases where tenders were not required or feasible.*

*Taxi renewal: The CSFP acknowledges that proper documentation was not maintained and commits to provide same in the future. The board notes, however, that over previous years, the given company was the only available supplier in the immediate area and that this company had consistently serviced the given CSFP students at the lowest cost.*

*Conference Equipment: Initial cost estimates put the cost of conference equipment below \$10,000, so only three prices were requested.*

*Three quotes required for purchases under \$10,000: On a go forward basis a more thorough approach to tendering will be pursued and appropriate forms (form 'B's) will be used. The CSFP commits to work with Government to address weaknesses in its procedures in this area. Where less than three prices were obtained, choices were made in good faith with economy as the primary criterion in order to provide the best possible service to the schools and children.*

*Required documentation to ensure suppliers meet tender specifications: The CSFP acknowledges that it did not always obtain all required documentation to ensure suppliers met the tender specifications and the board will address this through a better delegation of duties amongst its board support staff. These short cuts are attributable to a lack of human resources. Through a strategy of continuous improvement, the CSFP believes that its staff will attain a complete monitoring of all tender specifications and results.*

*Processing of tenders: In light of AG recommendations in this regard, the CSFP will consult with the GPA to ensure that proper procedure is followed in this regard.*

### ***Travel and Relocation Expenses***

*Mileage rates on claims: In light of the discrepancies noted, board management has directed that staff exercise particular care in this regard in the future. Clearly, given the quarterly changes in the prescribed mileage rates, mistakes occurred in this regard more easily than had been thought.*

*Car allowance and Government policy: The CSFP will consult with Government to verify policy requirements in this area so as to subsequently pursue this case with the concerned party and if necessary, his union, with the purpose of rectifying the discrepancy.*

*Daily incidental allowance: This detail was unknown to board administrators. Staff will be informed and administrative personnel have been apprised of this requirement.*

*Claimable expenses under government policy: Subsequent to the AG's observations in this area, the CSFP acknowledges that various expenses were paid that are not claimable according to Government policy. In this light, the CSFP commits to review all cases with the purpose to determine the appropriate follow-up action. It should be noted that where approval was granted, it was done in good faith so as to procure a required service from either staff or volunteers.*

*Taxable benefits: In regard to taxable benefit implications, the CSFP will consult with the CCRA and act according to their recommendations.*

*Documentation to claim meal rates: Board procedures and forms will be modified to show departure & arrival times so that meal rates may be accurately reimbursed.*

*New forms required for non-travel related expenses: The CSFP has consulted with the DOE in regard to the development of a new form to be used for non-travel related expenses. Such form, which the board intends to implement quickly, will require that receipts be provided for all requests for payment.*

*Travel claims requiring documented approvals: The CSFP will address the question of travel claim approvals as raised by the AG with all staff affected. As such, it will be more rigorous in its application of Government policy with respect to future travel claims processing. Examples - Though out-of-town and especially mainland travel is approved by the Director, a more formal accounting of this will be maintained for future reference. Furthermore, the Director has put in place an approval process with the board chair for Director travel.*

*Return in service agreements: Subsequent to the AG's commentary in regard to travel/ relocation issues, the CSFP has commenced a more thorough study of Government policy in this regard. The CSFP will realign its relocation policy and specifically the element pertaining to recovery requirements relating to early departures from the employ of the Board so that they are in line with Government policy.*

*Relocation lump sum payments to assist new hires vis-à-vis relocation policy: Nationally and provincially, competition for French speaking teachers is fierce. A thoughtful approach is thus necessary to ensure our schools are staffed with qualified teachers. Where the large majority of its staff is recruited from the outside of the province, the board needed to develop a reasonable scheme to support relocation. The CSFP believes that even though the application of its relocation payment policy was occasionally inconsistent, it would have rarely, if ever, accorded privileges beyond that*

*permitted by Government policy. Subsequent to the AG's commentary in regard to travel/relocation issues, the CSFP has commenced a more thorough study of Government policy in this regard. The board will consult with Government to ensure that its future practices are fully compliant with Government policy.*

*Taxable benefit reporting - relocation: The CSFP will consult with the CCRA on this issue and will apply their recommendation.*

### ***Other travel Issues***

*Claiming input tax credit on mileage and meal allowances: The CSFP has commenced claiming the said input tax credit.*

*Claim form for non-travel related expenses: The CSFP has consulted with the DOE in regard to the development of a new form to be used for non-travel related expenses. Such form, which the board intends to implement quickly, will require that receipts be provided for all requests for payment.*

*Insurance on rental vehicles – more economical alternative: The CSFP will dialogue with government to determine alternative to rental car agency insurance. A new Amex card account is likely the easiest route in this case.*

### ***Other Expenditure Issues***

*HST changes regarding bussing and snow-clearing contracts: Overpayments are to be recouped.*

*Bussing and snow-clearing – maximum contract term: The AG is correct to highlight the date errors in the three bus contracts. It was the board's and given contractors' intention that the contract terms be for only five years. Specification documents and the contract award letters reference the five year term. Given that the two companies are experienced bussing contractors in the NL school bus system that are aware of the five year maximum, the CSFP fully expects that the given contractors will comply with the five year intended term of this contract. In light of this problem, the CSFP will be especially careful in regard to the dates used in future contracts.*

*Taxi company contract renewal - The taxi company in question is the only listed supplier in the immediate area and has consistently serviced our students at the lowest cost. On a go-forward basis, the board will maintain adequate documentation to support changes.*

*Computer purchases: HUVUO is a partner francophone organization with whom the CSFP has arms-length dealings. The CSFP acknowledges that proper procedure was not followed for the noted purchase. However, the CSFP is satisfied that the computers were purchased for a fair and reasonable price as the board had previously purchased computers from the company which supplied HUVUO with the computers. The per-computer price was comparable to the price paid for previous computer purchases and, as noted in the Auditor General's findings, HUVUO resold these to the board at their purchase price. The CSFP will ensure the Public Tender Act is followed for all future purchases.*

*Computer purchase – serial numbers not noted on HUVUO invoice: The CSFP has rarely noted that computer serial numbers appear on invoices. However the board fully concurs that all serial numbers must be noted for new computer acquisitions so as to properly track these valuable assets.*

### **Capital Assets**

*Controls: The school Board is presently involved in the process of reviewing its by-laws, policies and procedures. It will ensure that it has a proper policy and procedures to properly acquire, dispose of and monitor capital assets. Due to limited staff, to date, the CSFP has focused its attention on valuable movable assets, primarily electronic equipment and especially computers.*

*Tagging to identify and control assets: The CSFP agrees with the AG that tagging is a valuable method for asset control and will seek to implement this method as part of an expanded capital asset policy.*

*Capital asset ledger to control capital assets: The CSFP agrees with the AG that a proper capital asset ledger is a valuable tool for asset control and will seek to implement this method as part of an expanded capital asset policy.*

*Use of transfer form for asset control: The CSFP agrees with the AG that use of a transfer form is a valuable method for asset control and will seek to implement this method as part of an expanded capital asset policy.*

*Importance of periodic inventory counts: The CSFP agrees with the AG that periodic counts of inventory is a valuable method for asset control and will seek to implement this method as part of an expanded capital asset policy.*

### **Conclusion**

*This constitutes the first time since its creation ten years ago that the CSFP has benefited from the expertise of the Auditor General. We acknowledge the findings contained in the report and are committed to addressing the noted deficiencies. The findings and recommendations will assist the CSFP to improve its policies and procedures, and guide the board as it adjusts its operation to more closely match that of government.*

*The CSFP, because of its small student enrolment, is challenged from a financial and human resources perspective to comply with government policy and procedures. Section 110 of the Schools Act, 1997 sets the number of CSFP executive staff. However, while on a smaller scale, the CSFP is responsible for all the same functions as the other school boards throughout the province. The Director of Education and the Assistant Director (Finance & Administration) share these tasks without having specific expertise in all areas. This is evidenced in the findings of the Auditor General.*

*In conclusion, the CSFP acknowledges its policy and procedures challenges and has included their revision as a goal in the recently released 2008-11 Strategic Plan. All revised policies and procedures will be cognizant of government procedure and applicable legislation.*

---





## Highlights

**Highlights of a review of monitoring air quality in schools in Newfoundland and Labrador.**

### Why our Office Did this Review

The objectives of our review were to determine whether the Department of Education (Department), the Department of Government Services and the school districts were adequately monitoring indoor air quality in schools and taking action to address issues related to air quality.

### What our Office Recommends

Following are highlights of recommendations included in the Report that should be addressed. The Department of Education, the Department of Government Services and school districts should:

- establish a process to monitor the results of annual inspections and ensure corrective action is taken to address issues; and
- establish policies and procedures and a centralized information system to monitor school inspections, issues, and any action taken.

The Department of Education and school districts should:

- identify where schools are not inspected annually and ensure inspections are completed;
- monitor issues related to ventilation that are identified in annual inspections and take action to address the issues; and
- establish a system to monitor hazardous materials assessments.

The Department of Education and the Department of Government Services should establish procedures to ensure:

- an enhanced inspection is performed on all schools in the Province; and
- appropriate action is taken to address issues identified during the inspections.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

### Chapter 2, Part 2.4

#### DEPARTMENT OF EDUCATION

##### Monitoring Air Quality in Schools

The Department of Education (Department) and the five school districts (Labrador, Western, Nova Central, Eastern and Conseil scolaire francophone provincial) in the Province, through the *Executive Council Act* and the *Schools Act, 1997* respectively, each have responsibility for monitoring the construction and maintenance of schools. This includes monitoring air quality. Poor air quality is associated with many ailments such as headaches, tiredness, dizziness and/or nausea. In a school system, poor indoor air quality can adversely affect the health, attendance and academic success of students, teachers and staff.

### What We Found

Based on the results of annual school inspections, enhanced inspections undertaken in 2007 and tests associated with prior initiatives, there is evidence to suggest that there are issues in schools with regards to air quality. For example: the annual inspections performed at 270 schools during 2007 identified issues related to air quality at 150 schools and the enhanced inspections of 26 highest risk schools performed during 2007 identified issues related to air quality at all 26 schools inspected. Potential issues identified in both types of inspections included such things as ventilation, mould and mildew, leaks and stained ceiling tiles.

Not all planned inspections and/or initiatives were completed. For example: the Department of Government Services is not always completing the required annual school inspections; 186 of 229 schools identified in 2004 as requiring an inspection for asbestos have never had assessments performed by the school district; and 43 schools in operation in 2007-08 have never been tested for air quality even though they were part of an initiative to do so in 1998. Furthermore, 177 schools in operation in 2007-08 have not been tested since 1998.

Issues relating to air quality were not always addressed in a timely manner. Although issues relating to air quality were identified every year in annual inspections, quite often the issues were not addressed and recurred from year to year at the same school. For example, 26 of 150 annual inspection reports for 2007 identified the same issue(s) that had been identified in previous annual inspection reports, some as far back as 2004. These issues include mould and mildew problems, stained ceiling tiles, ventilation issues and leaks.

Carpets and chalkboards continue to be used in schools even though these were identified as contributors to dust and poor air quality in schools in the 1998 air quality testing. For example, for schools in operation in 2007-08, 42 still had either wall-to-wall carpets or pieces of carpet and 92 of 121 schools in the Eastern District still have some chalkboards.

Our review identified ventilation issues in 56 of the 283 schools open in 2006-07. Issues with mechanical ventilation systems include inoperable, unclean and blocked ventilation systems and poor ventilation in specific classrooms such as computer and chemistry labs, and industrial arts rooms. Furthermore, issues were identified with regards to natural ventilation including windows that could not be opened because they had been sealed shut, missing handles, missing or broken screens and classrooms without windows or other ventilation.

There were a number of procedural and system issues with regards to monitoring issues related to air quality. For example: neither the Department of Government Services nor the school districts have a centralized database to track annual school inspections and any issues identified during those inspections; the Department of Government Services does not have a documented school inspection policies and procedures manual to assist the Environmental Health Officers in their annual inspections of schools; and neither the Department of Education nor the school districts have policies and procedures to ensure issues related to air quality are monitored and followed up.

---

### Background

---

Poor air quality is associated with many ailments such as headaches, tiredness, dizziness and/or nausea. In a school system, poor indoor air quality can adversely affect the health, attendance and academic success of students, teachers and staff.

---

#### Legislation

The Department of Education and the five school districts (Labrador, Western, Nova Central, Eastern and Conseil scolaire francophone provincial) in the Province, through the *Executive Council Act* and the *Schools Act, 1997* respectively, each have responsibility for monitoring the construction and maintenance of schools. This includes monitoring air quality.

The *Department of Education Notice, 2003* under the *Executive Council Act* states that the powers, functions and duties of the minister include “*supervision, control and direction of all matters relating to education generally, including all matters relating to ... construction and maintenance of school buildings.*”

The school districts’ responsibility is identified in the *Schools Act, 1997* and one of the duties of the districts is “*to establish priorities for school construction, maintenance and repair and make recommendations to the minister.*”

Inspections related to general environmental health issues concerning sanitation and safety conditions in schools are performed by Environmental Health Officers of the Department of Government Services in accordance with the *Health and Community Services Act* and a 1995 Memorandum of Understanding between the Department of Health and Community Services and the Department of Government Services.

---

#### Issues related to air quality and recent developments

Issues related to air quality can include high carbon dioxide levels and mould which can be caused by such things as inadequate ventilation and excess moisture. Issues related to air quality have been documented in reports and inspections at the Department of Education and school districts for over 13 years and have resulted in either the temporary or permanent closure of schools.

## Monitoring Air Quality in Schools

To illustrate, in the past three years, mould, excess moisture and air quality issues have resulted in the permanent closure of 1 school and the temporary closure of 10 schools as follows:

In 2006 the following were temporarily closed:

- 2 schools (Humber/Presentation) in the Western District; and
- 2 schools (Paradise Elementary and Roncalli Elementary - portable classrooms) in the Eastern District.

In 2007 the following were temporarily closed:

- 3 schools (Cabot Academy, St. Peter's Elementary and Swift Current Academy) in the Eastern District.

In 2007 the following was permanently closed:

- 1 school (Paradise Elementary) in the Eastern District.

In 2008 the following were temporarily closed:

- 2 schools (St. George's Elementary and Frank Roberts Junior High) in the Eastern District; and
- 1 school (Hillside Elementary) in the Nova Central District.

### Schools by district

Figure 1 shows the number of schools by school district for the 1997-98, 2006-07 and 2007-08 school years.

#### Figure 1

#### Department of Education Number of Schools by District 1997-98, 2006-07 and 2007-08 School Years

District	1997-98	2006-07	2007-08
Labrador	20	16	15
Western	106	74	72
Nova Central	97	69	67
Eastern	168	121	120
Conseil scolaire francophone provincial	Note 1	5	5
<b>Total schools</b>	<b>391</b>	<b>285</b>	<b>279</b>

Source: Education Statistics, Elementary-Secondary (1 school in Paradise that closed during 2007-08 is excluded from the table).

Note 1: Schools for 1997-98 were reported as part of other school districts.

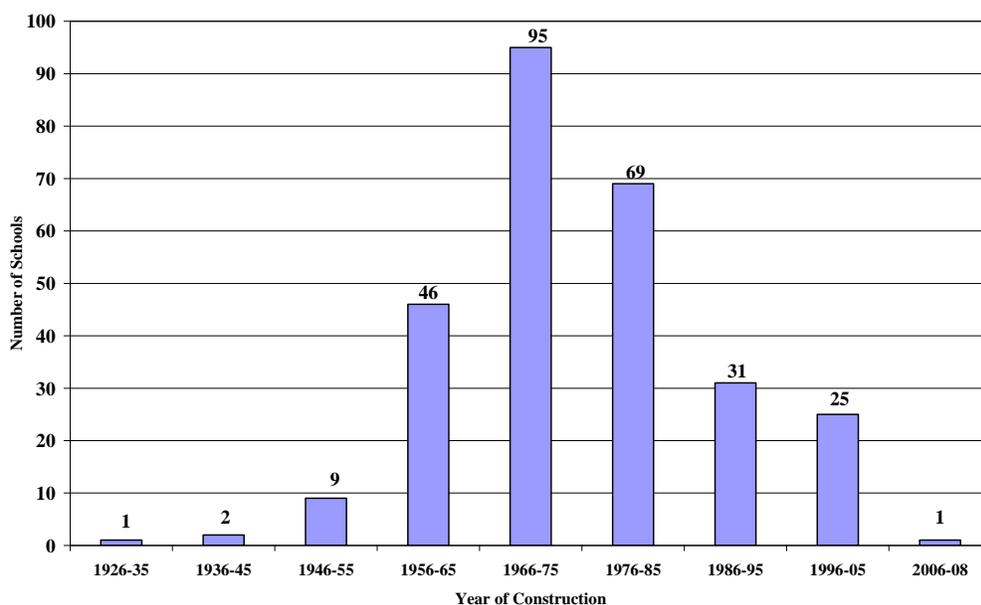
## Monitoring Air Quality in Schools

As Figure 1 shows, since 1997-98, the number of schools in the Province has declined by 112 (29%), from 391 to 279.

**Age of schools** Figure 2 provides a summary of the age of schools based upon the original construction date (capital extensions to schools are not identified).

**Figure 2**

### Age of Schools As of 30 June 2008



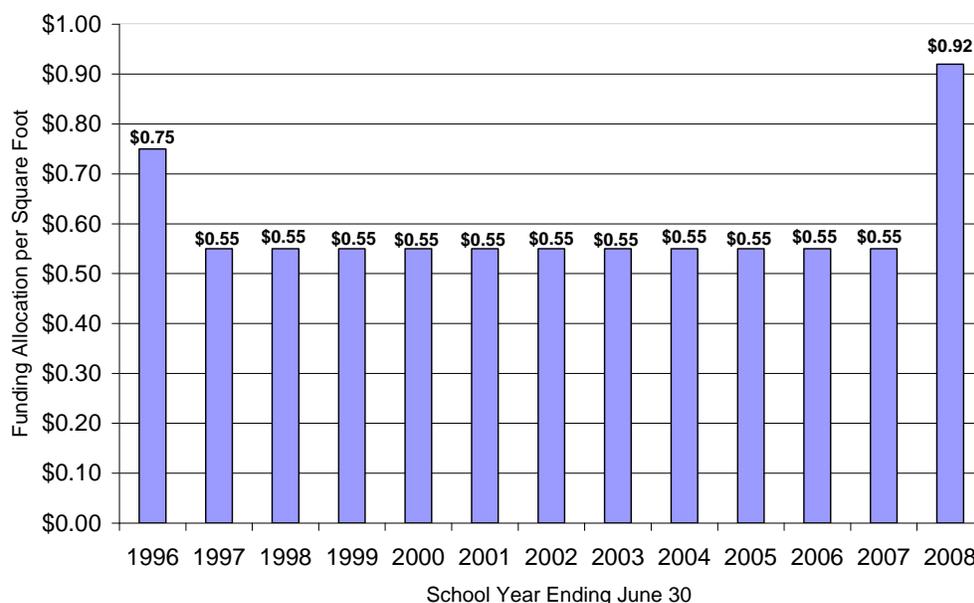
As the Figure shows, the Province's schools vary in age from 1 year to 80 years, and 55% (153) of the 279 schools in 2007-08 are older than 32 years.

### Maintenance funding

School maintenance is funded by the Department of Education through its annual budget process. The repairs and maintenance budget allocation is calculated based upon the square footage of each school within the school district. Figure 3 shows the total budget allocation per square foot for repairs and maintenance for fiscal years 1996 to 2008.

**Figure 3**

**Repairs and Maintenance Budget Allocation  
Funding Allocation per Square Foot  
1996 to 2008**



As Figure 3 shows, Government’s budget allocation for repairs and maintenance for the school system was \$0.75 per square foot prior to 1997. From 1997 to 2007, school boards were provided \$0.55 per square foot for repairs and maintenance. For 2008, Government increased repairs and maintenance funding to \$0.92 per square foot, an increase of \$0.37 or 67%. Based upon the 2007 total square footage of schools in the Province, the increase to \$0.92 per square foot for 2008 would provide an additional \$4.2 million to the five school districts for repairs and maintenance.

**Preventative maintenance lacking**

A report “Facing the Challenge” issued in 2003, indicated that preventative maintenance in schools was lacking in many of the schools, not only because of the shortage in personnel, but also due to the shortage of funds for materials, supplies and equipment. The report further indicated that the rate at the time (\$0.55 per square foot) was inadequate to meet the repairs and maintenance demands of ageing buildings. This rate continued until the 2007-08 budget when it was increased to \$0.92 per square foot.

## Monitoring Air Quality in Schools

**Funding** In addition to the repairs and maintenance funding, Government provides an annual capital funding allocation for major maintenance projects (e.g. roof repairs, windows and siding), new schools, extensions and renovations. Figure 4 shows the repairs, maintenance, janitorial and capital funding from 1995-96 to 2007-08.

**Figure 4**

**Repairs, Maintenance, Janitorial and Capital Funding**  
**Fiscal years 1995-96 to 2007-08**  
**(\$ 000)**

Fiscal Year	Capital Funding	Janitorial and Maintenance (Note 1)	Repairs & Maintenance (Note 2)	Totals
1995-96	7,597	23,487	9,714	40,798
1996-97	33,334	23,638	7,079	64,051
1997-98	11,834	23,271	6,969	42,074
1998-99	24,133	23,272	6,969	54,374
1999-00	30,085	23,865	7,076	61,026
2000-01	23,162	24,697	6,853	54,712
2001-02	29,823	24,845	6,555	61,223
2002-03	29,375	24,750	6,259	60,384
2003-04	22,408	28,828	6,174	57,410
2004-05	14,790	28,438	6,068	49,296
2005-06	17,829	28,427	6,002	52,258
2006-07	27,956	28,732	5,875	62,563
2007-08	44,474	28,907	9,765	83,146

Source: Public Accounts and Department of Education financial information.

Note 1: Funding based upon square footage and a weighted average wage cost.

Note 2: Funding based upon \$0.55 per square foot (1995-96: \$0.75 per square foot; 2007-08: \$0.92 per square foot).

As Figure 4 shows, total funding provided to the school districts increased 33% in 2007-08.

### Audit Objectives and Scope

#### Audit objectives

The objectives of our review were to determine whether the Department of Education, the Department of Government Services and the school districts were:

- adequately monitoring indoor air quality in schools; and
- taking action to address issues related to air quality.

#### Audit scope

Our audit included interviews with officials from the Department of Education, Department of Government Services and school officials regarding issues related to air quality. We visited or contacted all 5 school district offices and 17 schools to review policies/directives on matters relating to air quality at schools, air quality inspection reports, and school inspection reports.

### Overall Conclusions

Based on the results of annual school inspections, enhanced inspections undertaken in 2007 and tests associated with prior initiatives, there is evidence to suggest that there are issues in schools with regards to air quality. For example:

- The annual inspections performed at 270 schools during 2007 identified issues related to air quality at 150 schools.
- The enhanced inspections of 26 highest risk schools performed during 2007 identified issues related to air quality at all 26 schools inspected.

Potential issues identified in both types of inspections included such things as: ventilation, mould and mildew, leaks and stained ceiling tiles.

Not all planned inspections and/or initiatives were completed. For example:

- The Department of Government Services is not always completing the required annual school inspections. For example, in 2006-07 fiscal year, 13 schools were not inspected. In fact, one school had not been inspected for over seven years.

## Monitoring Air Quality in Schools

- Information at the Department of Education indicated that, as of April 2007, 186 of 229 schools identified in 2004 as requiring an inspection for asbestos have never had assessments performed by the school district. Furthermore, the school districts did not have information to confirm which schools had been assessed.
- 43 schools in operation in 2007-08 have never been tested for air quality even though they were part of an initiative to do so in 1998. Furthermore, 177 schools in operation in 2007-08 have not been tested since 1998. The 1998 initiative identified significant issues related to air quality such as roof leaks, stained ceiling tiles and ventilation. There is currently no program to test air quality in schools on a periodic basis although inspections have identified issues related to air quality.

Issues relating to air quality were not always addressed in a timely manner. Although issues relating to air quality were identified every year in annual inspections, quite often the issues were not addressed and recurred from year to year at the same school. For example:

- 26 of 150 annual inspection reports for 2007 identified the same issue(s) that had been identified in previous annual inspection reports, some as far back as 2004. These issues include mould and mildew problems, stained ceiling tiles, ventilation issues and leaks.
- Carpets and chalkboards continue to be used in schools although these were identified as contributors to dust and poor air quality in schools in the 1998 air quality testing. For example, for schools in operation in 2007-08, 42 still had either wall-to-wall carpets or pieces of carpet and 92 of 121 schools in the Eastern District still have some chalkboards.
- Our review identified ventilation issues in 56 of the 283 schools open in 2006-07. Issues with mechanical ventilation systems include inoperable, unclean and blocked ventilation systems and poor ventilation in specific classrooms such as computer and chemistry labs, and industrial arts rooms. Furthermore, issues were identified with regards to natural ventilation including windows that could not be opened because they had been sealed shut, missing handles, missing or broken screens and classrooms without windows or other ventilation. Ventilation issues have been a concern for quite some time as evidenced by a 1995 sample survey by the Department of Employment and Labour Relations.

## Monitoring Air Quality in Schools

- A school which closed in August 2007 had a history of roof leaks, deteriorating windows, mould and poor ventilation dating back to 1995, none of which were adequately addressed.

There were a number of procedural and system issues with regards to monitoring issues related to air quality. For example:

- Not all parts of the annual inspection reports prepared by the Department of Government Services were always completed and compliance dates/times for remedial action were not always noted.
- Neither the Department of Government Services nor the school districts have a centralized database to track annual school inspections and any issues identified during those inspections.
- The Department of Education's database to record air quality initiatives and the required asbestos testing was not up-to-date.
- The Department of Government Services does not have a documented school inspection policies and procedures manual to assist the Environmental Health Officers in their annual inspections of schools.
- Neither the Department of Education nor the school districts have policies and procedures to ensure issues related to air quality are monitored and followed up.

---

## Detailed Observations

---

### Overview

Based on an average six hour day, students spend approximately 1,100 hours (13% of a year) in a school building each year. Teachers and other staff are there even longer. Poor indoor air quality can adversely affect the health and attendance of students, teachers and other staff. Issues related to air quality can also negatively affect a student's academic success. Therefore, it is important to maintain a high level of air quality in schools.

Since the mid-1990s, there have been a number of initiatives relating to the identification of such things as poor ventilation, roof leaks and air quality concerns in schools. This report provides detailed findings and recommendations in the following sections which, for the most part, coincide with the dates of some of these initiatives:

1. Annual School Inspections
  2. 1995 Air Quality Survey Assessment
  3. 1998 Air Quality Testing
  4. 2004 Asbestos Audit Survey/Hazardous Material Assessments
  5. 2007 Enhanced Air Quality Inspections
  6. Information Systems and Policies and Procedures
- 

### 1. Annual School Inspections

---

#### Annual school inspections

Annual school inspections are carried out by Environmental Health Officers of the Department of Government Services to determine whether schools operate in a safe and clean environment. Inspections include a review of areas such as the school's water supply, sewage disposal, interior/exterior construction, lighting, ventilation, playgrounds, fire safety, electrical, pest control and leaks. Although not focused solely on air quality, these inspections may result in the identification of issues associated with air quality.

#### Figure 5

##### Stained Ceiling Tiles Bonne Bay Academy Western School District



Source: Enhanced Inspection Report, May 2007.

## Monitoring Air Quality in Schools

In 1995, a Memorandum of Understanding (MOU) between the Department of Health and Community Services and the Department of Government Services was signed. The MOU was revised in 1999. The MOU provides that the Department of Government Services is responsible for inspecting schools yearly to determine whether schools operate in a safe and clean environment. Inspections are performed by Environmental Health Officers throughout the Province in accordance with the *Health and Community Services Act*.

Environmental Health Officers are responsible for following up on any compliance dates that are established during these inspections. Critical items (e.g. no water, malfunctioning sewer system) must be corrected immediately or within a short time frame. Follow-up on minor issues (e.g. dirty floors) may occur during the next regular inspection.

**Not all schools inspected** Our review of the annual inspection process for 2006-07 indicated the following:

- 13 of 285 schools were not inspected during 2006-07 as required. Figure 6 shows these schools and the most recent inspections prior to 2006-07 and any inspections subsequent to 2006-07.

**Figure 6**

### List of Schools not Inspected During 2006-07

School and District	Most recent inspection prior to 2006-07	Most recent inspection subsequent to 2006-07	Elapsed Time Between Inspections
<b>Eastern</b>			
Holy Heart High	February 2005	April 2008	37 Months
Holy Name of Mary Academy	October 2005	May 2007	19 Months
St. Peter's Junior High	December 2005	May 2007	16 Months
<b>Conseil scolaire francophone provincial</b>			
Ecole Boreale de Goose Bay (Note 2)	Not inspected	Note 1	72 Months
<b>Labrador</b>			
Mud Lake	September 2002	Note 1	63 Months
<b>Western</b>			
Pathfinders/Directions Alternative	July 2003	Note 1	53 Months

## Monitoring Air Quality in Schools

School and District	Most recent inspection prior to 2006-07	Most recent inspection subsequent to 2006-07	Elapsed Time Between Inspections
Raymond Ward Memorial	March 2000	Note 1	93 Months
Canon Richards Central High	November 2004	September 2007	33 Months
Lourdes Elementary	November 2005	January 2008	25 Months
Sacred Heart All Grade	December 2005	October 2007	21 Months
St. Joseph's All Grade	January 2006	September 2007	19 Months
Harriot Curtis Collegiate	February 2006	November 2007	20 Months
Pistolet Bay	February 2006	Closed 2007-08	16 Months

Source: Department of Government Services Reports

Note 1: School not inspected up to January 2008.

Note 2: School opened in January 2002.

As Figure 6 shows, not all schools are being inspected annually as required. For example, it has been more than 7 years since Raymond Ward Memorial School (Western District) was inspected.

### Issues identified and not acted on

We reviewed 270 annual inspection reports, 26 enhanced inspection reports and, in November 2007, visited 17 schools. Our review indicated the following:

- The annual inspections for 2006-07 indicated issues with 150 of the 270 schools inspected (2 closed and 13 not inspected). Issues included such things as the suspected presence of mould, dusty ventilation systems, roof and/or window leaks, stained and/or missing ceiling tiles, and carpets.
- 26 (17%) of the 150 annual inspection reports that noted issues, noted the same issue(s) related to air quality as reported on previous annual inspections; these had not been adequately addressed by the school district. Details are outlined in Figure 7.

**Figure 7**

**Annual Inspection Reports  
Repeated Issues**

School	Date of Inspection(s)	Issue	Department indicated funding provided
<b>Western</b>			
St. James' Regional High	Sep 21/06, Oct 22/07	Stained ceiling tiles	Apr 2006 - Roofing
Sacred Heart All-Grade	Dec 12/05, Oct 5/07	Windows leaking possible mould	May 2008 - Windows
G.C. Rowe Junior High	Apr 24/06, Mar 5/07	Stained ceiling tiles	Apr 2005- Roofing
H.G. Filler Academy	Dec 14/05, Sep 13/06	Evidence of roof leaks	Jun 1998 - Roofing
Pasadena Elem. School	May 4/06, May 4/07	Windows in classrooms has mould	Jun 1998 - Remove mould and repair windows
Gros Morne Academy	Sep 26/06, Sep 13/07	Windows not working	No information provided
Cloud River Academy	Dec 12/05, Sep 13/06	Evidence of roof leaks	No information provided
Jakeman All-Grade	Nov 1/04, Dec 13/06	Windows can't open	Nov 2007 - Air quality improvements
Bonne Bay Academy	Dec 13/06*	Ceiling leaking by Exit B-ongoing for years	Aug 2007 - Envelope repairs Nov 2007 - Air quality improvements
<b>Central</b>			
Baie Verte Academy	Sep 16/04, Mar 18/06	Evidence of roof leaks	Jan 2001, Aug 2007 - Roofing
Gill Memorial Academy	Feb 21/05, Feb 7/06	Poor ventilation in computer room	Feb 2008 - Air Quality
Dorset Collegiate	Mar 24/05, Oct 31/06	Roof leaks in Gym	Aug 2003, Apr 2007 - Roofing
Riverwood Academy	Nov 20/06, Oct 15/07	Ventilation low in some areas	No information provided
<b>Conseil scolaire francophone provincial</b>			
Ecole Ste-Anne	Mar 21/05, Nov 14/06	Evidence of roof leaks	Jul 1999, Jan 2001 and Apr 2005 - Roofing
<b>Eastern</b>			
Amalgamated Academy	Oct 26/06*	Mould and mildew problems along window walls (problem for years)	No information provided
St. Augustine's Primary	Jan 10/07*	Outstanding items from last two inspections – leaks around windows and large number of cracks in walls	No information provided
St. Michael's Reg. High	Jan 10/07*	Outstanding items from previous inspections-Carpet, leaks in Cafeteria	No information provided
Davis Elem.	Nov 24/06, Sep 14/07	Windows leaking	Jun 1998 - Windows

## Monitoring Air Quality in Schools

School	Date of Inspection(s)	Issue	Department indicated funding provided
St. Francis	Mar 28/06, Mar 15/07	Exterior gym door needs repairs	Aug 2008 - Mould remediation and building envelope, Roofing
All Hallows Elem.	Dec 21/06, Sep 14/07	Stained ceiling tiles	Apr 2007 - Roofing
Pearce Junior High	Oct 6/06*	Leak in Gym still unrepaired (noted on previous report)	Jul 2007 - Gym Roof
Prince of Wales Collegiate	Mar 16/07*	Still outstanding – stained ceiling tiles throughout school	Sep 2000, Apr 2005, Jul 2007, Jul 2008 - Roofing
Cowan Heights Elem.	Apr 26/06, Nov1/06	Stained ceiling tiles	Jan 2000, Jan 2001 and Apr 2005 - Roofing
Gonzaga High School	Mar 9/07*	Industrial Arts - Ventilation not installed still outstanding	No information provided
Rennie's River Elem.	May 15/06*	Ceiling leaks in gym ongoing issue	Apr 2006 - Roofing
Holy Trinity High	Oct 4/06, Oct 30/07	Evidence of roof leaks	Jan 1999 and Jan 2001 - Roofing, Jan 2007 - Roof top unit

\*Where only one inspection date is noted, the inspection report indicated that it was a repeat item.

As Figure 7 shows, there are many instances where potential issues related to air quality are either not acted upon from one year to the next or, in some instances, the Department of Education provided funding and the issue still existed.

- 5 schools we visited had issues related to air quality that were reported during a previous Department of Government Services annual school inspection and which either had not been addressed or were not addressed within one year after an annual inspection was performed. (Elwood High and Presentation Jr. High - Western District; Mount Pearl Senior High, Holy Cross Elementary and Roncalli Elementary - Eastern District).

To illustrate, one school inspection (Roncalli Elementary - Eastern District) in November 2006 identified old and stained carpeting in the school library. This was still present during our visit in November 2007.

### Known issues related to air quality not addressed over a period of years

- One school (Paradise Elementary - Eastern District) had a history of roof leaks, deteriorating windows, mould and poor ventilation dating back to 1995, none of which were adequately addressed. Specifically:

## Monitoring Air Quality in Schools

- In 1995, an inspection of the school by an Environmental Health Officer identified excessive humidity readings and deteriorating windows that were leading to condensation and mildew issues. The inspection report recommended an assessment and remediation of the ventilation system and windows, and removal of all mildew.
- In 1998, an air quality test again identified numerous windows with leaks, condensation and mould build-up, roof leaks, stained ceiling tiles, and a lack of mechanical ventilation.
- In 2003 and 2004, annual inspections by the Department of Government Services once again identified problems with windows and mould/mildew.
- In 2005, as a result of issues previously identified, extensive mould remediation, and wall and roof renovation work was undertaken.
- In January 2006, an annual inspection once again identified roof leaks and drafty windows as issues. The inspection recommended the immediate repair of the roof, the removal of water stained ceiling tiles, and the removal of wet insulation.
- During the summer of 2006, roof repairs were conducted; however, an inspection conducted in August 2006 identified visible mould due to roof leaks, significant quantities of debris (such as insulation, metal particulate and dust) on top of the ceiling tiles left over from the summer roof repairs, water-damaged and warped ceiling tiles, mould within student desks, and the absence of a mechanical ventilation system.

The school, which was built in 1979 (27 years old in 2006), closed temporarily in November 2006 and permanently in August 2007 due to issues related to air quality (mould). As this shows, although issues related to air quality were identified over a decade before the school was closed, the issues were never adequately addressed. From April 2005 up to the school's closing, the Province spent approximately \$1.0 million in assessment and remedial actions in an attempt to address poor air quality at this school.

## Monitoring Air Quality in Schools

### Issues identified prior to school closure

- Annual inspections in 2006 at one school (St. George's Elementary - Eastern District) did not identify any major air quality issues; however school officials indicated that, in January 2007, the school council requested an indoor air quality test due to complaints of flu like symptoms from staff and students. Our school visit on 26 November 2007 identified issues with moisture inside window panes as well as suspicion of mildew on other windows.

On 27 August 2008, repairs to drywall in three classrooms detected issues with rot on the external plywood. As a result, on 29 August, an indoor air quality test was performed. The results received on 9 September indicated small amounts of mould in some classrooms. Further investigation was carried out on 10 September and additional mould was detected under some window sills and trim. The school was closed on 11 September. Further investigations found more mould after the school was closed.

### Issues with annual inspection process

In addition to issues identified with the schools, there were also issues with regard to the inspection process. For example, not all parts of the inspection reports were always completed and compliance dates/times for remedial action were not always noted. To illustrate, for the Western District for 2006-07, of the 65 reports completed, we identified 40 inspection process issues with 34 schools as follows:

- 18 inspection reports did not have the checkboxes completed (or partially completed) to document the inspection;
- 9 stated compliance information such as “ASAP” or “immediately” or “next inspection”; and
- 13 did not provide any compliance times/dates or information.

Without inspection reports being fully completed, the Department of Government Services could not determine whether a particular procedure was completed. Furthermore, without compliance dates/times it is not possible to determine priorities for remedial action.

Although the 1995 MOU included an “Inspection Frequency Document” dated April 1995 stating that school inspections were targeted to be carried out twice per year, this was never done. We do note, however, that there was no mention of a commencement date.

### Recommendations

The Department of Education in cooperation with the Department of Government Services and school districts should establish a process to monitor the results of annual inspections by the Department of Government Services and ensure corrective action is taken to address issues related to air quality in schools.

The Department of Education and school districts should identify instances where schools are not inspected annually and follow-up with the Department of Government Services to ensure this is done.

## 2. 1995 Air Quality Survey Assessment

### Ventilation concerns identified in 1995 survey

Poor air quality caused by mould or carbon dioxide levels can be remediated by removing the mould and ensuring there is an adequate supply of fresh air. There are essentially two methods of providing an adequate supply of fresh air in schools, through either natural ventilation (open windows and doors) or mechanical ventilation.

A 1995 air quality assessment survey was undertaken by the former Department of Employment and Labour Relations after several schools were identified as having indoor air quality problems.

**Figure 8**

**Jakeman All-Grade, Trout River  
Western School District**



Source: Enhanced Inspection Report, May 2007.

A representative sample of 10% of schools was to be tested. Testing was comprised of a one day on-site assessment of carbon dioxide levels, temperature, relative humidity levels and a bulk asbestos sample. Ultimately, an assessment survey of indoor air quality was performed in 55 of the 472 schools. The assessment survey concluded the following:

- 25% of the schools reported adverse health effects possibly due to poor indoor air quality;
- all schools assessed had carbon dioxide levels above accepted standards; and
- mechanical ventilation systems were operational in only 47% of schools that had them in place - most of which were not in a classroom environment.

The report, prepared by the Department of Employment and Labour Relations - Medical and Hygiene Section, made recommendations primarily concerning ventilation systems and window operability. Where water leaks were a problem, there was a recommendation that bio-aerosol monitoring be performed.

In the 1997 Budget, \$2.5 million was allocated to address issues related to air quality, mostly for new ventilation systems.

**Poor ventilation in schools** Our review of 270 annual inspection reports, 26 enhanced inspection reports and visits to 17 schools in 2007 identified the following 58 issues in 56 of the 283 schools open in 2006-07 with regards to air ventilation:

- Concerns with mechanical air ventilation systems still existed, including:
  - 4 schools with inoperable ventilation systems;
  - 25 schools with unclean ventilation systems;
  - 1 school with blocked ventilation; and
  - 28 schools with poor ventilation in course-specific classrooms such as computer labs, chemistry labs, and industrial arts rooms.

To illustrate an issue with a ventilation system, during one of our visits to a school, officials indicated that the ventilation system had not been working well. When the system was being cleaned in December 2006, officials discovered student textbooks in the ventilation ductwork which were blocking the flow of air. (Presentation - Western District). Another school (Clareville High - Eastern District), which was inspected during the enhanced inspection process in 2007, had mould in the mechanical ventilation's air intake room. This room was used to source all return air throughout the school.

- Concerns with natural ventilation including: windows that could not be opened because they had been sealed shut, missing handles, missing and/or broken screens, and classrooms without windows or other ventilation. We found instances at 3 schools (St. Andrew's Elementary and Mary Queen of Peace - Eastern District, J.J. Curling - Western District) where there were issues with the natural ventilation and the affected room did not have a mechanical ventilation system.
- 9 of the 17 schools we visited had mechanical ventilation systems in place. Seven of the 9 schools did not maintain adequate ventilation system service records as follows:
  - 3 had no record to indicate that the system had been properly serviced;

## Monitoring Air Quality in Schools

- 3 where an external service company maintained the system, records were not maintained at the school to evidence the service results; and
- 1 school had information recorded only up to 2005.

Without maintaining service records, schools cannot document that school heating and ventilation systems are properly serviced.

### Recommendation

The Department of Education, in cooperation with school districts, should monitor issues related to ventilation that are identified in the Department of Government Services annual inspections and take action to address the issues.

### 3. 1998 Air Quality Testing

#### 1998 was last extensive testing of air quality in schools

In 1998, the Department of Education, subsequent to the closure of Buchans Elementary the previous year and concern by the public, undertook extensive testing of indoor air quality in the Province's schools.

At that time, the Department of Education planned on conducting air quality tests in all 391 schools in 3 phases by the Fall of 1998. To facilitate the testing, the Minister of Education required that all school boards provide a priority list of what they considered high risk schools so that they could be tested first.

An indoor air quality committee was established to develop policies and procedures that school boards would be expected to follow in order to ensure a safe and healthy school environment. The Department, in consultation with the former Department of Environment and Labour, and the Department of Works, Services and Transportation developed terms of reference for air quality testing.

**Figure 9**

**The Appearance of Mould Above Ceiling Tiles  
St. Joseph's All Grade School, Croque  
Western School District**



Source: Enhanced Inspection Report, May 2007.

The Department contracted a microbiologist to review the results of air quality tests and the microbiologist concluded there were no immediate health hazards in schools throughout the Province. However, the testing resulted in the identification of necessary remediation work such as roof replacement or repair, replacing water damaged tile, replacing carpets with tiles, making windows operable, improving ventilation systems, and establishing maintenance procedures. The test results were documented in individual reports for each school. In the 1998-99 Budget, \$10.5 million was allocated for 364 projects to address issues related to air quality.

Our review indicated the following:

**Schools  
prepared prior  
to testing**

- It is difficult to conclude that the testing was truly representative of the condition of the schools at the time given that Directors of Education were notified on 25 February 1998 by the Assistant Deputy Minister of Support Services of the Department of Education to prepare the schools before the consultants commenced the 1998 air quality testing program. Schools were requested to *“wash all floors; wash all shelving, chalk boards and other dust accumulating surfaces; clean student lockers and/or storage area; vacuum all carpeted area; vacuum all radiators; replace all filters in ventilating and/or heating equipment, if such filters have not recently been replaced in accordance with the manufacturer’s*

## Monitoring Air Quality in Schools

*specifications; remove all mould and treat such surfaces with an approved solution to kill mould; and remove and replace all building finishes which show evidence of water damage.”*

One consultant indicated in its report that a visual inspection could not be relied upon due to the preparatory cleaning by staff, and that staff interviews had to be relied upon to identify potential problem areas.

---

### Not all schools tested

- Although phases 1 and 2 were completed and 244 schools were tested by June 1998, phase 3 was never started; therefore, the remaining 147 schools were never tested.
- 43 of the 147 schools not tested in 1998 and in operation in 2007-08, have still not been tested for air quality.
- 177 schools in operation in 2007-08 have not been tested since the 1998 initiative.

---

### Testing conducted when issues identified

There is no requirement for the Department of Education to conduct regular indoor air quality tests. As a result, since 1998, there has not been any extensive testing of air quality in schools. Instead, air quality tests are conducted in schools on an adhoc basis and only if an issue is identified. During our review, we found the following related to an adhoc review:

- In 2007, air quality tests were conducted after mould was detected in one school in the Western District (Presentation Junior High). In the report, the engineering consultant stated: *“the [mould] abatement has been able to uncover some of the inherent problems in the design and installation of, in particular the windows that were installed some 10-12 years ago”*. These problems included windows too wide for the opening, caulking not applied properly or incorrect product used, vapor barrier not sealed and the building wrap not being tied in.

The report also stated that the *“Music Room and basement area was flooded about 5 years ago with about 3 feet of water, and that the only remediation done was to replace one strip of gyproc wall in one area. The abatement uncovered mould growth under the vast majority of the Music Room stage and in the wood studs of the gyproc walls. Also, mould covered large areas of studs in both stairwell partitions - so much so, that the entire partitions have been removed.”*

## Monitoring Air Quality in Schools

The 1998 air quality tests identified carpets and chalkboards as contributors to dust and poor air quality in schools. Our review identified the following issues:

### **Carpets still used in some schools**

- Beginning in 1998, the Department increased its efforts to remove carpets in schools, including a 50-50 cost-shared program with the former school boards at that time. Since 1998, the majority of schools have had carpets removed; however, our review identified that, in 2006-07 or later, 42 schools had carpets wall-to-wall located in libraries, music rooms, offices and pieces of carpet in some classrooms. Specifically, the following number of schools had carpet:
  - 13 schools from our review of 2007 annual inspections;
  - 4 schools from our review of enhanced inspections;
  - 8 schools from our school visits; and
  - 17 schools from information provided by a school district.

### **Chalkboards in 16 of 17 schools visited**

- Since 1998 the Department has funded the replacement of chalkboards (and chalk) with whiteboards (and markers). However, our visits to schools identified that 16 of the 17 schools visited still used chalkboards to some degree in classrooms.

In addition, one district indicated that 92 of its 121 schools (Eastern District) had some chalkboards as of the 2007-08 school year.

## **Recommendation**

The Department of Education should establish procedures to monitor issues related to air quality in schools on a proactive basis.

### 4. 2004 Asbestos Audit Survey/Hazardous Material Assessments

#### Introduction

The *Asbestos Abatement Regulations, 1998* state that every owner or contractor to whom the *Regulations* apply shall have an assessment made in writing of the exposure or likelihood of exposure of an employee to the inhalation of asbestos fibres. The *Regulations* apply to:

- every workplace covered under occupational health and safety legislation where asbestos or material containing asbestos **is likely** to be handled, dealt with, disturbed or removed; and
- the repair, alteration or maintenance of a building containing asbestos.

Correspondence dated 8 July 2004 from one school district to the Department of Government Services indicated that schools in excess of 20 years old are likely to contain some form of asbestos and, as such, should be assessed. As a result, school districts used 1985 as the cut-off year whereby schools constructed after that date were considered not to have asbestos issues. It was determined that 229 schools were constructed prior to 1985 and therefore they should have been assessed for asbestos.

#### Department of Education and school districts lack information on asbestos assessments

Our review identified the following:

- The Department of Education's air quality database indicates that, as of April 2007, 186 (81%) of the 229 schools were not assessed for asbestos as required.
- The Department of Education was not adequately tracking asbestos assessments performed as evidenced by the following:

One school (Presentation - Western District) was recommended for an asbestos assessment during a 1998 air quality test. However, in 2006, the Department of Education contacted the district and questioned a recent inspection of the school that indicated materials containing asbestos was suspected and that if an asbestos survey had not been done, a hazardous material study should be done as soon as possible. This example illustrates a lack of coordination/communication between the school district and the Department of Education in that the Department was unaware if an assessment had been done at the school.

## Monitoring Air Quality in Schools

- During our visits to schools it became evident that school officials did not always know whether asbestos assessments had been completed for a particular school. While school districts indicated that asbestos assessments are performed prior to any major renovations in schools in accordance with the *Regulations*, the school districts did not always maintain a listing of schools to confirm that assessments were performed.
- 3 schools (St. Mary's All Grade - Western District, Greenwood Academy - Central District, Lourdes Elementary - Western District), that had major renovations, did not have the required asbestos assessment performed prior to the commencement of work. We identified these schools during our review of enhanced inspection reports and school visits in 2007.

### **Inadequate monitoring of asbestos assessments**

In May 2004, the Occupational Health and Safety branch of the Department of Government Services requested information from school districts to determine whether the districts complied with the *Regulations* in regard to asbestos assessment. The following occurred:

- Only 4 of the 11 districts contacted responded to the request for information; and
- Only 2 of the 4 responses contained information on asbestos assessment in schools.
  - One school district (Avalon East) reported that, of its 64 schools, 31 did not have the required assessments performed; and
  - One school district (Labrador) reported that, of its 18 schools, 8 did not have the required assessments performed.

These findings clearly show that not all schools were assessed for asbestos in accordance with the *Asbestos Abatement Regulations, 1998* and there were no complete and accurate records of asbestos assessment work. As a result, the extent of asbestos in schools was not known. In August 2004, Department of Education correspondence indicated that it was apparent that asbestos audits did not exist on a number of schools as identified from the asbestos audit survey performed in May 2004 by the Occupational Health and Safety branch of the Department of Government Services.

### **Recommendation**

The Department of Education and school districts should establish a system to monitor hazardous materials assessments in schools and ensure assessments are performed and documented for all schools.

---

## **5. 2007 Enhanced Air Quality Inspections**

---

### **Overview**

In February 2007, the Department of Government Services in conjunction with the Department of Education established an Enhanced Inspection Committee (Committee) to implement a pilot project to conduct enhanced school inspections. The pilot project included the Eastern, Nova Central and Western school districts, (Labrador and Conseil scolaire francophone provincial school districts were not included in the pilot) each of which were asked to select 5 priority schools (total of 15) for enhanced inspections.

Enhanced inspections were detailed inspections carried out by Environmental Health Officers (sometimes accompanied by an industrial hygienist of Occupational Health and Safety) that concentrated on issues related to indoor air quality. The inspection included a visual inspection of building construction and condition, assessment of maintenance and housekeeping activities, assessment of ventilation, and other items such as asbestos, laboratory chemicals, pesticides, and combustion appliances (e.g. boilers and furnaces). In addition, readings were taken on temperature and relative humidity levels.

**Figure 10**

**Water Stained Wall in Electrical Room  
Long Range Academy, Cow Head  
Western School District**



Source: Enhanced Inspection Report, May 2007.

The Environmental Health Officers were required to document the results in an inspection report. Completed reports were provided to the Department of Education, the Department of Health and Community Services, and the school districts. Each school district was required to submit an action plan to the Department of Government Services to address any issues identified during the enhanced inspection.

---

**26 enhanced inspections**

The Department of Government Services conducted 26 enhanced inspections (the original 15 during April and May 2007 and an additional 11 between July and September 2007). Figure 11 summarizes the results of the enhanced school inspections performed by Environmental Health Officers of the Department of Government Services.

## Monitoring Air Quality in Schools

**Figure 11**

**Department of Education  
Enhanced School Inspection Findings  
2007**

School	Inspection Date	Roofing leaks/poor drainage	Water damage/stains due to piping	Windows/doors leaking/disrepair	Stained ceiling tiles	Exterior siding/brick Issues	High moisture readings/Condensation	Presence/Suspicion of mould	Suspicion of asbestos	Windows can't always open	Ventilation issues	Temperature issues	Carpets in use	Chalkboards in use	Evidence of pests/access	Presence of chemical cleansers
<b>Eastern</b>																
Topsail Elementary	Apr 18-19	Y	Y	Y	Y	Y	Y		Y		Y	Y				
Anthony Paddon Elementary	May-09	Y		Y	Y	Y	Y				Y					
Marystown Central High	May-23	Y		Y	Y	Y	Y		Y		Y	Y				
St. Teresa's	Apr 11-15	Y		Y	Y	Y	Y	Y	Y		Y				Y	
Hazelwood Elementary	Apr-26			Y	Y	Y	Y				Y		Y		Y	Y
Holy Cross Elem., St. John's	Aug-16			Y	Y		Y								Y	
Beaconsfield Jr. High	Aug-14		Y	Y	Y	Y		Y			Y	Y		Y		
MacDonald Drive Jr. High	Aug-15		Y	Y	Y		Y	Y			Y		Y	Y		
St. Peter's Elementary	Aug-13	Y	Y		Y	Y					Y	Y	Y			
Clarenville High	Aug-21	Y	Y	Y	Y	Y		Y		Y	Y				Y	
St. Edward's	Aug-21	Y	Y	Y	Y			Y		Y	Y					
Sub-Total [11]		7	6	10	11	8	7	5	3	2	10	4	3	2	4	1
<b>Central</b>																
Avoca Collegiate	May-10	Y			Y	Y										
Hillview Academy	May-01			Y	Y	Y		Y			Y					
Greenwood Academy	May-01	Y	Y	Y	Y				Y	Y	Y				Y	
Twillingate Elementary	May-02	Y		Y	Y	Y				Y	Y					
J.M. Olds Collegiate	May-02	Y			Y	Y		Y	Y		Y				Y	

## Monitoring Air Quality in Schools

School	Inspection Date	Roofing leaks/poor drainage	Water damage/stains due to piping	Windows/doors leaking/disrepair	Stained ceiling tiles	Exterior siding/brick Issues	High moisture readings/Condensation	Presence/Suspicion of mould	Suspicion of asbestos	Windows can't always open	Ventilation issues	Temperature issues	Carpets in use	Chalkboards in use	Evidence of pests/access	Presence of chemical cleansers
Lewisporte Collegiate	Jul-19	Y		Y	Y	Y				Y	Y					
Lewisporte Middle	Aug-27	Y	Y	Y	Y	Y				Y			Y			
Sub-Total [7]		6	2	5	7	6	0	2	2	4	5	0	1	0	2	0
<b>Western</b>																
Hampden Academy	May-17		Y	Y	Y	Y				Y						
Jakeman All-Grade	May 14-15	Y		Y	Y	Y	Y			Y	Y	Y		Y	Y	
St. Mary's All-Grade	May-30	Y	Y		Y	Y			Y		Y					
Bonne Bay Academy	May 15-16	Y	Y	Y	Y	Y	Y	Y	Y							
Long Range Academy	May 16-17	Y	Y	Y	Y						Y					
James Cook Memorial	Sep-06	Y							Y		Y					
St. Joseph's All-Grade	Sep-04	Y		Y	Y	Y		Y			Y				Y	
C.C. Loughlin Elementary	Aug-28	Y			Y	Y	Y				Y					
Sub-Total [8]		7	4	5	7	6	3	2	3	2	6	1	0	1	2	0
<b>Total [26]</b>		<b>20</b>	<b>12</b>	<b>20</b>	<b>25</b>	<b>20</b>	<b>10</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>21</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>8</b>	<b>1</b>

Source: Department of Government Services Enhanced Inspection Reports

## Monitoring Air Quality in Schools

### Significant air quality-related issues identified

As Figure 11 shows, there were significant findings identified during the enhanced inspections as follows:

- Every school inspected had multiple issues;
- 25 schools had water stained ceiling tiles;
- 20 schools had issues with roof leaks and drainage. One school reported a history of roof leaks for at least 12 years (Twillingate Elementary - Nova Central District). Furthermore, 1 of the enhanced inspection reports that identified roof leaks, water damage, stained tiles, exterior siding issues, high moisture readings, and suspicion of mould and asbestos, stated that, “*a lot of work had been requested for the past 5-7 years with very little of it being addressed.*” (Bonne Bay Academy - Western District);
- 21 schools had issues with ventilation. One school reported a mechanical ventilation system that had been decommissioned for more than 10 years (Hillview Academy - Nova Central District);
- 20 schools had windows/door leaking and/or in disrepair;
- 20 schools had exterior siding/brick issues;
- 9 schools had suspicion of mould. For example, in a September 2007 enhanced inspection report, it was reported that an inspection in March 2007 detected mould; however, it was not properly treated in the interim. The report stated that “*gyproc in the area was not replaced but painted over; therefore the problem is **NOT** corrected, and can reoccur.*” (St. Joseph’s - Western District); and
- 8 schools had suspicion of asbestos. 7 of the 8 schools (Bonne Bay, St. Mary’s All Grade and James Cook - Western District; St. Teresa’s, Marystown High and Topsail Elementary - Eastern District; Greenwood Academy - Nova Central) were recommended for an asbestos assessment in 1998 because of a suspicion of asbestos; however, only 1 asbestos assessment (Marystown High - Eastern District) was completed and this school still had suspicion of asbestos noted during the enhanced inspection.

## Monitoring Air Quality in Schools

The findings of the enhanced inspections demonstrate that concerns associated with poor indoor air quality exist in a significant number of the 26 schools inspected under the pilot program. As a result, the Department of Education will be required to take appropriate steps to ensure that air quality in schools is acceptable.

### Issues with enhanced inspection process

Our review of the enhanced inspections process related to the 26 schools identified as part of the pilot project indicated the following:

- Environmental Health Officers who performed the annual inspections did not participate in the process of selecting priority schools for enhanced inspections. Instead, only the school districts were requested to identify the priority schools. In our opinion, it would have been more appropriate to also include the Environmental Health Officers in the process of identifying priority schools for inspection.
- Some inspections were incomplete. Although each inspection was to include an examination of the exterior of the school building, including the foundation, roof, siding, windows and grounds, 6 (23%) of the 26 inspection reports indicated that the roof or parts of the roof were not examined as the roof was not accessible at the time of the inspection.
- Not all required action plans were complete. Our review identified that 8 (31%) of the 26 action plans were either incomplete or were not detailed enough to determine if proper corrective actions were being taken to address the issues identified. For example:
  - One school inspection report (Hazelwood - Eastern District) identified the presence of carpet and areas in disrepair where water/moisture could build. However, the action plan did not address these issues.
  - One school inspection report (Clarenville High - Eastern District) identified school interior issues such as stained ceiling tiles, the presence of mould on ceiling tiles and interior concrete block. The action plan stated that the Regional Operations Manager would follow-up on other cleaning issues; however, no specific actions on how or when the mould issues on ceiling tiles and concrete block would be addressed.

## Monitoring Air Quality in Schools

- 9 (35%) of the 26 inspections were conducted during the summer months i.e. when the schools were closed and student activity was at a minimum. Inspections carried out during these periods would not provide an environment representative of normal school activity. Environmental Health Officers indicated that future inspections should occur during the school year.

### Recommendations

The Department of Education in cooperation with the Department of Government Services should establish procedures to ensure:

- an enhanced inspection is performed on all schools in the Province; and
- appropriate action is taken to address issues identified during the inspections.

## 6. Information Systems and Policies and Procedures

### Overview

We would expect all school inspections to be recorded in a centralized database at the department responsible for the inspection. We would also expect school districts to have information readily available for each school in their district.

For example, we would expect the Department of Government Services to have a centralized database to track the annual school inspections and we would expect the Department of Education to have a centralized database to track its air quality testing initiatives.

### No centralized database

Our review indicated the following:

- The Department of Government Services does not maintain a centralized database to track annual school inspections. Instead, Department officials indicated that each region is responsible for monitoring school inspections and that monitoring and reporting processes may differ among regions. As a result, the Department of Government Services cannot readily determine the history of school inspections and issues related to air quality for follow-up and setting priorities for inspections.

## Monitoring Air Quality in Schools

- Information recorded in the various Department of Government Services regions is not consistent and not all information is captured. For example, the reports do not record pertinent information related to issues identified, compliance dates, or actions taken. In addition, one region (Western) did not maintain information related to previous annual inspections and, as a result, it was not possible to readily determine if all schools had been inspected annually.
- Although each school district office is provided with a copy of the annual inspection report, there is no standard database for school districts to record the information. Likewise, information on air quality tests is not captured by the school districts. As a result, the school districts cannot readily identify whether air quality tests or annual school inspections had taken place or if the appropriate remedial action on issues identified have occurred.

To illustrate, during our review, each of the five school districts was requested to provide us with inspection reports for the fiscal year 2006-07. However, the school districts did not provide inspection reports for 72 (25%) of the 283 schools even though we had evidence that all completed reports were provided to them. As a result, we went to each Department of Government Services region and received the inspection reports for 58 schools and determined that 14 inspections had not been performed.

- The Department of Education's air quality database is neither current nor accurate. For example, one school (CC Loughlin - Western District) had a hazardous materials assessment completed in 2000; however, this information was not recorded in the database.

---

### Policies and procedures

Policies and procedures are necessary to ensure required tasks are identified and performed in accordance with standards. We would expect all relevant entities (e.g. the Department of Education, the Department of Government Services and school districts) to have up-to-date and documented policies and procedures related to annual school inspections and air quality issues at schools.

---

## Monitoring Air Quality in Schools

**No policies and procedures** Our review identified the following:

- The Department of Education does not have any documented policies and procedures relating to issues associated with air quality at schools. As a result, the Department is not providing proactive guidance to school districts as to when additional school inspections and air quality testing should be conducted or as to the type of inspections and air quality testing that should be conducted. Instead, inspections and testing are performed, for the most part, on an ad hoc basis as issues arise.
- Although an “Indoor Air Quality: Tools for Schools Action Kit” was provided to school districts in 2007, the school districts have not used the kit. The kit originated from Health Canada and was to provide practical help to school boards, principals and their management teams, and school employees to help them understand and address issues related to air quality and problems in schools. It also contained 11 “stand-alone” checklists that could be used to improve indoor air quality in schools.
- The school districts do not have any policies or procedures for either assessing air quality in schools or resolving issues related to air quality.

We do note that the Nova Central School District undertook a pilot project to develop and implement a plan to assess the district’s schools on a priority basis to determine if any mould existed as a result of water damage. The District received funding from the Department of Education in February 2007 to train personnel to assess schools for mould and provide equipment to remove/clean up mould according to industry standards. The District is expecting to test 10 to 15 schools as part of this pilot project.

- The Department of Government Services does not have documented policies and procedures to assist its Environmental Health Officers during annual school inspections. Department of Government Services officials indicated that the Officers use an annual inspection form to guide them in the annual inspection process; however, there are still no policies or procedures relating to the use of this form.

### Recommendation

The Department of Education in cooperation with school districts and the Department of Government Services should establish policies and procedures and a centralized information system to monitor school inspections, issues, and any action taken.

## Department's Response

### Preamble

- *The Auditor General's report covers a thirteen year period and comments on historical matters as long ago as 1995, as well as current issues. Given changes in the intervening years in school board governance, record-keeping and funding allocations, it has been challenging for the Department to comment on some of the situations referenced by the Auditor General. This has been further complicated by that fact that the auditor does not indicate whether the issues identified were minor or major. In addition, the Department of Education notes that the pictures included in the Auditor General's report are not indicative of the current conditions in the schools represented.*
- *Nevertheless, the Department acknowledges the Auditor General's findings that some schools within the K-12 system have maintenance issues. Addressing maintenance-related issues and improving school environments are two of the highest priorities of the Department, and examples of associated initiatives in place to ensure safe learning environments include the following:*
  - *An increase of funding by 485 percent for new school construction, extensions, and repairs and maintenance during the period fiscal year 1995-96 to 2007-08, that is, from \$7.6 million in 1995-96 to \$44.5 million in 2007-08. Budget 2008 further increased this amount to \$88.8 million, almost doubling the allocation again in the last year alone.*
  - *An increase in funding for school districts repairs and maintenance budgets of 67 percent, from 55 cents to 92 cents per square foot, that is, an increase of an additional \$4.2 million annually.*

## Monitoring Air Quality in Schools

- *Implementation in conjunction with the Department of Government Services of an enhanced inspections process (still evolving) to complement the annual school inspection program. The Department of Health and Community Services is also currently represented on the enhanced inspection pilot program committee. In 2006-07, as the first phase of this pilot process, the school districts identified 26 schools where it was considered that issues of concern would most likely be present. Officials of the Departments of Education and Government Services have since conducted an additional 32 enhanced inspections, selecting schools next most likely to have issues. The pilot project has already been successful in achieving the original objectives, that is, to clearly identify key issues having potential to negatively affect air quality and noting those for inspectors and those responsible for maintenance; and to provide information on the most common issues observed to assist school districts to plan proactively.*
- *Taking proactive action to close schools whenever problems were identified that presented a risk or potential risk to students or employees, and taking action to address the identified problems before reopening.*
- *The Department is concerned that the report may lead some readers to conclude that air quality testing is the solution to identifying indoor air quality problems. However, the Department has been guided by the American Industrial Hygienists Association which has concluded that air quality testing is not the first, best or only approach. The reason for this is that there are no accepted standards against which the results can be compared and results can vary significantly depending on the specific circumstances on any given day in the same location. The American Industrial Hygienists Association notes that many industrial hygienists, professional remediators, and others involved in mould assessment and remediation are concerned about air sampling and the lack of a threshold value or regulatory levels for mould in air. The Department's experience also indicates that air sampling may not detect mould, especially if it is concealed behind walls.*
- *The Departments of Education and Government Services therefore consider that it is more productive and a better use of resources to investigate and remediate issues which have the potential to affect air quality rather than to focus human and financial resources on indoor air quality testing.*

- *In addition, the presence of water infiltration or stained ceiling tiles are not in and of themselves indicators that air quality issues exist. However, the causes must be addressed to ensure that air quality issues do not develop as a result. The Department notes that in all situations where concerns relating to mould or air quality were identified through the enhanced inspection process, building envelope assessments (a thorough inspection of the building roof, siding and windows) were initiated by qualified professionals.*
- *The Department acknowledges that it does not have a physical document containing all of its policies and procedures. However, the Department's practice is to ensure schools are closed if there is any doubt about the facility's safety. Even with documented policies and procedures, professional judgement is still required to determine whether there are air quality related health concerns. The best approach is to identify problems which may potentially lead to air quality issues, ascertain the solution and take immediate action. This is the methodology which is currently being employed.*

### **1. Annual School Inspections**

#### Not all schools inspected

- *The Department of Government Services acknowledges that a small number of schools (13 out of 285, less than five percent) were not inspected during the annual inspection process in the 2007-08 fiscal year. There were some cases where there were significant time lags between inspections, as noted in the report. However, in two of these cases, at Holy Heart and St. Peter's, inspections of the school cafeterias were conducted between those dates and the inspector discussed other issues with the school staff but did not record the visits appropriately as school inspections. In two others, inspections were done within the relevant fiscal year or very shortly thereafter, in April or May instead of March. Such minor scheduling changes do not adversely affect the health and safety objectives of the inspection. The greatest gaps were in Labrador and on the Northern Peninsula where the Department of Government Services experienced prolonged staffing vacancies due to recruitment and retention challenges. In the case of Raymond Ward Memorial in Norman Bay, Labrador, the school is only accessible by boat, helicopter or by snowmobile when the river is frozen. Nevertheless, it should have been inspected. The school in Pistolet Bay on the Northern Peninsula was known to be closing just after the end of the 2006-07 fiscal year, in June 2007. Since then, the Department of Government Services has been successful in recruiting*

*inspectors for both of these areas, and is making every effort to ensure that all schools are inspected annually as required and that the proper documentation is completed.*

- *The Department of Government Services will also review the documentation requirements for annual inspections and remind inspectors of the importance of properly recording the timelines for compliance as well as relevant information with respect to the correction of identified issues.*

### Issues identified and not acted on

- *The Department acknowledges the Auditor General's findings and notes that the annual inspection process is only one factor considered during the establishment of funding priorities in any given year. Issues are prioritized for action based upon not only the annual inspection process but also the enhanced inspection pilot program and direct input from the school districts.*
- *It should be noted that the presence of stained ceiling tiles is not, in and of itself, necessarily indicative of poor air quality. Stained tiles may be a residual indicator where a previous problem with moisture or water infiltration had been addressed but the tiles not replaced. There would only be a potential of adverse effects on air quality if the source of the moisture was an on-going problem that had not been fixed or the tiles themselves contained mould, which is not usually the case once the moisture issue has been addressed.*

### Known issues related to air quality not addressed over a period of years

- *The Department acknowledges the Auditor General's findings regarding the history of leaks at Paradise Elementary. It should be noted, however, that despite an opinion of an indoor air quality consultant that "based on my inspection, I do not see any reason why the school should remain closed after remediation actions are completed, or be condemned," government decided to replace the facility.*

### Issues identified prior to school closure

- *The St. George's school and Frank Roberts school cases confirm the Department's position that air quality testing is only one tool in identifying maintenance-related air quality issues. While testing identified small traces of mould, which would only have resulted to repairs in a single classroom, it was not until further investigative work was conducted throughout the buildings, including further removal of interior finishes, that the full extent of the problem was identified. Consistent with the enhanced inspection protocol, the Occupational Health and Safety Branch of Government Services was consulted and the schools were closed so that they could be remediated in their entirety.*

### **2. 1995 Air Quality Survey Assessment**

#### Ventilation concerns identified in 1995 survey/ Poor ventilation in schools

- *The Department acknowledges the Auditor General's recommendations.*
- *However, it should be noted that ventilation systems alone do not prevent mould growth.*
- *For the past 10 years, plans for all new schools and major expansions have included mechanical ventilation systems.*
- *The Department is currently researching cost-effective options to address ventilation issues in the province's schools.*
- *The Department will request that school districts ensure that all windows are operable.*
- *The Department's priority is to prevent the infiltration of water which could lead to situations that can adversely affect indoor air quality.*

### 3. 1998 Air Quality Testing

#### 1998 was last extensive testing of air quality in schools

- *As noted earlier, the Departments of Education and Government Services believe that it is more productive and a better use of resources to investigate and remediate potential issues rather than to utilize resources on air quality testing when there are no accepted standards against which the results can be compared.*

#### Schools prepared prior to testing

- *It would be an inappropriate use of resources and a waste of funding to conduct indoor air quality testing in the presence of superficial mould and/or dust. Testing may be beneficial when other ways of determining the source of an odour or the cause of an air quality complaint fail. In these cases, testing may be able to ascertain the presence of a toxin. On the other hand, testing may or may not be an effective tool in detecting a mould problem, for example, if the mould is sealed behind a wall. The proper cleaning of school facilities is a necessary component of any school maintenance program, has a prevention focus, and ensures that potential issues are identified at their earliest possible stage before they result in air quality issues. The Department acknowledges that one consultant disagreed with this practice in 1998; however, consultants currently recommend cleaning prior to testing.*

#### Not all schools tested/ Testing conducted when issues identified

- *The Departments of Education and Government Services believe that it is more productive and a better use of resources to investigate and remediate potential issues rather than to utilize resources on air quality testing when there are no accepted standards against which the results can be compared.*

#### Carpets still used in some schools

- *Carpet is no longer used in school classrooms except for Kindergarten rooms where area rugs, which can easily be cleaned or discarded once soiled, may be used. The only wall-to-wall carpet remaining in school facilities is in a small number of libraries (where no food or drink is permitted), private offices, theatres and/or stages. For example, in Western District carpet remains only in the theatres in Stephenville High School and Stephenville Middle School, on the stage at Bonne Bay Academy, and in the library at Basque Memorial.*

## Monitoring Air Quality in Schools

- *The Department has funded initiatives to replace carpet with hard surface flooring since 1998.*

### Chalkboards in 16 of 17 schools visited

- *The Department has funded initiatives to replace chalkboards with whiteboards since 1998. However, some schools do continue to use chalkboards to some degree, as noted in the Auditor General's report.*
- *The Department will continue to provide funding for the replacement of chalkboards and will encourage school districts to ensure their replacement.*

### Conclusions

- *Steps taken in recent years to identify and address potential air quality related issues include:*
  - *Increasing funding from \$7.6 million in 1995-96 to \$44.5 million in 2007-08, an increase of 485 percent; noting that Budget 2008 allocations alone effectively doubled this amount again in the past year to \$88.8 million. This brings the total increase since 1995-96 to more than 10 times the 1995-96 allocation;*
  - *Developing an enhanced inspections pilot process to identify common conditions (e.g., roof and window leaks) which may lead to air quality issues;*
  - *Funding specific initiatives identified from those inspections to deal with critical problems in particular schools;*
  - *Undertaking more assessments of building envelopes in an effort to identify potential concerns and prevent adverse air quality issues associated with water infiltration;*
  - *Increasing funding for repairs and maintenance by 67 percent from 55 cents to 92 cents per square foot; and*
  - *Increasing the Department's engineering capacity through the hiring of an individual with building envelope expertise.*

#### 4. 2004 Asbestos Audit Survey/Hazardous Material Assessments

##### Department of Education and school districts lack information on asbestos assessments

- *The requirement for asbestos assessments to be completed is not disputed. However, readers should not draw the conclusion that exposure to asbestos occurred in facilities built before 1985 where major renovations were conducted.*
- *The Department of Education has been offering funding to school districts to carry out hazardous materials assessments for a number of years; however, some schools still have not been assessed.*
- *The Department requires that all school districts ensure that an assessment is completed prior to commencing maintenance work, which is the critical time for such information to be available. Since 2007 hazardous materials assessments have been completed in 50 schools.*
- *The Department has allocated funding to all school districts in 2008-09 to complete hazardous materials assessments in all schools not previously tested.*
- *School districts are in the process of having the remaining 132 schools assessed. The Department of Education has allocated approximately \$400,000 in fiscal 2008-09 to have these assessments completed. As of January 2009, Eastern School District has contracted a consultant to conduct 50 Hazardous Material Assessments in district schools requiring same out of this funding.*

##### Inadequate monitoring of asbestos assessments

- *The Department acknowledges the Auditor General's findings.*
- *Since 2002, 18 schools have had asbestos assessments completed. In addition, 11 of the 18 also had full Hazardous Material Assessments.*

### 5. 2007 Enhanced Air Quality Inspections

#### 26 enhanced inspections

- *The Department acknowledges the Auditor General's findings and has completed a further 32 enhanced inspections since January, 2007, bringing the current total to 58 schools or 21 percent of the province's current schools. In addition, the Department has allocated in excess of \$9.0 million for maintenance requirements in the original 26 schools since January of 2007.*

#### Significant air quality related issues identified

- *The Department acknowledges the Auditor General's findings.*
- *The 26 schools selected for the first phase of this pilot process were selected on the basis that these facilities were identified by the school districts as the ones in which issues were most likely present. This is indicative of the departments' proactive approach. Since January, 2007, 21 percent of the province's schools have received an enhanced inspection.*

#### Issues with enhanced inspections process

- *As noted in the report, the first 26 schools selected for the enhanced inspection pilot were initially chosen by school districts on the basis of their knowledge as to which schools might be most likely to have issues requiring attention. This allowed the pilot to quickly commence as the school districts have the most detailed knowledge of current maintenance and repair issues for their schools. It should also be noted that the process had been adjusted after the first round of inspections and the initial evaluation phase, and inspectors have been actively involved in the selection process since that time.*
- *The initial inspection protocol did include a section for the inspection of roof infrastructure, however, it was quickly determined that the inspectors did not have the necessary expertise to conduct such inspections and were not properly equipped or trained to do so from an occupational health and safety perspective. As such, it would have been irresponsible to continue to require such a physical assessment. As an alternative, inspectors were advised to recommend, as part of their inspection reports, that an appropriate building envelope assessment be conducted by qualified personnel if symptoms indicative of potential roofing issues are noted during their overall inspection of*

*the facility. (Roof and/or building envelope assessments are an important tool used to identify potential sources of water infiltration. Both the Departments of Education and Government Services believe addressing water infiltration is the best use of available resources.) This is reflective of the nature of this initiative as a pilot, and the built-in evaluation processes that pilots include, that such adaptations to the process were made. This does not imply that the inspections were “incomplete” as portrayed in the report.*

- *Subsequent to the initial round of inspections, it was decided that the Department of Education would engage engineering consultants or in-house resources to complete building envelope assessments as part of the enhanced inspections process. In addition, and also indicative of the changing nature of the pilot process, building envelope assessments are now completed on other schools in the community by the consultants when they are in the area.*
- *In the initial phases of the pilot, school districts were not instructed specifically with respect to the format or content of the action plans to be provided upon completion of an enhanced inspection. As the initial plans were received, reviewed and further discussed, this reporting process evolved and considerably improved. Further discussions will also take place to help standardize the reporting processes. Again, such evaluation and improvement is the nature of a pilot process.*
- *It is correct that some of the initial inspections were conducted during the summer months. This was in an effort to ensure that as many inspections as possible were conducted before the beginning of the 2007-08 school year. It should be noted that the inspection itself is primarily an identification of pre-existing and current infrastructure conditions rather than operational issues associated with the presence of students or staff. As such, while some conditions such as levels of carbon dioxide and/or moisture could be expected to be lower during the summer months, the infrastructure issues would be the same. However, every effort will be made to ensure that any future enhanced inspections are conducted during the school year.*

### 6. Information Systems and Policies and Procedures

#### No centralized database

- *The Department of Education acknowledges that school districts do not yet have adequate information systems to track the issues raised through enhanced inspections. As stated previously, the highest priority is addressing building envelope issues to stop water infiltration. However, the school districts are developing better quality action plans that will make issues easier to track.*
- *The Department of Government Services also acknowledges that it does not have a centralized computer database for school inspections. However, each region does keep a database of its inspections and is responsible for monitoring issues given that this is a regional (field inspection) function. In addition, all regions provide monthly reports of inspections completed to the Program and Support Services Division of the Department. This division was established in 2008 to develop a central coordination function for the regionally based programs. Government Services agrees that a coordinated IT strategy for tracking issues would be preferable and have requested funding from the Office of the Chief Information Officer (OCIO) to add schools to its AMANDA database system in 2009-10.*

#### No policies and procedures

- *Both the Department of Education and the Department of Government Services acknowledge the lack of detailed policy and procedures manuals regarding school inspections and follow-up. These will be developed as part of the on-going discussions with the school districts. It should be noted that, notwithstanding the absence of documents, government is taking a responsible and proactive stance towards addressing these issues. As part of these initiatives, the Department of Education has also requested Public Service Secretariat approval for the creation of a position for an Industrial Hygienist to focus on air quality policies and procedures. This initiative was previously included as a recommendation by the Auditor General and is indicative of the evolving and proactive approach being developed by the school boards and the Departments of Education and Government Services to address this very important issue.*



## Highlights

Highlights of a review of systems and practices in place at the Department of Education related to monitoring private training institutions.

### Why our Office Did this Review

The objective of our review was to assess the systems and practices in place at the Department of Education and to determine whether the Department is monitoring private training institutions for compliance with the requirements of the *Private Training Institutions Act* and *Regulations*.

### What our Office Recommends

Following are highlights of recommendations included in the Report that the Department should address. The Department should:

- complete three year reviews of the programs offered by private training institutions;
- perform annual compliance visits on all campuses;
- provide campuses with a written report outlining the results of each annual compliance visit.
- ask instructors to withdraw from their teaching roles if they fail to complete courses within the deadline specified;
- require institutions to have instructors approved by the Department prior to commencing teaching duties;
- ensure that the database is accurate;
- comply with the *Act* and require institutions to submit complete registration renewal applications on or before December 31 each year; and
- ensure that it receives audited financial statements from each private training institution within three months after the institution's deadline, as outlined in the *Regulations*.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

### Chapter 2, Part 2.5

#### DEPARTMENT OF EDUCATION

##### Monitoring Private Training Institutions

A private training institution is defined under the *Private Training Institutions Act* and *Regulations* as a facility used for the purpose of providing instruction or training in a vocation and a course of study whether by correspondence or home study course that has a duration of 50 or more instructional hours. The *Act* and *Regulations* govern the operations of private training institutions in the Province and require that all private training institutions be registered on an annual basis. Registrations expire on December 31 of each year. When institutions renew their registration each year, they must provide documentation such as audited financial statements, a copy of the required security bond, and names and addresses of all instructors. The Department of Education (Department) is responsible for ensuring that registered private training institutions operate within the *Act* and *Regulations*.

### What We Found

The Department and many of the private training institutions are not in full compliance with the requirements of the *Act* and *Regulations*. During our review we identified issues such as:

**Three Year Program Reviews:** Contrary to the *Regulations*, the Department has never completed a three year review of the programs offered by any private training institution.

**Annual Compliance Visits:** Contrary to Departmental policy, annual compliance visits are not performed on all campuses. In 2007, 6 of the 26 campuses with students did not have a compliance visit completed. In addition, contrary to Departmental policy, a report outlining the results of each annual compliance visit was not always provided to the campus.

**Instructor Approval:** Not all instructors at the private training institutions have been approved by the Department as required under the *Regulations*. In addition, not all approved instructors had completed all of the courses necessary to receive the required Post Secondary Instructor's Certificate.

**Registration renewal of Private Training Institutions:** Contrary to the *Act*, which requires registration renewal applications to be submitted on or before December 31 each year, the Department's Operations Manual (which is provided to all institutions) indicates that the renewal applications are to be submitted on or before January 31 of the following year. As a result, while institutions may be in compliance with requirements established by the Department, they can still be in contravention of the requirements of the *Act*. In 2008, there were 12 institutions (2007 – 19 institutions) which did not provide all the registration renewal information by the January 31 deadline established by the Department. With regards to the December 31 deadline in the *Act*, in 2008, there were 24 institutions (2007 – 23 institutions) which did not meet the deadline.

**Audited Financial Statements:** Not all private training institutions are providing audited financial statements three calendar months after their respective year-end dates as required under the *Regulations*. In 2007, only 2 of the 25 private training institutions (2006 – 1 of 25) submitted their financial statements within three months of their year end. In 2007, the private training institutions were, on average, 75 days past the required date of filing their audited financial statements. In 2006, the private training institutions were, on average, 126 days past the required date of filing their audited financial statements.

**Security Bonds and Train Out Fund:** The Department has not instructed private training institutions to have their auditors provide net tuition revenue on the audited financial statements. Although some financial statements include this information, when it is not included, the registration renewal forms have to be used. As a result, when registration renewal forms have to be used, the information used in the calculation is not subject to any third party verification.

### Background

A private training institution is defined under the *Private Training Institutions Act* and *Regulations* as a facility used for the purpose of providing instruction or training in a vocation and a course of study whether by correspondence or home study course that has a duration of 50 or more instructional hours.

The *Act* and *Regulations* govern the operations of private training institutions in the Province and require that all private training institutions be registered on an annual basis. Registrations expire on December 31 of each year. When institutions renew their registration each year, they must provide documentation such as audited financial statements, a copy of the required security bond, and names and addresses of all instructors.

As a protection to students, the *Regulations* require the following:

- Private training institutions are required to obtain a security bond to cover the tuition costs that would be due to students if the institution closed during the academic year. The minimum amount of the security bond is \$50,000 or 15% of the institution's total tuition revenue to the nearest \$1,000 from the previous academic year, whichever is greater. The maximum amount of the security bond is \$150,000.
- Private training institutions are required to contribute 1% of student tuition fees collected each year to a Train Out Fund which is operated by the Private Training Corporation (under the auspices of the Department of Education and under the authority of the *Act*). The purpose of the Train Out Fund is to provide compensation to students to complete their training if a private training institution fails to fulfill its training to students due to closure.

The *Regulations* require that each course of study offered by private training institutions be approved by the Superintendent of Private Training Institutions at the Department of Education. The *Regulations* also require that every instructor employed at a private training institution be approved by the Department prior to the instructor beginning to teach at the institution.

## Monitoring Private Training Institutions

The Minister of Education may cancel the registration of any private training institution for violations of the *Act* and *Regulations*. In addition, a director, officer or institution may be fined for violations of the *Act* and *Regulations*.

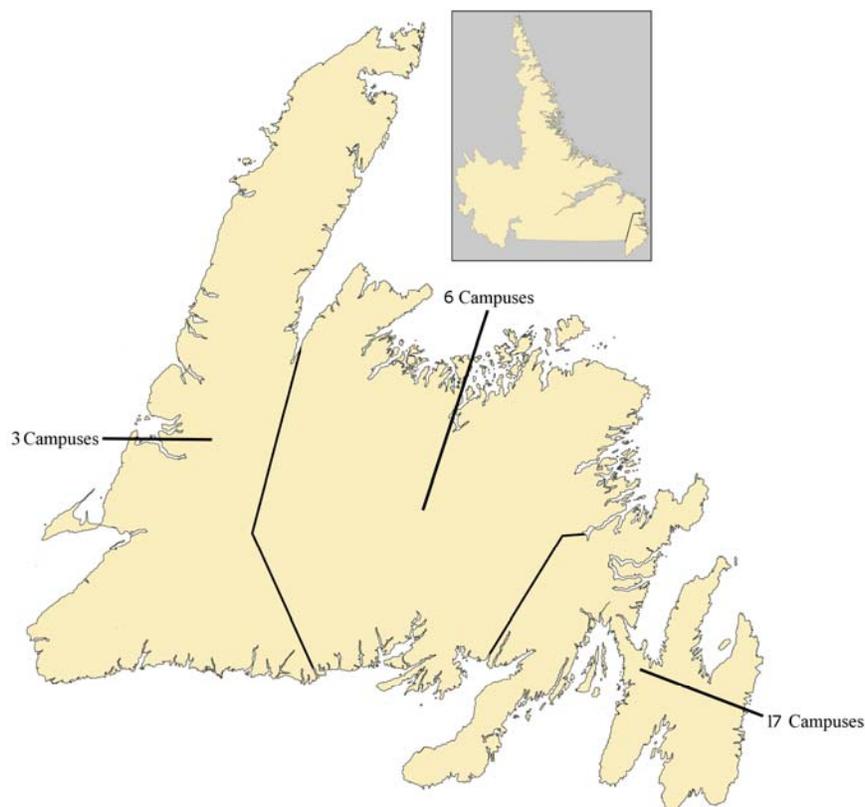
The Department of Education is responsible for ensuring that registered private training institutions operate within the *Act* and *Regulations*. To monitor private training institutions, the Department has established the Private Training Section within its Institutional and Industrial Education Division. The Private Training Section currently has three employees (two in St. John's and one in Corner Brook) who monitor and report on private training institutions in the Province. These employees report to a Manager of Private Training Institutions who reports to the Director of Institutional and Industrial Education. The Director is also the Superintendent of Private Training Institutions.

The Department has prepared and circulated to each registered private training institution, an Operations Manual for private training institutions. The manual is also available on the Department's website. The Operations Manual provides guidelines to private training institutions for submitting information to the Department as well as the requirements of student contracts, course descriptions, advertising and instructors.

At 31 March 2008, there were 25 private training institutions registered to operate in the Province. These 25 institutions operated 26 campuses on the island portion of the Province - there were no registered private training institutions in Labrador. Figure 1 shows the regions where the 26 campuses are located.

**Figure 1**

### **Private Training Institutions Campuses**



---

## **Audit Objectives and Scope**

---

### **Audit objectives**

The objective of our review was to assess the systems and practices in place at the Department of Education and to determine whether the Department is monitoring private training institutions for compliance with the requirements of the *Private Training Institutions Act* and *Regulations*.

### **Audit scope**

We interviewed officials at the Department of Education, reviewed the *Private Training Institutions Act* and *Regulations* and, policies and information submitted to the Department by the private training institutions.

We completed our review in November 2008.

---

### Overall Conclusions

The Department of Education and many of the private training institutions are not in full compliance with the requirements of the *Private Training Institutions Act* and *Regulations*. During our review we identified issues such as: complete registration renewal applications were not always submitted by the required deadline, audited financial statements were not submitted within the required three month timeframe, and instructors did not always have their training requirements completed. The Department did not perform any three year program reviews and was not always performing the required annual compliance visits. Details are outlined as follows:

#### Three Year Program Reviews

Contrary to the *Regulations*, the Department has never completed a three year review of the programs offered by any private training institution. The three year program review is designed to evaluate a program offered by a private training institution on criteria such as needs assessment, admission standards, curriculum content, program duration and graduate certification.

#### Annual Compliance Visits

Contrary to Departmental policy, annual compliance visits are not performed on all campuses. In 2007, 6 of the 26 campuses with students did not have a compliance visit completed. As a result, the Department did not compile information on the nine areas (e.g. instructional staff, programs, student records) required during compliance visits to determine compliance with the *Act*, *Regulations* and Departmental policies. In addition, contrary to Departmental policy, a report outlining the results of each annual compliance visit was not always provided to the campus.

#### Instructor Approval

Not all instructors at the private training institutions have been approved by the Department as required under the *Regulations*. From a review of the 2007 registration renewal applications, we identified that at least 8 instructors in 6 institutions were teaching courses even though the instructors had not been approved by the Department.

Not all approved instructors had completed all of the courses necessary to receive the required Post Secondary Instructor's Certificate. As at March 2008, out of 50 files reviewed, there were 15 instructors in 10 institutions who had not completed the course requirements within the required timeframe established by the Department. In fact, 12 of the 15 instructors have not completed any courses since being approved.

### Registration renewal of Private Training Institutions

Contrary to the *Act*, which requires registration renewal applications to be submitted on or before December 31 each year, the Department's Operations Manual (which is provided to all institutions) indicates that the renewal applications are to be submitted on or before January 31 of the following year. As a result, while institutions may be in compliance with requirements established by the Department, they can still be in contravention of the requirements of the *Act*.

Not all institutions submitted complete registration renewal information within the required deadline. In 2008 there were 12 institutions (2007 – 19 institutions) which did not provide all the registration renewal information by the January 31 deadline established by the Department. With regards to the December 31 deadline in the *Act*, in 2008, there were 24 institutions (2007 – 23 institutions) which did not meet the deadline. As a result, many private training institutions in the Province were operating in contravention of the *Act* during a portion of the 2008 and 2007 calendar years because they did not have their completed registration renewal information submitted on or before 31 December 2007 or 31 December 2006 respectively.

### Audited Financial Statements

Not all private training institutions are providing audited financial statements three calendar months after their respective year-end dates as required under the *Regulations*. In 2007 only 2 of the 25 private training institutions (2006 – 1 of 25) submitted their financial statements within three months of their year end. In 2007, the private training institutions were, on average, 75 days past the required date of filing their audited financial statements. In 2006, the private training institutions were, on average, 126 days past the required date of filing their audited financial statements.

### Security Bonds and Train Out Fund

The Department has not instructed private training institutions to have their auditors provide net tuition revenue on the audited financial statements. The net tuition revenue amount is required in order to calculate the value of a bond required by an institution and the amount that the institution has to contribute to the Train Out Fund. Although some financial statements include this information, when it is not included, the registration renewal forms have to be used. As a result, when registration renewal forms have to be used, the information used in the calculation is not subject to any third party verification.

## Monitoring Private Training Institutions

The results of our review are detailed in the following sections:

1. Program Reviews and Compliance Visits
2. Instructor Approval
3. Annual Registration Renewal
4. Audited Financial Statements

---

### 1. Program Reviews and Compliance Visits

---

#### Introduction

The *Private Training Institutions Regulations* require that the Department review, every three years, all programs that an institution offers. This program review is required to evaluate the program on the following criteria: a needs assessment for the program being offered, including a market analysis; admission standards; curriculum content; program duration; and graduate certification. Our review indicated the following:

---

#### Program reviews have never been completed

Contrary to the *Regulations*, the Department has never completed a three year review of the programs offered by any private training institution. A program review is only performed if an institution requests a change or the Provincial standards for that program change.

---

#### Compliance visits

In addition to the three year program review, Departmental policy requires that a formal compliance visit be conducted annually and that the visit be followed by a written compliance report to the institution. As required, a follow up visit will be scheduled. As part of the annual compliance visit, the Department has established a standard form which must be completed during each visit. The form gathers information in the following nine areas:

- general information;
  - classroom, laboratory and shop facilities;
  - resource materials provided to students;
  - instructional staff;
  - programs offered by institutions;
  - program work terms, where applicable;
  - maintenance and content of student records;
  - services offered to students; and
  - any additional information considered necessary.
-

## Monitoring Private Training Institutions

### Annual compliance visits are not being completed

Our review of information provided by the Department indicated the following:

Contrary to Departmental policy, annual compliance visits are not performed on all campuses. Details are provided in Appendix A. For example:

- in 2007, 6 of the 26 campuses (one institution has 2 campuses and each requires a visit) with students did not have a compliance visit completed.
- for the calendar years 2003 through 2007, 15 of 26 campuses with students did not have the required annual compliance visit performed in at least one year from 2003 to 2007.

As a result, the Department did not compile information on the nine areas required during compliance visits to determine compliance with the *Act*, *Regulations* and Departmental policies.

### Written compliance reports not being provided

Our review of two consecutive reports, prepared during the calendar years 2003 to 2007, for a sample of 13 of the 26 campuses (i.e. 26 reports) indicated that 5 reports relating to 4 private training institutions were not provided by the Department to the institutions for review. Of the 5, 3 reports relating to 3 private training institutions identified issues that required corrective action from the institution.

## Recommendations

The Department should:

- complete three year reviews of the programs offered by private training institutions;
- perform annual compliance visits on all campuses; and
- provide campuses with a written report outlining the results of each annual compliance visit.

### 2. Instructor Approval

#### Introduction

Private training institutions are required to have an instructor approved by the Department before the instructor can teach. The *Private Training Institutions Regulations* state “*Private training institutions shall seek approval for instructional staff before hiring in a format specified by the Minister.*”

The *Regulations* also provide the Minister with the authority to prescribe the qualifications that an instructor must possess in order to teach at a private training institution. These qualifications are a combination of education and experience and are detailed in the Department’s Operations Manual.

In order to be an approved instructor, an individual must possess a certificate or diploma related to the field of instruction supplemented by at least two years of experience within the field, with the combination of training and experience being at least six years. However, the *Regulations* also provide the Minister with the authority to approve the employment of instructors who may not have this combination of education and experience.

Another educational requirement is that an instructor must obtain a Post-Secondary Instructor’s Certificate. The Certificate is issued by the Department of Education and individuals must complete six courses that are offered by Memorial University of Newfoundland to qualify for a Certificate. Departmental policy requires that, although instructors are not required to possess this Certificate in order to begin teaching, they earn the Certificate within three years of starting their teaching career. Instructors who possess a Bachelor of Post Secondary Education or a Masters of Education would not be required to obtain a Post Secondary Instructor’s Certificate.

The Operations Manual indicates that instructors are to complete at least two courses per year. The Department may also grant a one year extension to instructors to earn their Certificate. The Operations Manual states that instructors who do not comply within the specified time frame will be asked to withdraw from their instructing roles and will not be granted further approval until they complete the required courses.

Registration of a private training institution may be delayed if an institution has unregistered instructors teaching and registration will not be issued until the necessary documents are received.

## Monitoring Private Training Institutions

Our review indicated the following:

- Contrary to Departmental policy, instructors are not asked to withdraw from their teaching roles if they fail to complete the courses needed to obtain the Certificate within the deadline specified. Instead, the Department allowed the instructors to continue to teach what they had been previously approved to teach; however, the Department will not approve the instructor to teach any other courses.
- Not all instructors at the private training institutions have been approved by the Department as required under the *Regulations*. From a review of the 2007 registration renewal applications, we identified that at least 8 instructors in 6 institutions were teaching courses even though the instructors had not been approved by the Department.
- Contrary to Departmental policy, instructors are not required to complete at least two courses each year. Instead, the Department requires that the instructors complete all six courses within the required three year timeframe.

**Not all  
instructors  
are approved**

**Instructors  
are not  
completing  
Certificate  
courses as  
required**

We reviewed 50 instructor files (out of 443 files that were active on 13 March 2008) to determine whether the instructor completed their courses within the time frame specified. We found the following:

- 15 instructors in 10 institutions had not completed courses for their Certificate within the deadlines given to them by the Department. Of these 15, 12 had not completed any courses since being approved as an instructor.
- 20 instructors in 9 institutions had not reached the deadline given to them to complete courses for their Certificate. Of these 20:
  - 5 have been approved as an instructor for over one year and have not completed any courses towards their Certificate; and
  - 2 have been approved as an instructor for at least four years and have not completed two courses per year towards their Certificate as required by policy.

## Monitoring Private Training Institutions

The Department maintains a file for each instructor that contains information such as a request from the institution to have them added to the approved list of instructors, and verification of credentials (e.g. resume, certificates, diplomas, transcripts). The information in these files is gathered during the registration renewal process or the required annual compliance review.

Also, an instructor database is maintained by the Department which includes a list of all instructors and such things as their education, work experience and what courses they are approved to teach. The information, for the most part, comes from information obtained during registration renewal.

### **Departmental database is not accurate**

Our review of the Department's database in February 2008 indicated that the database was not accurate as evidenced by the following:

- Although 7 private training institutions were no longer operating, 34 instructors associated with these institutions were still listed as active in the database;
- 2 instructors had been issued a Post Secondary Instructor Certificate; however, the database had not been updated and it showed the instructors had courses remaining to be completed; and
- 1 instructor was assigned courses to be completed by 2010 but the database shows 0 courses completed and 0 courses left to be completed.

### **Recommendations**

The Department should:

- ask instructors to withdraw from their teaching roles if they fail to complete the courses needed to obtain the Post Secondary Instructor's Certificate within the deadline specified;
- require institutions to have instructors approved by the Department prior to commencing teaching duties;
- require instructors to complete at least two courses each year towards the Post Secondary Instructor's Certificate; and
- ensure that the database is accurate.

### 3. Annual Registration Renewal

**Introduction** The *Private Training Institutions Act* requires that a private training institution be registered annually with the registration expiring on December 31 of each year. The *Act* requires that, by December 31, each training institution submit a complete application for registration renewal with all the applicable information (e.g. audited financial statements, proof of a valid security bond).

The purpose of the security bond is to cover the tuition costs that would be due to students if the institution closed during the academic year. The bond amount is 15% of total tuition revenue with a minimum bond of \$50,000 and a maximum bond of \$150,000. If there are no issues identified, the Department will renew the institution's registration.

We reviewed the registration renewals of the 25 active private training institutions for 2007 and 2008 and found the following:

- Although the *Act* requires a complete registration renewal application to be submitted by December 31, the Department has informed the private training institutions that the registration renewal applications are not required until January 31 i.e. one month after the requirement in the *Act*.
- For the purposes of calculating the amount of the security bond, the Department uses the amount of net tuition revenue for the last fiscal year from either the audited financial statements or the registration renewal forms that are provided by the institution. Audited financial statements are not always used because, in many cases, the financial statements do not show the net tuition revenue as a separate item. As a result, when registration renewal forms have to be used, the information used in the calculation is not subject to any third party verification.

**Security bond amounts not verified in many cases**

The Department has not directed the institutions to have their auditors provide this information on a consistent basis.

- The Department processed three registration renewals for the 2007 calendar year before the institution provided audited financial statements for its most recent fiscal year end which are required by the *Act*. Details are as follows:

**Figure 2**

**Institutions Registered Prior  
to the Receipt of Audited Financial Statements  
2007 Calendar Year**

<b>Institution</b>	<b>Date Registered</b>	<b>Date Financial Statements Received</b>
Keyin College (Carbonear)	12 October 2007	16 October 2007
Keyin College (Gander)	22 March 2007	16 October 2007
Keyin College (Grand Falls/Winsor)	22 March 2007	16 October 2007

**Registration renewal applications received late in 2008 and 2007**

- Not all institutions submitted complete registration renewal information within the required deadline. In 2008 there were 12 institutions (2007 – 19 institutions) which did not provide all the registration renewal information by the January 31 deadline established by the Department. With regards to the December 31 deadline in the *Act*, in 2008, there were 24 institutions (2007 – 23 institutions) which did not meet the deadline. As a result, many private training institutions in the Province were operating in contravention of the *Act* during a portion of the 2008 and 2007 calendar years because they did not have their completed registration renewal information submitted on or before 31 December 2007 or 31 December 2006 respectively. Details relating to 2008 and 2007 are included in Appendices B and C respectively.
- For 1 institution in 2008, the Department could not confirm the receipt date of the registration renewal application. Also, for 2007, the Department could not confirm the receipt date of either the registration renewal application or the audited financial statements of 1 institution and could not confirm the receipt date of the audited financial statements of a second institution. Therefore, it was not possible to assess these institutions' compliance with either the January 31 deadline given by the Department or the December 31 deadline specified in the *Act* for either 2008 or 2007.

### Recommendations

The Department should:

- comply with the *Act* and require institutions to submit complete registration renewal applications on or before December 31 each year; and
- instruct private training institutions to have their auditors provide net tuition revenue on the audited financial statements.

## 4. Audited Financial Statements

### Introduction

The *Regulations* state that audited financial statements are to be filed with the Minister within 3 months of the institution's fiscal year end. Once received by the Department, these financial statements are used to determine the adequacy of the institutions' security bonds. The financial statements are also provided to the Private Training Corporation (Corporation) so that the 1% contribution that the institutions have to contribute to the Train Out Fund as required by the *Regulations* can be calculated and collected.

### Audited financial statements received late

We reviewed the financial statement submissions and found that not all institutions were providing audited financial statements within the required three month timeframe. For example:

- In 2007 only 2 of the 25 private training institutions submitted their financial statements within three months of their year end. The audited financial statements were late being received by the Department by an average of 75 days. There were 8 institutions with audited financial statements that were more than 100 days late, with 1 institution that was 153 days late. Details are provided in Appendix D.
- In 2006 only 1 of the 25 private training institutions submitted their financial statements within three months of their year end. The audited financial statements were late being received by the Department by an average of 126 days. There were 11 institutions with audited financial statements that were more than 100 days late, with 3 institutions that were 320 days late. Details are provided in Appendix E.

## Monitoring Private Training Institutions

It is important for the Department and the Corporation to receive and review audited financial statements as required by the *Regulations*. Timely financial statements can help identify issues that the Department may need to address. However, we found that even when issues are identified, audited financial statements are still not being provided within the required deadline. For example:

- One institution which had a going concern qualification in its audited financial statements for the year ended 31 July 2006 did not provide these statements to the Department until 10 May 2007, 191 days past the 31 October 2006 deadline. Subsequent to the receipt of these financial statements, the Corporation closely monitored the situation to ensure that students were protected in the event of a closure. The going concern qualification was also in the financial statements for the year ended 31 July 2007, which were received on 19 February 2008, 111 days past the 31 October 2007 deadline.

### Recommendation

The Department should ensure that it receives audited financial statements from each private training institution within three months after the institution's deadline, as outlined in the *Regulations*.

## Department's Response

*The Department acknowledges that there are improvements required in areas identified by the Auditor General in this review.*

### **1. Program Reviews and Compliance Visits**

*The Department notes improvements have been implemented, which should address several of the recommendations. With respect to conducting program reviews and annual compliance visits, the following initiatives have been implemented:*

## Monitoring Private Training Institutions

- *An officer was hired in July 2008 to commence the three year program review. Research has been completed on program review processes at other post-secondary institutions, concepts upon which the three-year review will be based are under development and will be presented for approval within the next six months. This will include an identification of priority programs to be reviewed. The Department expects these reviews will commence this year.*
- *A compliance visit work plan has been implemented and the visits with reports on all 25 schools will be completed in 2009. In 2008, 17 reports were completed (five are in drafting stages) and due to scheduling conflicts in December 2008, three more visits will occur in January 2009. A tracking system has been implemented to ensure that the manager follows up on outstanding visits.*

*The Department notes compliance visits and reports are just one of a series of tools used to monitor institutions. Whenever an institution is seeking to hire a new instructor, make changes to an existing program, or add a new program, close contact is maintained with the Department.*

### **2. Instructor Approvals**

*With respect to instructor approvals, the Department will remove inactive instructors from the database as recommended. While the Department needs to maintain flexibility in approving instructors to ensure students continue to receive training, a number of changes are being made to improve processing such as improvements to administrative practices including the implementation of a bring-forward and document tracking system. Furthermore, increased distance education post-secondary offerings at Memorial University now gives instructors who are not in close proximity to a campus access to required courses to complete these programs, thus enhancing compliance with instructor certification requirements.*

### **3. Annual Registration Renewal**

*With respect to the annual institutional re-registration process, the Department will ensure these are tracked electronically so that timelines are addressed as recommended. While the Act does not require institutions to have auditors include net tuition revenue on the audited financial statements, such disclosure will now be required by the Department where appropriate. New initiatives under consideration for 2009 will also include enhancements to the Private Training Administration system.*

### **4. Audited Financial Statements**

*In terms of the timeliness of receiving audited financial statements, the Department will continue to track the filing of these statements and will ensure tools such as instructor or program approvals are used to enhance compliance. The requirement for a three-month submission after year end dates is closely monitored but institutions often encounter challenges with their accounting service providers.*

---

## Monitoring Private Training Institutions

### Appendix A

**Department of Education  
Private Training Institutions  
Annual Compliance Visits  
2003 through 2007 Calendar years**

Annual Compliance Visits					
Private Training Institution	Compliance Visit Completed?				
	2003	2004	2005	2006	2007
Academy Canada (St. John's) - Kenmount	Y	N	Y	N	Y
Academy Canada (St. John's) - Harding	Y	Y	Y	N	Y
BAC Training Centre Inc.	N/A	N/A	N <sup>1</sup>	N <sup>1</sup>	N <sup>1</sup>
Carpenters Millwrights College Inc.	Y	Y	Y	Y	Y
CompuCollege School of Business	Y	Y	Y	Y	N
U.A. Training Centre	Y	N	Y	N	N
Woodford Training Centre Inc.	N	Y	Y	Y	Y
Academy Canada (Corner Brook)	N	Y	Y	N	N
Central Training Academy	N	Y	N	N	N
Corona College	Y	N	Y	N	Y
DieTrac Technical Institute	Y	N	Y	N	N
Gander Flight Training	N	N	N	N <sup>2</sup>	N <sup>2</sup>
Keyin College (Gander)	Y	N	Y	N	Y
Keyin College (Grand Falls-Windsor)	Y	N	Y	N	Y
Victorian Order of Nurses	Y	N <sup>1</sup>	Y	N <sup>1</sup>	N <sup>1</sup>
Western College	N	Y	N	Y	Y
Boilermakers Industrial Training Centre	N <sup>1</sup>	N <sup>1</sup>	Y	N <sup>1</sup>	N <sup>1</sup>
Canadian Training Institute	Y	Y	Y	Y	Y
Centrac College of Business, Trades, and Technology	Y	Y	Y	Y	Y
Ironworkers Education and Training Co. Inc.	Y	Y	Y	Y	Y
Keyin College (St. John's)	Y	Y	Y	Y	Y
Keyin College (Carbonear)	Y	Y	Y	Y	Y
Keyin College (Clareville)	Y	Y	Y	N	Y

## Monitoring Private Training Institutions

Annual Compliance Visits					
Private Training Institution	Compliance Visit Completed?				
	2003	2004	2005	2006	2007
Keyin College (Marystown)	Y	Y	Y	Y	Y
LeMoine's School of Hair Design	Y	Y	Y	Y	Y
Operating Engineers College	N	N	Y	Y	N
<b>Compliance visit not completed</b>	<b>7</b>	<b>10</b>	<b>4</b>	<b>14</b>	<b>10</b>
<b>Average instance of visits not being completed</b>	<b>9</b>				

N/A – This institution commenced operations during the 2004 calendar year.

1. The Department indicated that there were no students.
2. The Department indicated that there were no students in programs that they monitor.

Source: Department of Education

## Monitoring Private Training Institutions

### Appendix B

#### Department of Education Private Training Institutions Receipt Dates of Complete Registration Renewal Applications 2008

Institution	Date registration renewal application received	Date audited financial statements received	# days past 31 December 2007	# days past 31 January 2008
Academy Canada (Corner Brook)	30 January 2008	8 January 2008	30	0
Academy Canada (St. John's)	30 January 2008	8 January 2008	30	0
BAC Training Centre Inc.	30 January 2008	30 January 2008	30	0
Boilermakers Industrial Training Centre	18 January 2008	29 August 2007	18	0
Canadian Training Institute	4 February 2008	15 June 2007	35	4
Carpenters Millwrights College Inc.	18 January 2008	18 January 2008	18	0
Centrac College of Business, Trades & Technology	4 February 2008	25 April 2007	35	4
Central Training Academy	31 January 2008	18 January 2008	31	0
CompuCollege School of Business	25 January 2008	31 January 2008	31	0
Corona College	31 January 2008	2 April 2007	31	0
DieTrac Technical Institute	N/A	19 February 2008	N/A	N/A
Gander Flight Training	1 February 2008	24 January 2008	32	1
Ironworkers Education and Training Co. Inc.	22 February 2008	14 June 2007	53	22
Keyin College (St. John's)	1 February 2008	9 January 2008	32	1
Keyin College (Carbonear)	4 February 2008	5 March 2008	65	34
Keyin College (Clareville)	30 January 2008	28 April 2008	119	88
Keyin College (Gander)	30 January 2008	8 January 2008	30	0
Keyin College (Grand-Falls/Winsor)	30 January 2008	8 January 2008	30	0
Keyin College (Marystown)	19 March 2008	10 April 2008	101	70
LeMoine's School of Hair Design	31 January 2008	13 December 2007	31	0
Operating Engineers College	1 February 2008	20 March 2007	32	1
U.A. Training Centre	27 February 2008	27 February 2008	58	27

## Monitoring Private Training Institutions

Institution	Date registration renewal application received	Date audited financial statements received	# days past 31 December 2007	# days past 31 January 2008
Victorian Order of Nurses	30 January 2008	21 September 2007	30	0
Western College	4 February 2008	28 March 2008	88	57
Woodford Training Centre Inc.	26 February 2008	26 February 2008	57	26

N/A: The Department cannot confirm when the institution's registration renewal application was received.

Note Days past the 31 December 2007 deadline or the 31 January 2008 deadline is determined by taking the later of the date that the registration renewal application was received or the date that the audited financial statements were received and comparing this date to 31 December 2007 or 31 January 2008 respectively.

## Monitoring Private Training Institutions

### Appendix C

#### Department of Education Private Training Institutions Receipt Dates of Complete Registration Renewal Applications 2007

Institution	Date registration renewal application received	Date audited financial statements received	# days past 31 December 2006	# days past 31 January 2007
Academy Canada (Corner Brook)	31 January 2007	15 January 2007	31	0
Academy Canada (St. John's)	31 January 2007	15 January 2007	31	0
BAC Training Centre Inc.	6 February 2007	17 May 2007	137	106
Boilermakers Industrial Training Centre	5 February 2007	20 July 2006	36	5
Canadian Training Institute	23 February 2007	7 July 2006	54	23
Carpenters Millwrights College Inc.	N/A	N/A	N/A	N/A
Centrac College of Business, Trades & Technology	14 February 2007	21 April 2006	45	14
Central Training Academy	14 February 2007	3 May 2006	45	14
CompuCollege School of Business	9 February 2007	15 February 2007	46	15
Corona College	2 February 2007	21 March 2006	33	2
DieTrac Technical Institute	27 June 2007	10 May 2007	178	147
Gander Flight Training	8 March 2007	22 December 2006	67	36
Ironworkers Education and Training Co. Inc.	26 January 2007	20 April 2006	26	0
Keyin College (St. John's)	5 February 2007	4 May 2007	124	93
Keyin College (Carbonear)	9 March 2007	16 October 2007	289	258
Keyin College (Clareville)	2 February 2007	4 December 2006	33	2
Keyin College (Gander)	22 March 2007	16 October 2007	289	258
Keyin College (Grand-Falls/Winsor)	6 February 2007	16 October 2007	289	258
Keyin College (Marystown)	9 March 2007	25 January 2007	68	37
LeMoine's School of Hair Design	27 February 2007	27 April 2007	117	86

## Monitoring Private Training Institutions

Institution	Date registration renewal application received	Date audited financial statements received	# days past 31 December 2006	# days past 31 January 2007
Operating Engineers College	7 February 2007	N/A	N/A	N/A
U.A. Training Centre	5 February 2007	5 February 2007	36	5
Victorian Order of Nurses (Note 1)	20 September 2007	21 September 2007	264	233
Western College	2 February 2007	8 May 2007	128	97
Woodford Training Centre Inc.	31 January 2007	2 October 2006	31	0

N/A: The Department cannot confirm when the institution's financial statements or registration renewal applications were received.

Note 1: Delay due to discussions between Department and Victorian Order of Nurses regarding requirement to register.

Note 2: Days past the 31 December 2006 deadline or the 31 January 2007 deadline is determined by taking the later of the date that the registration renewal application was received or the date that the audited financial statements were received and comparing this date to 31 December 2006 or 31 January 2007 respectively.

## Monitoring Private Training Institutions

### Appendix D

#### Department of Education Private Training Institutions 2007 Audited Financial Statements Submissions

<b>2007 Financial Statement Submissions</b>				
<b>Institution</b>	<b>Year End Date</b>	<b>Date Due</b>	<b>Date Received</b>	<b># Days past due</b>
Academy Canada (Corner Brook)	31 August 2007	30 November 2007	8 January 2008	39
Academy Canada (St. John's)	31 August 2007	30 November 2007	8 January 2008	39
BAC Training Centre Inc.	31 August 2007	30 November 2007	30 January 2008	61
Boilermakers Industrial Training Centre	31 March 2007	30 June 2007	29 August 2007	60
Canadian Training Institute	31 December 2007	31 March 2008	6 May 2008	36
Carpenters Millwrights College Inc.	30 June 2007	30 September 2007	18 January 2008	110
Centrac College of Business, Trades & Technology	31 December 2007	31 March 2008	31 March 2008	0
Central Training Academy	31 December 2007	31 March 2008	3 April 2008	3
CompuCollege School of Business	31 May 2007	31 August 2007	31 January 2008	153
Corona College	30 November 2007	29 February 2008	31 January 2008	0
DieTrac Technical Institute	31 July 2007	31 October 2007	19 February 2008	111
Gander Flight Training	31 July 2007	31 October 2007	24 January 2008	85
Ironworkers Education and Training Co. Inc.	31 December 2007	31 March 2008	4 April 2008	4
Keyin College (St. John's)	31 August 2007	30 November 2007	9 January 2008	40
Keyin College (Carbonear)	31 August 2007	30 November 2007	5 March 2008	96
Keyin College (Clareville)	31 August 2007	30 November 2007	28 April 2008	150
Keyin College (Gander)	31 August 2007	30 November 2007	8 January 2008	39
Keyin College (Grand-Falls/Winsor)	31 August 2007	30 November 2007	8 January 2008	39
Keyin College (Marystown)	31 August 2007	30 November 2007	10 April 2008	132
LeMoine's School of Hair Design	30 June 2007	30 September 2007	13 December 2007	74
Operating Engineers College	31 December 2007	31 March 2008	26 May 2008	56
U.A. Training Centre	30 June 2007	30 September 2007	27 February 2008	150
Victorian Order of Nurses	31 March 2007	30 June 2007	21 September 2007	83

## Monitoring Private Training Institutions

<b>2007 Financial Statement Submissions</b>				
<b>Institution</b>	<b>Year End Date</b>	<b>Date Due</b>	<b>Date Received</b>	<b># Days past due</b>
Western College	31 July 2007	31 October 2007	28 March 2008	149
Woodford Training Centre Inc.	30 June 2007	30 September 2007	26 February 2008	149
<b>Average</b>				<b>74.32</b>

## Monitoring Private Training Institutions

### Appendix E

#### Department of Education Private Training Institutions 2006 Audited Financial Statements Submissions

2006 Financial Statement Submissions				
Institution	Year End Date	Date Due	Date Received	# Days past due
Academy Canada (Corner Brook)	31 August 2006	30 November 2006	15 January 2007	46
Academy Canada (St. John's)	31 August 2006	30 November 2006	15 January 2007	46
BAC Training Centre Inc.	31 August 2006	30 November 2006	17 May 2007	168
Boilermakers Industrial Training Centre	31 March 2006	30 June 2006	20 July 2006	20
Canadian Training Institute	31 December 2006	31 March 2007	15 June 2007	76
Carpenters Millwrights College Inc.	30 June 2006	30 September 2006	N/A	
Centrac College of Business, Trades & Technology	31 December 2006	31 March 2007	25 April 2007	25
Central Training Academy	31 December 2006	31 March 2007	18 January 2008	293
CompuCollege School of Business	31 May 2006	31 August 2006	15 February 2007	168
Corona College	30 November 2006	28 February 2007	2 April 2007	33
DieTrac Technical Institute	31 July 2006	31 October 2006	10 May 2007	191
Gander Flight Training	31 July 2006	31 October 2006	22 December 2006	52
Ironworkers Education and Training Co. Inc.	31 December 2006	31 March 2007	14 June 2007	75
Keyin College (St. John's)	31 August 2006	30 November 2006	4 May 2007	155
Keyin College (Carbonear)	31 August 2006	30 November 2006	16 October 2007	320
Keyin College (Clareville)	31 August 2006	30 November 2006	4 December 2006	4
Keyin College (Gander)	31 August 2006	30 November 2006	16 October 2007	320
Keyin College (Grand-Falls/Winsor)	31 August 2006	30 November 2006	16 October 2007	320
Keyin College (Marystown)	31 August 2006	30 November 2006	25 January 2007	56
LeMoine's School of Hair Design	30 June 2006	30 September 2006	27 April 2007	209
Operating Engineers College	31 December 2006	31 March 2007	20 March 2007	0
U.A. Training Centre	30 June 2006	30 September 2006	5 February 2007	128
Victorian Order of Nurses (Note 1)	31 March 2006	30 June 2006	21 September 2007	448

## Monitoring Private Training Institutions

2006 Financial Statement Submissions				
Institution	Year End Date	Date Due	Date Received	# Days past due
Western College	31 July 2006	31 October 2006	8 May 2007	189
Woodford Training Centre Inc.	30 June 2006	30 September 2006	2 October 2006	2
<b>Average</b>				<b>125.91</b>

N/A: The Department cannot confirm when the institution's financial statements were received (not included in average).

Note 1: Delay due to discussions between Department and Victorian Order of Nurses regarding requirement to register (not included in average)

---



## Highlights

**Highlights of a review of MMSB's Used Tire Recycling Program since MMSB took over responsibility for operations in June 2004 to 31 March 2008.**

### Why our Office Did this Review

The objectives of our review of the Used Tire Recycling Program were to determine whether: MMSB was attaining its goal of collecting, processing, and marketing processed used tires; there were adequate management information systems in place to administer the Program throughout the Province; the Program was adequately funded from levies and related remittances; and MMSB was complying with requirements of governing legislation including *Waste Management Regulations, 2003* under the *Environmental Protection Act*.

### What our Office Recommends

We recommend that the MMSB should, in conjunction with Government, take the necessary steps to ensure that a sustainable Used Tire Recycling Program is put in place which meets all its objectives of collecting, transporting, processing and recycling of used tires.

In addition, the MMSB should ensure that:

- efforts are made to investigate why the used tire recovery rates are declining;
- used tires are being recovered at an acceptable rate; and
- the inventory of used tires at Bull Arm are stored in compliance with required standards.

Furthermore, we recommend that Government should ensure that a solution is found to the growing level of stockpiles of ATV and off road tires at dealer sites.

### What the MMSB Said

To provide balance to this report and to ensure full disclosure, the MMSB was asked to formulate a response to our findings and conclusions. The MMSB response, verbatim, is included at the end of this report. Readers are encouraged to consider the MMSB comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

### Chapter 2, Part 2.6

#### DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Multi-Materials Stewardship Board

Used Tire Recycling Program

The Multi-Materials Stewardship Board (MMSB) operates under the authority of the *Environmental Protection Act*. MMSB develops, manages, and administers Provincial waste diversion programs as prescribed in the *Waste Management Regulations, 2003 (Regulations)* or as authorized by the Minister of Environment and Conservation. Part III of the *Waste Management Regulations, 2003* specifies requirements for the Used Tire Recycling Program (Program), the intent of which is to collect, process, and market processed used tires.

### What We Found

We have concluded that the MMSB has not been able to ensure that the objectives of the Program have been met. Since the Program's inception in April 2002, there have been two failed attempts at contracting out the combined used tire collection, transportation, and processing/recycling functions with private operators. Since the MMSB took over operations of the Program in June 2004, it has put an infrastructure in place for the collection and temporary storage of used tires; however, an additional attempt to attract a private operator to take over the processing/recycling side of the operations in 2005 was also unsuccessful.

More than four years after MMSB took over the operations of the Used Tire Recycling Program as an interim measure, there is still no solution in place for the processing/recycling of used tires. In particular, our review indicated the following:

- MMSB has a used tire recovery rate of only 57% for 2007-08. This is considerably lower than their current targeted recovery rate of 70% and the 80% that would be expected in a mature market.
- At 31 March 2008, there were 1.3 million tires in stockpiles (1.2 million at Placentia and .1 million at Bull Arm) awaiting a processing solution. Since 2002, MMSB has not been able to arrange a processing/recycling solution to deal with the mounting inventory of used tires in the Province.
- There are safety concerns related to the interim storage of .1 million used tires at the Bull Arm site.
- Since the inception of the Used Tire Recycling Program in April 2002 to 31 March 2008, MMSB had tire levy revenues totalling \$8,882,000 and expenses totalling \$8,858,000, resulting in a very small surplus of \$24,000. This shows MMSB does not have the funds within this Program to pay for processing/recycling.
- As a result of the continued maintenance of a large inventory of used tires pending a solution for used tire processing, MMSB has and will continue to pay significant interim contingency costs. With no processing/recycling solution implemented, these storage costs will continue to escalate. For 2008, storage costs totalled \$663,000. Given the steady increase in the tire inventory, storage costs will continue to increase and could reach \$850,000 for 2009 and more than \$1 million for 2010.
- Under a proposed plan for an in-Province tire processing solution, one time costs of at least \$5.7 million in total are estimated for processing existing inventory, transporting aggregate to civil engineering projects, and continued interim storage costs at Placentia.

MMSB has indicated that funds required for the planned initiative are not available from the Used Tire Recycling Program and would have to be obtained from another MMSB source, most likely the Used Beverage Container Recycling Program. This means that at least in the short-term, a portion of the surplus proceeds from deposits paid by consumers on beverage containers would be needed to subsidize the Used Tire Recycling Program.

MMSB has also indicated that, under the latest proposal, existing levies charged on new tires need to be raised an estimated \$1.50 to \$2.00 per tire sold in order to sustain the continued future operations of the Used Tire Recycling Program.

### Background

---

#### Agency Overview

The Multi-Materials Stewardship Board (MMSB) was established as an agency of the Crown in 1996. The MMSB reports to the Minister of Environment and Conservation. Its purpose is to develop, implement and manage waste diversion and recycling programs throughout the Province as set by Government. MMSB's mandate has been expanded over time to include the administration of the Waste Management Trust Fund and the development and implementation of public education initiatives to promote more progressive waste management practices throughout the Province.

MMSB has a Headquarters Office in Mount Pearl and four warehouse locations in Wabush, Stephenville, Bishop's Falls and St. John's. At 31 March 2008, MMSB had a total of staff complement of 25 positions of which 16 were filled and 9 were vacant.

---

#### Used Tire Recycling Program

The Multi-Materials Stewardship Board operates under the authority of the *Environmental Protection Act*. MMSB develops, manages, and administers Provincial waste diversion programs as prescribed in the *Waste Management Regulations, 2003 (Regulations)* or as authorized by the Minister of Environment and Conservation. Part III of the *Waste Management Regulations, 2003* specifies requirements for the Used Tire Recycling Program.

In April 2002, MMSB, on Government's direction, implemented the Used Tire Recycling Program. It is financed through retailer-based levies on the sale of new highway tires as specified in the *Regulations*.

The Used Tire Recycling Program applies to tires used on highway vehicles within the Province and includes tires for passenger vehicles, light trucks and tractor trailers. At the time of purchase a levy is charged based upon the tire size. A \$3 levy is charged on tires with a rim size equal to or less than 17 inches in diameter and a \$9 levy is charged on tires with a rim size between 17 inches and 24.5 inches as prescribed in the *Regulations*. The levies are reported and remitted by tire retailers to the MMSB on an agreed basis (monthly - primarily larger tire retailers, quarterly - smaller tire retailers). Levies on the purchase of new tires are intended to finance all aspects of the Used Tire Recycling Program.

---

## Used Tire Recycling Program

**Financial Information** A summary of information contained in the MMSB audited financial statements is contained in Figure 1 which follows.

**Figure 1**

**Used Tire Recycling Program  
Financial Information  
Years Ended 31 March  
(\$000's)**

Category	2003	2004	2005	2006	2007	2008	Total
<b>Revenue</b>							
- Tire levy remittances	\$ 1,263	\$ 1,443	\$ 1,407	\$ 1,474	\$ 1,510	\$ 1,785	\$ 8,882
<b>Expenses</b>							
- Disposal costs	-	-	-	1	-	-	1
- Interim contingency costs <sup>1</sup>	-	-	1,312	588	1,354	663	3,917
- Freight and transportation	410	508	85	700	770	709	3,182
- Processing	-	556	7	-	-	-	563
- Storage	10	-	-	20	-	-	30
- Administration	189	202	258	178	203	135	1,165
	609	1,266	1,662	1,487	2,327	1,507	8,858
<b>Net income (loss)</b>	<b>654</b>	<b>177</b>	<b>(255)</b>	<b>(13)</b>	<b>(817)</b>	<b>278</b>	<b>24</b>
<b>Surplus (deficit), Beginning of year</b>	-	654	831	576	563	(254)	
<b>Surplus (deficit), End of year</b>	\$ 654	\$ 831	\$ 576	\$ 563	\$ (254)	\$ 24	

Source: MMSB audited financial statements

1. Details are included in Figure 2.

As Figure 1 shows, revenues received from tire levies have been able to cover related total expenses incurred to 31 March 2008.

## Used Tire Recycling Program

### Audit Objectives and Scope

<b>Audit objectives</b>	<p>The objectives of our review of the Used Tire Recycling Program were to determine whether:</p> <ul style="list-style-type: none"><li>• MMSB was attaining its goal of collecting, processing, and marketing processed used tires;</li><li>• there were adequate management information systems in place to administer the Program throughout the Province;</li><li>• the Program was adequately funded from levies and related remittances; and</li><li>• MMSB was complying with requirements of governing legislation including <i>Waste Management Regulations, 2003</i> under the <i>Environmental Protection Act</i>.</li></ul>
<b>Audit scope</b>	<p>We reviewed activities under the Used Tire Recycling Program since MMSB took over responsibility for operations in June 2004 to 31 March 2008.</p> <p>Our review included discussions with MMSB officials and an examination of documentation at the MMSB Headquarters Office in Mount Pearl. The review was completed in October 2008.</p>

### Overall Conclusions

One of the goals of the Multi-Materials Stewardship Board (MMSB) has been to collect, process, and market processed used tires under the Used Tire Recycling Program. As a result of our review, we have concluded that the MMSB has not been able to ensure that the objectives of the Used Tire Recycling Program have been met.

Since the Program's inception in April 2002, there have been two failed attempts at contracting out the combined used tire collection, transportation, and processing/recycling functions with private operators. Since the MMSB took over operations of the Program in June 2004, it has put an infrastructure in place for the collection and temporary storage of used tires; however, an additional attempt to attract a private operator to take over the processing/recycling side of the operations in 2005 was also unsuccessful.

## Used Tire Recycling Program

More than four years after MMSB took over the operations of the Used Tire Recycling Program as an interim measure, there is still no solution in place for the processing/recycling of used tires.

In particular, our review indicated the following:

- MMSB has a used tire recovery rate of only 57% for 2007-08. This is considerably lower than their current targeted recovery rate of 70% and the 80% that would be expected in a mature market. There have been no recent promotional efforts and only limited initiatives by MMSB to improve the recovery rate.
- At 31 March 2008, there were 1.3 million tires in stockpiles (1.2 million at Placentia and .1 million at Bull Arm) awaiting a processing solution. Since 2002, MMSB has not been able to arrange a processing/recycling solution to deal with the mounting inventory of used tires in the Province.
- There are safety concerns related to the interim storage of .1 million used tires at the Bull Arm site.
- Since the inception of the Used Tire Recycling Program in April 2002 to 31 March 2008, MMSB had tire levy revenues totalling \$8,882,000 and expenses totalling \$8,858,000, resulting in a very small surplus of \$24,000. This shows that although there were 1.3 million unprocessed used tires in the Province at 31 March 2008, MMSB does not have the funds within this Program to pay for processing/recycling.

As a result of the continued maintenance of a large inventory of used tires pending a solution for used tire processing, MMSB has and will continue to pay significant interim contingency costs. For the period 1 June 2004 to 31 March 2008 the cost of storage of tires with a private contractor in Placentia was \$2.1 million. As a result of having no processing/recycling solution implemented, these storage costs continue to escalate. For 2008, storage costs totalled \$663,000. Given the steady increase in the tire inventory, and without a processing/recycling solution, storage costs will continue to increase and could reach \$850,000 for 2009 and more than \$1 million for 2010.

In addition to the \$2.1 million of storage costs, MMSB has incurred \$1.8 million relating to other takeover costs since the Program was assumed from a private operator in June 2004.

## Used Tire Recycling Program

- At 31 March 2008, MMSB was seeking Government approval for a proposed in-Province tire processing solution resulting in a tire derived aggregate (TDA) for civil engineering applications. Under the plan, one time costs of at least \$5.7 million in total are estimated for processing existing inventory, transporting aggregate to civil engineering projects, and continued interim storage costs at Placentia.

MMSB has indicated that funds required for the planned initiative are not available from the Used Tire Recycling Program and would have to be obtained from another MMSB source, most likely the Used Beverage Container Recycling Program. This means that at least in the short-term, a portion of the surplus proceeds from deposits paid by consumers on beverage containers would be needed to subsidize the Used Tire Recycling Program.

MMSB has also indicated that, under the latest TDA proposal, existing levies charged on new tires need to be raised an estimated \$1.50 to \$2.00 per tire sold in order to sustain the continued future operations of the Used Tire Recycling Program.

---

## Detailed Observations

---

### Overview

In our 2002 Annual Report to the House of Assembly, we identified the fact that the original contractor commenced operations under the Used Tire Recycling Program on 1 April 2002 but withdrew from the contract shortly thereafter on 15 May 2002 citing difficulties in establishing a planned collection system. We also identified concerns with the tendering process relating to the awarding of a second contract in November 2002 for the collection, storage, transportation, processing, and disposal of used tires in the Province.

In November 2004, we completed an update review of the Used Tire Recycling Program. We concluded that the program had not met its goal of collecting and processing used tires in the Province. For example:

- Not all tires were collected from retailers and other sites;
- Not all collected tires were processed; and
- Not all processed tires were marketed and sold.

## Used Tire Recycling Program

Both parties agreed to terminate the contract with the tire processor in June 2004 with MMSB taking over direct responsibility for the program. MMSB implemented a contingency plan for the temporary storage and removal of used tires. At the time of our 2004 Annual Report, MMSB indicated that a “call for proposals” for the processing and recycling of the used tires currently stockpiled, and future tires would be issued in early 2005.

MMSB’s overall approach to the Used Tire Recycling Program has changed from tendering one contract for the complete program to a three-phased approach with the following main areas:

1. MMSB Takeover
2. Collection and Temporary Storage Infrastructure
3. Processing and Recycling

---

### 1. MMSB Takeover

---

#### Introduction

In the first stage (June 2004), MMSB took over all operational aspects of the Program and collected the backlog of used tires that had accumulated in the Province since 2002. MMSB also assumed responsibility for the stockpile of used tires that had been delivered and partially processed at the former processing plant owned by Newfoundland Envirotire Shreds Incorporated (NETS) in Stephenville, as well as two separate MMSB managed stockpiles at Bull Arm and Placentia.

---

#### Detailed findings

Based upon our review, we noted that MMSB has incurred significant costs related to its takeover of the Used Tire Recycling Program in June 2004. These costs include the collection, transportation and disposal of used tires that had accumulated at retailers and the various sites used by the previous operator. Our observations on takeover costs follow.

---

Figure 2 shows the interim contingency costs by years ended 31 March from 2005 to 2008.

## Used Tire Recycling Program

**Figure 2**

**Used Tire Recycling Program  
Interim Contingency Costs  
Years Ended 31 March  
(\$000's)**

Category	2005	2006	2007	2008	Total
<b>Storage fees Placentia</b>	\$ 385	\$ 505	\$ 529	\$ 663	\$ 2,082
<b>Other takeover costs:</b>					
Disposal of Stephenville tires	-	-	773	-	773
Disposal of Labrador tires	243	75	-	-	318
Department of Transportation and Works depot cleanup costs	-	8	52	-	60
Mobile collection	124	-	-	-	124
Transportation to storage	470	-	-	-	470
Advertising	37	-	-	-	37
Miscellaneous	53	-	-	-	53
Sub-total	927	83	825	-	1,835
<b>Total</b>	<b>\$ 1,312</b>	<b>\$ 588</b>	<b>\$ 1,354</b>	<b>\$ 663</b>	<b>\$ 3,917</b>

Source: MMSB Used Tire Recycling Program Statements and supporting reports

In addition to storage costs of \$2.1 million, Figure 2 contains other costs totalling \$1.8 million related to MMSB's takeover of the Used Tire Recycling Program. The \$1.8 million is comprised of the following:

- Disposal of tires at the former operator's Stephenville site in the amount of \$773,000.
- Disposal of tires in Labrador in the amount of \$318,000.
- Collection of tires at various sites within the Province in the amount of \$124,000.
- Transportation of collected tires to storage in the amount of \$470,000.
- Clean-up of Department of Transportation and Works depot sites used on an interim basis in the amount of \$60,000.
- Advertising and other costs amounting to \$90,000.

### 2. Collection and Temporary Storage Infrastructure

---

#### Introduction

MMSB made a policy decision to separate the ongoing collection of used tires from their processing and recycling. In the second stage, MMSB issued a separate tender for the collection of used tires resulting in a long-term contract in February 2005 for the establishment of permanent infrastructure for the collection of used tires from all tire retailers on the island and in southern Labrador. Subsequently, arrangements were made with contractors in the other regions of Labrador.

---

#### Detailed findings

Based upon our review, we made the following observations on:

- 2A. Tire collection
  - 2B. Interim storage costs
  - 2C. Storage safety
  - 2D. Non-program used tires
- 

#### 2A. Tire Collection

---

Private operators have been contracted to collect used tires that are left with retailers by customers. The used tires collected on the island and in southern Labrador are currently transported to the Placentia storage facility which is run by a private operator under contract. Used tires are collected in the remainder of Labrador by private contractors and shipped to a Quebec recycler for processing.

---

Figure 3 contains a listing of private contactors providing tire collection, transportation, storage and recycling services at 31 March 2008.

## Used Tire Recycling Program

**Figure 3**

**Used Tire Recycling Program  
Contracted Services  
As at 31 March 2008**

Area Covered	Contractor	Agreement Date	Term (years)	Service Provided
<b>Collection, Storage and/or Transportation Contracts</b>				
Island and southern Labrador	DD Transport Ltd.	15 Feb. 2005	5	Collection, temporary storage and transportation of tires generated on the Island and southern Labrador to destination (stored in Placentia)
Island and southern Labrador	Hynes Construction Co. Ltd.	21 Jun. 2004	Until MMSB termination	Storage of tires generated on Island and southern Labrador (stored in Placentia)
Happy Valley-Goose Bay	Rogers' Recycling Ltd.	1 Mar.2005	5	Collection and temporary storage (stored in Happy Valley-Goose Bay for shipment to Quebec for recycling)
Labrador City/ Wabush, Churchill Falls	Hodge Bros. Ltd.	18 Apr. 2007	5	Collection, temporary storage, transportation and loading (Stored in Labrador City/ Wabush, Churchill Falls for shipment to Quebec for recycling)
Labrador	Hodge Bros. Ltd.	16 May 2007	3	Shipment of tires temporarily stored in Labrador to Quebec for recycling.
<b>Recycling Contract</b>				
	Recyclage Granutech Inc. (Quebec)	25 May 2007	3	Recycling and disposal of all tires received from Labrador

## Used Tire Recycling Program

Officials indicated that the new collection system was working reasonably well with no major issues in terms of timely collection of tires from tire retailers.

MMSB records indicate that since the inception of the Used Tire Recycling Program in April 2002 to 31 March 2008 there were 2.7 million tires sold in the Province. During this period there were 1.8 million tires collected of which about 0.5 million have been processed or disposed of and 1.3 million remain in stockpiles (1.2 million at Placentia and .1 million at Bull Arm) awaiting a processing solution.

An official indicated that the MMSB target recovery rate for used tires of 70% is not being met. We also note that a MMSB contingency plan in November 2007 for processing/recycling anticipates a recovery rate of 75% and indicates that a recovery rate of 80% can be expected in a mature market.

Available annual recovery rates since the inception of the program are included in Figure 4.

**Figure 4**

### Used Tire Recycling Program Annual Tire Recovery Rates Years Ended 31 March

Description	2003	2004	2005	2006	2007	2008
Unit sales	383,720	442,230	440,355	453,266	465,920	516,095
Used Tires collected	194,087	314,010	345,267	333,530	309,287	294,562
Difference	189,633	128,220	95,088	119,736	156,633	221,533
<b>Recovery Rate</b>	<b>51%</b>	<b>71%</b>	<b>78%</b>	<b>74%</b>	<b>66%</b>	<b>57%</b>

Source: MMSB Tire Recovery Reports

Our review of recovery rates indicated that they are declining well below the 70% target recovery rate to 57% at 31 March 2008. While sales of tires are increasing, since 2005 the number of used tires collected has been decreasing significantly from 345,267 in 2005 to 294,562 in 2008. This is an indicator that used tires are not being returned by the public as the Program contemplates.

## Used Tire Recycling Program

An official of MMSB responsible for this area indicated that while they were aware of possible reasons for the decline, they could not explain why this was happening. We found that there have been no recent promotional efforts and only limited initiatives by MMSB (e.g. collection points increased from 460 to 595 and 40 municipalities have partnered to collect tires) to improve the recovery rate. A marketing campaign is planned to coincide with the resolution of the processing/recycling matter.

---

### 2B. Interim Storage Costs

---

There are significant costs associated with the continued interim storage of tires at the Placentia site pending a solution to the tire processing matter. Under the terms of a contract in place with a private operator, used tires are delivered to a storage site in Placentia.

Figure 2 contains information on storage costs at the Placentia site. Based upon our review, we made the following observations:

- Used tire storage at Placentia originated as a temporary measure pending a solution from a Request for Proposals issued by MMSB in 2005.
- The total cost of continued used tire storage at Placentia from the initial takeover in June 2004 to 31 March 2008 was \$ 2.1 million.
- As this initiative was unsuccessful and no solution has yet been implemented, these storage costs continue. For 2008, storage costs totalled \$663,000. Given the steady increase in the tire inventory, and without a processing/recycling solution, storage costs will continue to increase and could reach \$850,000 for 2009 and more than \$1 million for 2010.

**Figure 5**

**Aerial View of Placentia Storage Site**



---

### **2C. Storage Safety**

---

The storage of significant inventories of used tires in one location could present significant safety and environmental issues if the tires became ignited. During the process of MMSB taking over from the previous operator there were significant concerns raised by community representatives that unsecured sites existed in many areas in the Province. The only tires currently in storage are in secured locations at Placentia and Bull Arm.

At 31 March 2008, the following inventories of used tires were maintained by MMSB:

- 1.2 million used tires at Placentia that are stored with a private contractor; and
- 110,000 used tires that have been stored at Bull Arm.

## Used Tire Recycling Program

Figure 6 provides recent information on used tires stored at the Placentia site and at the Bull Arm site.

**Figure 6**

**Used Tire Recycling Program  
Annual Used Tire Inventory Amounts  
Years Ended 31 March**

<b>Description</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
Placentia site	621,189	923,886	1,220,731
Bull Arm site	110,000	110,000	110,000
<b>Total</b>	<b>731,189</b>	<b>1,033,886</b>	<b>1,330,731</b>

Source: MMSB Tire Recovery Reports

An MMSB official indicated that there have been recent reviews by the local area fire department and by the Office of the Fire Commissioner at the Placentia site with no significant issues being raised.

Although the Bull Arm site is considered by MMSB officials to be remote and secure, they also indicated that used tires at the site are not stored in compliance with the Guidelines set by the Office of the Fire Commissioner and the Department of Municipal Affairs. Furthermore, documentation on hand at the Bull Arm Site Corporation indicates that concerns have been raised by local community representatives about the health and safety issues surrounding the used tires stored at Bull Arm, in the event of a fire. An inventory of about 110,000 used tires has been stored at the Bull Arm site since 2002.

As well, during our financial statement audit of the Bull Arm Site Corporation, we learned that the Corporation wanted the tires removed from the site as early as possible. The Corporation also indicated its concern about possible legal issues with respect to its acceptance of the tires and was considering seeking an indemnification from the MMSB with respect to the matter.

**Figure 7**

**Aerial View of Tires Stored at Bull Arm site**



---

### **2D. Non-Program Used Tires**

---

While highway tires including those for passenger cars, light trucks and tractor trailers are included within the Used Tire Recycling Program, other tires such as those for forklifts, ATVs, construction equipment and other off road equipment are not. With the implementation of a Used Tire Recycling Program in April 2002, there was a Province-wide ban on the disposal of tires in landfills and on the open burning of tires within the Province. An exception was made for those tires authorized by the Minister of Environment and Conservation which could be taken to landfill sites.

Despite an effort by the Department in 2005 to issue guidelines under which specific approval was given to landfill off road tires, certain landfill operators in the Province continued to refuse to accept off road tires even though approved by Government. This placed the onus on the tire retailers and users of these tire types for tire disposal.

## Used Tire Recycling Program

In a media article in October 2008 it was reported that tire retailers selling non-program tires have expressed frustration with the lack of a disposal solution indicating such things as:

- They are no longer able to continue with the keeping used tires due to existing stockpiles and the lack of additional storage capability.
- Future used tires would have to be returned to their customers.
- Tires are being given to people for beach fires.
- Tires are being left outside a tire retailer's property for anyone to take.

A review of information on hand at the MMSB indicated that the Board has been considering the problem for some time. In November 2007, the Board forwarded recommendations for the consideration of the Minister of Environment and Conservation; however, officials indicated that no policy direction has since been provided.

---

### Recommendations

The MMSB should ensure that:

- efforts are made to investigate why the used tire recovery rates are declining and that used tires are being recovered at an acceptable rate; and
- the inventory of used tires at Bull Arm are stored in compliance with required standards.

Government should ensure that a solution is found to the growing level of stockpiles of ATV and off road tires at dealer sites.

---

### 3. Processing and Recycling

---

**Introduction** The third and final phase of the plan was to develop a “made in Newfoundland and Labrador” business model for the actual processing and recycling of used tires on a sustainable basis over the long-term. A Request for Proposals was issued in March 2005 for this final phase.

---

**Detailed findings** The Request for Proposals included the existing used tire inventories at Stephenville, Bull Arm, and Placentia as well as the future collections occurring each year.

Eight proposals were received of which two were considered feasible and short listed for further consideration. Due to one of the short-listed proponents dropping out of the process and the second one experiencing difficulties obtaining necessary investment capital, MMSB developed a contingency plan in the event that there was no successful proposal from the Request For Proposals.

Based upon our review, we made the following observations on:

- 3A. Corner Brook Pulp and Paper Proposal
  - 3B. Local Engineering Firm Proposal
  - 3C. Contingency Plan
- 

#### 3A. Corner Brook Pulp and Paper Proposal

---

One of the two short listed proposals was from the Corner Brook Pulp and Paper (CBPP). Under the CBPP proposal, MMSB would utilize the former NETS plant at Stephenville to process used tires into a Tire Derived Fuel (TDF) product which would be sold to CBPP at a price of \$40 per tonne. CBPP planned to burn TDF in its mill in Corner Brook and had agreed on terms of a 10 year contract with MMSB.

The entire stockpile of used tires at Stephenville (460,000 passenger tire equivalents [PTE]) and 200,000 PTE annually or about 40% of the estimated annual supply generated in the Province would be used in production.

Subsequently, CBPP were advised by the Department of Environment and Conservation that it would be required to register under the *Environmental Assessment Act* and meet other environmental standards. On 18 November 2005 the CBPP withdrew its proposal.

---

### 3B. Local Engineering Firm Proposal

---

The second short listed proposal was from a local engineering firm. The proposal involved an innovative technology which involves heating tires in an oxygen reduced environment to produce three product streams: carbon char, a liquid and a gas. Under the proposal, an \$8.1 million facility would be established in the Placentia area. Products from the process would be sold on the world market.

MMSB granted approval in principal for the new project in August 2005. Due to difficulties in raising the necessary capital for the project a number of successive deadlines were given for the company to obtain necessary funding until MMSB finally withdrew its approval in principal two years later in August 2007. During the process an equity investment offer of \$2 million was made by MMSB to assist.

---

We note that a series of successive deadlines were made in order to allow the company to obtain necessary funding that included:

- The initial deadline given by MMSB for the firm to raise necessary capital was 31 December 2005;
- The deadline for the firm to raise necessary capital was extended to 31 March 2006 and again to 31 October 2006;
- A plan to achieve necessary capital was presented by the local engineering firm on 8 November 2006. MMSB advised they could keep their option in play until such time as their contingency plan for the 2007 season would require implementation (i.e. about January 2007).
- MMSB finally withdrew its approval in principal in August 2007.

---

### 3C. Contingency Plan

---

An MMSB contingency plan was developed so that, in the absence of a local private sector alternative including the local engineering firm's proposal, MMSB would control the processing of used tires in-Province by producing a tire derived aggregate (TDA) for civil engineering applications. The aggregate would replace traditional sand and gravel aggregate in construction projects such as roads and was believed to be wanted in sufficient demand.

At the time of our review, MMSB was awaiting a response to a submission to Government for the implementation of its contingency plan. Under the submission, a full time marshalling yard facility would be required and a request for proposals would be made for a processor to operate a shredder which would be used at the various existing sites and a future site.

The one time costs to deal with the existing inventory of used tires under this initiative would be significant for MMSB and were estimated to be at least \$5.7 million related to:

- processing the existing used tire inventory;
- continued interim storage costs at Placentia (based upon 2007 inventory numbers);
- transportation of the TDA to the civil engineering projects; and
- site infrastructure.

As well, if a site has to be acquired by MMSB, then additional costs could be incurred for land acquisition and site preparation estimated at about \$1.7 million.

---

The Used Tire Recycling Program applies to tires used on highway vehicles within the Province and includes tires for passenger vehicles, light trucks and tractor trailers. At the time of purchase a levy is charged based upon the tire size. A \$3 levy is charged on tires with a rim size equal to or less than 17 inches in diameter and a \$9 levy is charged on tires with a rim size between 17 inches and 24.5 inches as prescribed in the *Regulations*. The levies are reported and remitted by tire retailers to the MMSB on an agreed basis (monthly - primarily larger tire retailers, quarterly - smaller tire retailers). Levies on the purchase of new tires are intended to finance all

## Used Tire Recycling Program

aspects of the Used Tire Recycling Program. Figure 1 provides information on tire levies and related costs under the Used Tire Recycling Program. Based upon our review we found that:

- The total value of tire levies received over the years under the Program barely covers the expenses of the Program to date. There is only a small surplus of about \$24,000 remaining for processing or disposal of used tires accumulating at Placentia and those stored at Bull Arm site. These costs required for the planned initiative are not fundable from the Used Tire Recycling Program and are proposed to be funded from another MMSB source – most likely the surplus from the Used Beverage Container Recycling Program. This means that at least in the short term, the surplus proceeds from deposits paid by consumers on beverages would be diverted.
- During preliminary discussion with an official of MMSB, it was indicated that the current tire levy rates were not sufficient to recover Program costs especially considering the current lack of processing.
- As well the future annual processing costs using a mobile shredder operator would have to be determined through a Request For Proposals. MMSB estimates that levies would have to increase by about \$1.50 to \$2.00 per tire in order to sustain the Program in the long-term.
- As the tire levy rates are legislated, any contemplated levy changes would require an amendment to the *Waste Management Regulations, 2003* under the *Environmental Protection Act*.

---

### Recommendation

The MMSB should, in conjunction with Government, take the necessary steps to ensure that a sustainable Used Tire Recycling Program is put in place which meets all its objectives of collecting, transporting, processing and recycling of used tires.

### MMSB's Response

#### 1.1 MMSB Operational Takeover of Program in 2004

*While MMSB did directly incur significant costs related to the operational takeover of the Used Tire Recycling Program in June 2004 following the failure of NETS, most of the \$1.8 million costs noted by the Auditor General, aside from the \$2.1 million in interim storage costs, were not actually additional costs to the program but rather ongoing costs needed to continue to operate the program and would have been incurred no matter who actually carried out the work (e.g. even if NETS had stayed on). In this context, these costs should not be viewed nor interpreted as being "incremental" in nature.*

#### 1.2 Tire Collections and Recovery Rates

*Recovery rates for used tires in most jurisdictions vary quite widely from year to year due to a number of factors, not the least of which is that new tires have a relatively long but somewhat unpredictable "life span" extending over several years before they are discarded and made available for recycling. Because of this situation, it is more appropriate to look at recovery rates over a multi-year period rather than for a single year. In this regard, the overall recovery rate since the inception of the program in 2002 through to March 31, 2008 was 69%, just under the 70% targeted recovery level, and it is presently tracking at 73% for the current (2008-09) fiscal period as compared to the 57% level recorded in 2007-08. It should also be noted that many used tires do not find their way into MMSB's collection (and reporting) system, but are "intercepted" and recycled by other parties for various local applications such as industrial blasting mats. Furthermore, MMSB has taken a number of measures since the beginning of the program to ensure overall collection efforts are as effective as possible, including an expansion in the number of consumer drop-off locations from 460 sites in 2004 to 595 sites in 2008 and the forging of partnerships with over 40 municipalities to organize special collection programs for used tires in conjunction with annual community clean-up events or regular bulk garbage collection activities. Additional promotional activities are planned once a final overall used tire recycling plan for the province is decided upon.*

### 1.3 *Tire Storage Safety*

*Stockpiling of tires is not an uncommon or prohibited practice in any jurisdiction in North America and has frequently been pursued in such provinces as New Brunswick (1.6 million tires), PEI (1 million tires) and Quebec (30 million tires) whenever industry or market realities require such action. The key issue is not necessarily how many tires are being stockpiled or whether they are stockpiled in one or more locations, but rather the manner in which they are stockpiled. Specific requirements have been established by the province's Fire Commissioners Office in this regard, based on internationally accepted standards.*

*As the Auditor General notes, all tires previously stored at unsecured sites in the province at the time MMSB assumed operational responsibility for the program from NETS in 2004 have been fully removed, and only two stockpiles currently exist, both of which are secure under the direct management control of MMSB. The storage yard at Placentia (which makes up about 92% of the total current tire inventory) meets all fire, life safety and environmental regulations. The more modest tire storage yard at Bull Arm (with approximately 110,000 tires) is deficient in meeting some of the standards set by the Fire Commissioners Office, but is in a very secure and publicly inaccessible area within Bull Arm and hence is not considered to pose a significant public safety or environmental risk. However, in recognition of the situation at Bull Arm, MMSB has committed that this stockpile will receive priority attention once a final overall recycling plan for the province is decided upon.*

### 1.4 *Non-Program Used Tires*

*The Board has been advised by the Department of Environment and Conservation that the issue of non-program used tires is under active consideration by government and that appropriate policy direction can be anticipated in the near future to address this issue. In the interim, MMSB has been informed that the responsible provincial regulatory authorities (the Department of Environment and Conservation and the Department of Government Services) are working with relevant municipal authorities to open up local landfills for the safe disposal of non-program used tires until longer term solutions can be put in place.*

### 1.5 *Used Tire Processing and Recycling*

*MMSB's "tire derived aggregate" (TDA) contingency plan was prepared in 2006 in the event the technology based private sector venture might not be able to raise the necessary investment capital to proceed with its plan. Upon MMSB's decision to withdraw its approval-in-principle for this proposal in August 2007, the Board updated its TDA contingency plan and was in a position to execute it in 2007-08 (with the benefit of some of MMSB's accumulated surplus operating funds). However, government requested MMSB to hold off on its implementation until it could more fully consider other potential long-term approaches to the recycling of used tires in the province.*

*During this period, and subsequent to the Auditor General's cut-off date associated with its current review (i.e. March 31, 2008), MMSB was approached by a private sector proponent with an end use recycling proposal which offers a potential opportunity to meet the objectives of the Used Tire Recycling Program without the need for any processing payments or incentives. Given the potential benefits of this initiative, including the possible ability to sustain the Used Tire Recycling Program with the current levies and without the full new investment required to implement the TDA contingency plan, the Board has given serious consideration to the merits of this initiative and is presently awaiting policy direction from government on it. The Department of Environment and Conservation has informed MMSB that such direction can be anticipated in the near future which will then enable MMSB to move forward with a firm plan of action.*

---



## Highlights

Highlights of a review of MMSB's Used Beverage Container Recycling Program for the period 1 April 2003 to 31 March 2008.

### Why our Office Did this Review

The objectives of our current review were to determine whether the MMSB: has achieved established target recovery rates for beverage containers in the Province; is in compliance with legislation and policies; and has adequate policies and procedures to manage the Green Depot, transportation and processing contracts.

### What our Office Recommends

We recommend that the MMSB should:

- improve efforts to increase the actual used beverage container recovery rate and reduce the number of units finding their way into landfills;
- develop initiatives to increase the target recovery rate beyond 70%;
- address the issue of a declining break-even point with the objective of increasing financial viability of the Program beyond a 75% recovery rate;
- comply with the *Public Tender Act*;
- implement policies and procedures to ensure contractor compliance with legislation, and to minimize risk exposure;
- ensure policies and procedures are applied consistently across its Program;
- ensure that business arrangements are made with entities having the financial capacity to operate efficiently; and
- have adequate controls in place over manual adjustments, and ensure that reconciliations are performed on a timely basis.

### What the MMSB Said

To provide balance to this report and to ensure full disclosure, the MMSB was asked to formulate a response to our findings and conclusions. The MMSB's response, verbatim, is included at the end of this report. Readers are encouraged to consider the MMSB's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.7

### DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Multi-Materials Stewardship Board

Used Beverage Container Recycling Program

On 15 January 1997, Government implemented a Beverage Container Control Program (Program) in the Province. The Program is managed by the Multi-Materials Stewardship Board (MMSB) which was established under provisions of the *Environmental Protection Act* and the *Waste Management Regulations*.

Under the Program, the consumer pays an environmental levy on specified beverage containers. Currently, these containers include all those containing ready-to-drink beverages of 5-litres or less, including alcoholic containers. The consumer receives a refund of a portion of the levy upon returning the beverage containers to any of the 39 established Green Depots in the Province. The Green Depot receives a handling fee for receiving and sorting the used beverage containers. The sorted containers are then transported to one of the four regional Processing Centres where they are prepared for transportation to markets in Canada and the United States.

### What We Found

Our review indicated that the MMSB is not achieving its targeted recovery rates with regards to used beverage containers. Although the target recovery rate in 2000 was established at 80% of containers placed into service within three years implementation of the Used Beverage Container Program, in 2003 the target recovery rate was reduced to 70%. In addition, the number of used beverage containers "not" returned has increased in the past two years. In 2006, 62.2 million beverage containers were "not" returned for recycling - the lowest number ever achieved; however, that number increased to 66.4 million beverage containers by 2008. As a result, the MMSB has not been successful in reducing the number of units that are finding their way into landfills and the environment.

MMSB officials indicated that if the recovery rates increased beyond 75%, the Program would not be financially viable. Currently, direct costs related to the recovery of used beverage containers exceed the consumer deposit and, therefore, the Program currently generates a surplus as a result of the low recovery rates i.e. high unredeemed deposits. Furthermore, while revenues increased from \$16.2 million in 2003 to \$19.5 million in 2008, an increase of 20.3%, the direct costs of delivering the Program increased from \$11.8 million in 2003 to \$15.5 million in 2008, an increase of 31.3%. As a result, revenues are not keeping pace with increases in expenditures which further jeopardize the ability of the Program to remain self-sufficient.

We identified issues with purchasing and monitoring contract requirements such as:

**Purchasing:** 2 Green Depot Operator contracts were awarded in 2007 by way of a Request for Proposal without the required approval of Cabinet to be exempt from a call for public tenders. Furthermore, neither contract had an identifiable expiry date and may continue for an indefinite period.

**Contract requirements:** information on file was limited and not complete with regards to whether the required insurance was in place for all service contracts beyond the initial year of the contract and there was no requirement for all service providers to provide proof of insurance during the term of the contract.

In addition, in 2006, as a result of an independent report commissioned by the Board of MMSB, it was identified that a number of net overpayments totalling \$212,081 occurred in the Labrador system between 2002 and 2005 as a result of weaknesses in controls. We note that, while MMSB has strengthened controls in an attempt to address the weaknesses, there is still a risk for overpayments. One Green Depot operator who received in excess of \$154,000 in overpayments identified in the 2006 report will not have their account settled until in excess of seven years.

---

### Background

---

#### Legislation

On 15 January 1997, Government implemented a Beverage Container Control Program in the Province under provisions of the *Packaging Materials Act (1993)* and established the *Beverage Container Control Regulations*. To manage this Program, Government established the Multi-Materials Stewardship Board (the MMSB).

In June 1999 the *Packaging Materials Act* and the *Regulations* were replaced by the *Waste Management Act* and the *Waste Management Regulations*. This new Act continued the MMSB and expanded its mandate. The *Waste Management Act* was repealed in May 2002 and replaced by the *Environmental Protection Act*, and in May 2003 the *Waste Management Regulations, 2003* were enacted.

---

#### The Board and its responsibilities

The mandate of the MMSB is to support and promote the protection, enhancement and wise use of the environment through waste management programs. The MMSB is overseen by a Board of Directors that consists of a minimum of eight (8) voting members and includes the Deputy Minister of Environment and Conservation (or designate) and not fewer than seven (7) members appointed by the Minister as follows:

- one representative of consumers;
- one representative of distributors;
- one representative of the Newfoundland and Labrador Federation of Municipalities; and
- four or more representatives-at-large, one of whom shall be a resident of Labrador.

Currently, the Chief Executive Officer of the MMSB serves as chair of the Board of Directors.

On an annual basis, the MMSB is required to submit to the Minister of Environment and Conservation both an operating budget for approval and a report on its activities, and the results of financial operations for the previous year. The MMSB is also considered a Category 1 Government Entity under the *Transparency and Accountability Act*, and must provide a three-year strategic plan setting out its goals and objectives to the Minister and to Government.

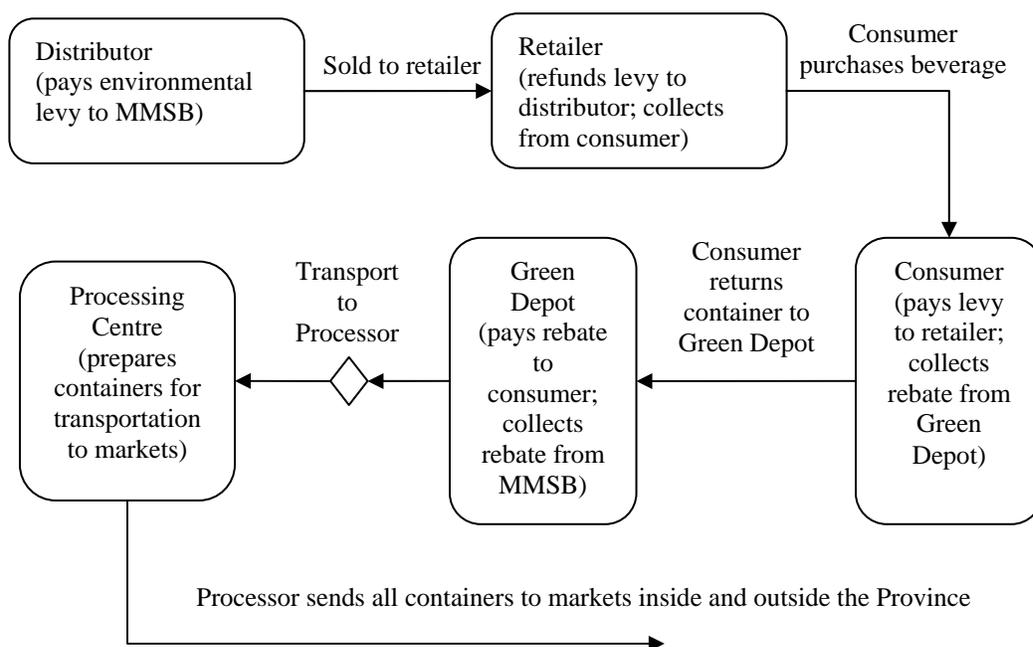
## Used Beverage Container Recycling Program

### The Recycling Process

Figure 1 depicts the recycling process for a single beverage container from the time it is manufactured until sent to market to be recycled.

**Figure 1**

### The Recycling Process All Used Beverage Containers



### Overview of the Used Beverage Container Recycling Program

In 1997, the MMSB entered into an agreement with Newfoundland Beverage Recovery Inc. (NewBRI) to operate, maintain and manage the Beverage Container Control Program (Program) on its behalf. NewBRI was a not-for-profit corporation established by the beverage industry for the purpose of carrying out the responsibilities of the Agreement. The Agreement covered the period from 8 November 1996, the date that NewBRI effectively began operating the Program, until 15 January 2002, the date that the MMSB assumed the day-to-day operation of the Program from NewBRI.

Under the Program, the consumer pays an environmental levy on specified beverage containers as defined by the *Waste Management Regulations, 2003 (Regulations)*. Currently, these containers include all those containing ready-to-drink beverages of 5-litres or less, including alcoholic containers. The *Regulations* state that beverage containers include soft drinks, bottled water,

## Used Beverage Container Recycling Program

fruit juice/drink, vegetable juice, beer and alcoholic liquor; however, does not include milk, infant formula and medicinal containers.

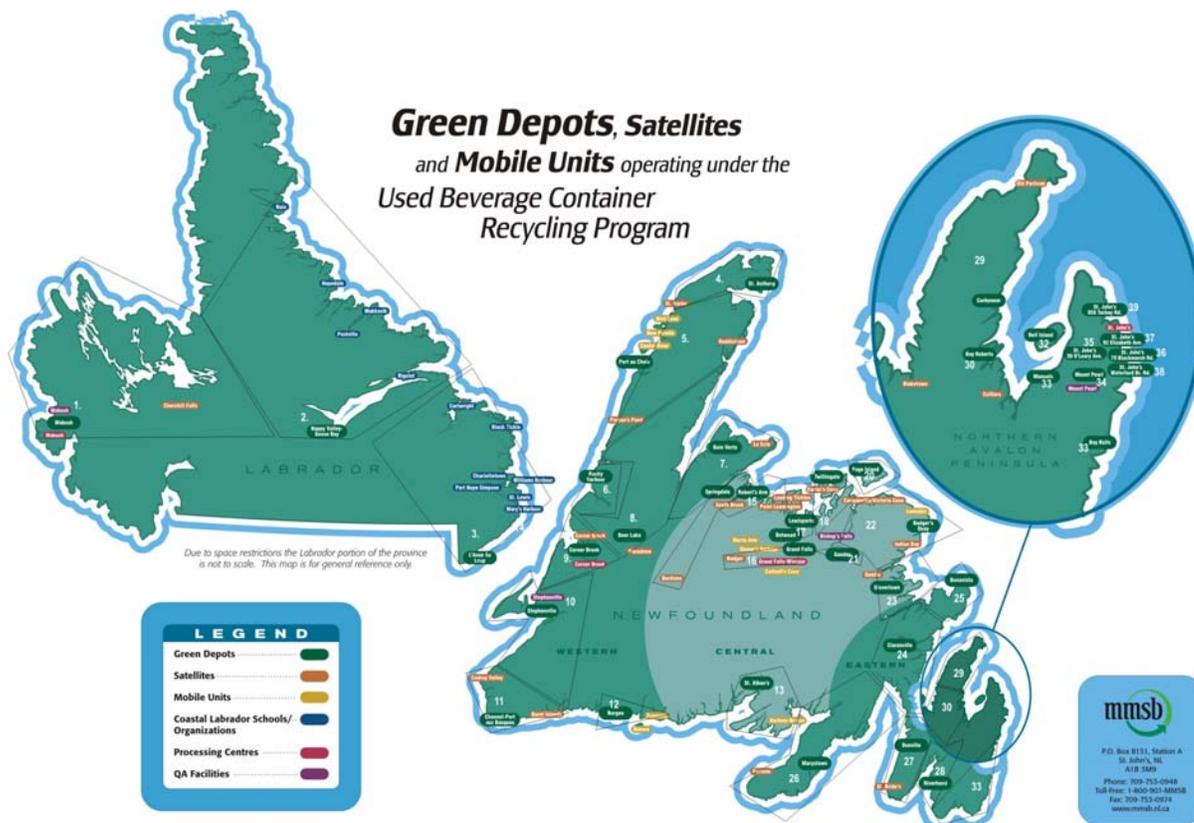
The consumer receives a refund of a portion of the levy upon returning the beverage containers to one of the 39 established Green Depots in the Province. 16 of the Green Depots also operate satellite locations, as well as 9 mobile units. The Green Depot receives a handling fee for receiving and sorting the used beverage containers. The sorted containers are then transported to one of the four regional Processing Centres where they are prepared for transportation to markets in Canada and the United States.

### Locations

Figure 2 shows the locations of the Green Depots and Processing Centres throughout the Province.

Figure 2

### Location of Green Depots and Processing Centres



Source: MMSB

## Used Beverage Container Recycling Program

Revenues generated from beverage container environmental levies are used to pay the transportation and processing fees. The remaining portion of the levies, as well as proceeds from the sale of the collected containers, is used to fund the costs associated with the Program. Net earnings from the Program are retained by the MMSB to finance other Government-approved waste management initiatives.

### Financial information

Figure 3 shows the financial information from the operation of the Used Beverage Container Recycling Program for the period under review.

**Figure 3**

### Used Beverage Container Recycling Program Financial Information Years Ended 31 March (\$ Millions)

	2003	2004	2005	2006	2007	2008
<b>Revenue:</b>						
Revenue From Deposits	\$ 14.5	\$ 15.8	\$ 15.3	\$ 16.0	\$ 16.7	\$ 17.3
Sales to Markets	1.7	1.5	2.0	2.2	2.4	2.2
	<b>16.2</b>	<b>17.3</b>	<b>17.3</b>	<b>18.2</b>	<b>19.1</b>	<b>19.5</b>
<b>Cost of Sales:</b>						
Deposits Refunded	5.6	6.4	6.8	7.0	7.0	7.4
Green Depot Handling Fees	3.6	3.9	4.0	4.4	4.6	5.1
Regional Processing Fees	1.6	1.4	0.7	0.7	0.7	0.7
Freight Costs	1.0	1.0	1.2	1.4	1.4	1.6
Green School Program <sup>1</sup>	0.0	0.0	0.0	0.7	0.6	0.6
Other	0.0	0.1	0.1	0.1	0.1	0.1
	<b>11.8</b>	<b>12.8</b>	<b>12.8</b>	<b>14.3</b>	<b>14.4</b>	<b>15.5</b>
<b>Gross Profit</b>	<b>4.4</b>	<b>4.5</b>	<b>4.5</b>	<b>3.9</b>	<b>4.7</b>	<b>4.0</b>
<b>Administrative Expenses:</b>						
Marketing and Communications	0.6	0.6	0.5	0.7	0.5	0.7
Wages and Related Expenses	0.5	0.7	0.7	0.6	0.7	0.7
Other Administrative Expenses	0.5	0.6	0.4	0.4	0.5	0.6
	<b>1.6</b>	<b>1.9</b>	<b>1.6</b>	<b>1.7</b>	<b>1.7</b>	<b>2.0</b>
<b>Net Earnings</b>	<b>\$ 2.8</b>	<b>\$ 2.6</b>	<b>\$ 2.9</b>	<b>\$ 2.2</b>	<b>\$ 3.0</b>	<b>\$ 2.0</b>

Source: MMSB audited financial statements

Note 1: Prior to 2006, the costs were included in the Waste Management Trust Fund

## Used Beverage Container Recycling Program

### 2002 Annual Report of the Auditor General

In our 2002 Annual Report to the House of Assembly we presented our findings on a review of the Multi-Materials Stewardship Board and the Used Beverage Container Recycling Program, and concluded the following:

- despite initiatives by Government aimed to increase the recovery rate, the actual recovery rate for 2002 of 61% was well below the target of 80%; and
- the MMSB did not always comply with the *Public Tender Act* in awarding contracts in its delivery of the Program.

## Audit Objectives and Scope

### Audit objectives

The objectives of our current review were to determine whether:

- the MMSB has achieved established target recovery rates for beverage containers in the Province;
- the MMSB is in compliance with legislation and policies; and
- the MMSB has adequate policies and procedures to manage the Green Depot, transportation and processing contracts.

### Audit scope

Our review included an examination of the administration of the Used Beverage Container Recycling Program by the Multi-Materials Stewardship Board. Our review covered the period 1 April 2003 to 31 March 2008. We completed our review in October 2008.

We reviewed documentation at the MMSB, examined records related to contracts and awards for compliance with legislation, and interviewed the MMSB officials.

### Overall Conclusions

Our review indicated that the MMSB is not achieving its targeted recovery rates with regards to used beverage containers, there are questions around the financial viability of the Program if recovery rates increase and the numbers of containers not being returned for recycling is increasing. With regards to service contracts we found instances of non-compliance with the *Public Tender Act* and deficiencies in how the MMSB monitors contract requirements. We also found that weaknesses in internal controls in the Labrador operations which resulted in overpayments totalling in excess of \$200,000 have not been adequately addressed. These conclusions are evidenced by the following findings.

Although the target recovery rate in 2000 was established at 80% of containers placed into service within three years implementation of the Used Beverage Container Program, in 2003 the target recovery rate was reduced to 70%. Furthermore, the actual recovery rates were well below the target at only 61% in 2002 and have stagnated at 68% for the past three years, and have not increased significantly since 2003.

The number of used beverage containers “not” returned has increased in the past two years. Furthermore, in 2006, 62.2 million beverage containers were “not” returned for recycling - the lowest number ever achieved; however, that number increased to 66.4 million beverage containers by 2008. As a result, the MMSB has not been successful in reducing the number of units that are finding their way into landfills and the environment.

Officials at the MMSB indicated that one significant initiative that would help increase the recovery rate and bring it closer to that of Nova Scotia, i.e. 78%, would be the introduction of curbside recycling. However, the MMSB is not currently participating in any curbside recycling initiatives.

MMSB officials indicated that if the recovery rates increased beyond 75%, the Program would not be financially viable. Currently, direct costs related to the recovery of used beverage containers exceed the consumer deposit and, therefore, the Program currently generates a surplus as a result of the low recovery rates i.e. high unredeemed deposits. Furthermore, while revenues increased from \$16.2 million in 2003 to \$19.5 million in 2008, an increase of 20.3%, the direct costs of delivering the Program increased from \$11.8 million in 2003 to \$15.5 million in 2008, an increase of 31.3%. As a result, revenues are not keeping pace with increases in expenditures which further jeopardize the ability of the Program to remain self-sufficient.

## Used Beverage Container Recycling Program

Contrary to the *Public Tender Act*:

- 37 Green Depot Operator contracts which expired on 31 March 2005 continue to be extended monthly without any public tender call.
- 2 Green Depot Operator contracts were awarded in 2007 by way of a Request for Proposal (RFP) without the required approval of Cabinet to be exempt from a call for public tenders. Furthermore, neither contract had an identifiable expiry date and may continue for an indefinite period. This situation therefore will prevent other parties with an interest in participating in the recycling Program from the opportunity to compete.
- the Chief Operating Officer of the Government Purchasing Agency was not informed of the reasons why a tender was not invited so that the information could be tabled in the House of Assembly.

Issues identified with regard to monitoring contract requirements included:

- the information on file was limited and not complete with regards to whether the required insurance was in place for all service contracts beyond the initial year of the contract.
- there was no requirement for all service providers to provide proof of insurance during the term of the contract.
- risk management procedures to reduce exposure from litigation by a third party have not been implemented, nor have service providers been required to provide proof of the required level of insurance.
- there is no requirement in the transportation contracts that the service provider who supplied a performance bond during the bid process to maintain that bond during the term of the contract. As a result, the MMSB is not ensuring it is adequately protected from possible financial loss due to the inability of a contractor to fully complete their obligations.
- service providers are not required to provide a certificate of good standing from the Workplace Health, Safety and Compensation Commission during the term of the contract even though such a certificate was required during the bid process.

## Used Beverage Container Recycling Program

---

There is a system in coastal Labrador whereby schools and certain organizations participate in the Used Beverage Container Recycling Program with the Green Depot operators. In 2006, as a result of an independent report commissioned by the Board of MMSB, it was identified that a number of net overpayments totalling \$212,081 occurred in the Labrador system between 2002 and 2005 as a result of weaknesses in controls. We note that, while MMSB has strengthened controls in an attempt to address the weaknesses, there is still a risk for overpayments. One Green Depot operator who received in excess of \$154,000 in overpayments identified in the 2006 report will not have their account settled until in excess of seven years.

---

### Detailed Observations

---

This report provides detailed audit findings and recommendations in the following sections:

1. Used Beverage Container Recovery Rates
  2. Recycling Contracts
  3. Administration of Recycling Contracts
  4. Coastal Labrador School Program
- 

#### 1. Used Beverage Container Recovery Rates

---

##### Overview

Figure 4 shows information on the established targeted recycling rates, actual recovery rates, and the volume of containers placed in service and recycled from inception of the Used Beverage Container Recycling Program in 1997 to 2008, on a fiscal year basis. Recovery rates for the Province of Nova Scotia are also included for comparison.

## Used Beverage Container Recycling Program

**Figure 4**

**Used Beverage Container Recycling Program  
Summary of Recovery Rates  
Years Ended 31 March  
(Millions of Units)**

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Containers placed in service	165.6	176.3	184.2	179.9	177.2	176.0	187.5	187.1	193.8	200.1	206.2
Containers returned	87.5	85.1	86.7	84.4	108.2	112.5	121.0	124.1	131.6	135.5	139.8
Containers not returned	78.1	91.2	97.5	95.5	69.0	63.5	66.5	63.0	62.2	64.6	66.4
Actual recovery rate	53%	48%	47%	47%	61%	64%	65%	66%	68%	68%	68%
Target recovery rate	60%	70%	80%	80%	80%	70%	70%	70%	70%	70%	70%
Actual recovery rate - Nova Scotia	76%	77%	79%	83%	83%	81%	79%	79%	78%	77%	78%

Source: MMSB Beverage Recycling Program reports and Nova Scotia Resource Recovery Fund Board

**Target recovery rates reduced** As Figure 4 shows, the target recovery rate in 2000 was established at 80% of containers placed into service within three years implementation of the Used Beverage Container Program. However, as Figure 4 shows, the actual recovery rates were well below the target at only 61% in 2002. In 2003, the MMSB reduced the target recovery rate to 70%. Recovery rates have stagnated at 68% for the past three years, and have not increased significantly since 2003.

**Beverage containers “not” returned increasing** Figure 4 also shows that the number of used beverage containers “not” returned has increased in the past two years. Furthermore, in 2006, 62.2 million beverage containers were “not” returned for recycling - the lowest rate ever achieved; however, that number increased to 66.4 million beverage containers by 2008. As a result, the MMSB has not been successful in reducing the number of units that are finding their way into landfills and the environment.

**No curbside recycling** Officials at the MMSB indicated that one significant initiative that would help increase the recovery rate and bring it closer to that of Nova Scotia, i.e. 78%, would be the introduction of curbside recycling. However, the MMSB is not currently participating in any curbside recycling initiatives.

## Used Beverage Container Recycling Program

**Recovery rates stagnate** Although the recovery rates have stagnated at approximately 68%, the MMSB continues to spend in excess of \$500,000 dollars annually on marketing and communications. For example, in 2008 the MMSB spent a total of \$707,272 on marketing and communications. In addition to the annual marketing and communication expenditures, the MMSB also manages the Green School Program.

The Green School Program was initially introduced in 1998 in an attempt to increase recovery rates. Under the Green School Program the schools are given the recyclable containers as a donation by members of the community. As a result, the deposit refund of 5¢ is “matched” with an additional 5¢ by the MMSB so that the schools will receive 10¢ per container. Officials indicate that *“there is little evidence to suggest that these special incentives [the Green School Program] play a significant role in improving the overall recovery rate for the used beverage container recycling program”*. The Green School Program initiative (the matching portion) has cost in excess of \$600,000 annually since 2005. However, our review indicated that the audited financial statements of the MMSB do not show any program costs and instead have the costs allocated as direct costs. Instead, the program costs (matching portion) should be shown separately in the financial statements and not be shown as part of the direct costs of sales.

---

**Costs of the Used Beverage Recycling Program** All fees related to the recycling of used beverage containers are fixed by the MMSB with the exception of transportation and processing, which varies based on the transportation contract for each area. The Province is divided into three areas for transportation purposes:

- Area 1 - the Avalon, Burin and Bonavista Peninsulas
- Area 2 - the rest of the island of Newfoundland
- Area 3 - Labrador

The transportation costs for Area 1 are the least, while Area 3 has the highest transportation costs.

Figure 5 shows the costs associated with recycling one (1) aluminum used beverage container in each of the three areas of the Province.

## Used Beverage Container Recycling Program

**Figure 5**

**Revenues and Costs Associated with  
Recycling One (1) Aluminum Used Beverage Container  
As at 31 March 2008**

	Per Single Aluminum Can (in cents)		
	Area 1	Area 2	Area 3
<b>Revenues</b>			
Consumer Deposit	8.0000 ¢	8.0000 ¢	8.0000 ¢
<b>Direct Costs</b>			
Consumer Refund	5.0000 ¢	5.0000 ¢	5.0000 ¢
Green Depot Handling Fee	3.5000 ¢	3.5000 ¢	3.5000 ¢
Processing Fee	0.5000 ¢	0.5000 ¢	1.2500 ¢
Transportation Fee	0.3125 ¢	0.5000 ¢	0.6750 ¢
<b>Total Outlay</b>	<b>9.3125 ¢</b>	<b>9.5000 ¢</b>	<b>10.4250 ¢</b>
<b>Loss Per Unit</b>	<b>-1.3125 ¢</b>	<b>-1.5000 ¢</b>	<b>-2.4250 ¢</b>

Source: MMSB internal records; MMSB officials

**Costs of the  
Program  
increasing  
faster than  
revenues**

As Figure 5 shows, the direct costs exceed the consumer deposit for aluminum cans. In addition, to the direct costs in Figure 5, there are additional costs that, when factored in, would result in a greater loss per unit. These additional costs include such things as:

- administrative costs associated with the MMSB;
- travel rebates related to satellite depots and mobile operations, based on the kilometers travelled to and from the Green Depot; and
- “presence fee” for certain more remote Green Depots. (Green Depots with an annual volume of less than 3 million units are also paid a monthly Presence Fee that can vary from \$400 to \$1,000 depending on the volume of the Green Depot.)

As a result of the loss per unit, and considering the fact that there are additional indirect costs, an increase in the recovery rate from the current 68% will make it more difficult for the Program to remain self-sufficient.

## Used Beverage Container Recycling Program

Furthermore, a review of the financial information at the MMSB indicates that gross revenues increased from \$16.2 million in 2003 to \$19.5 million in 2008, an increase of 20.3%. However, the direct costs of delivering the Program increased from \$11.8 million in 2003 to \$15.5 million in 2008, an increase of 31.3%. As a result, revenues are not keeping pace with increases in expenditures which further jeopardize the ability of the Program to remain self-sufficient.

It should be noted that expenditures in 2008 and 2009 will likely increase as a result of things such as:

- an increase in the Green Depot Handling Fee from 3.50¢ to 3.75¢ per unit effective April 1, 2008;
- additional costs associated with a plan to implement a satellite incentive fee modelled after the presence fee system; and
- increased transportation costs associated with transportation contracts scheduled to expire in March 2009.

In its Strategic Plan 2004-2010, the MMSB reported that the Program would begin to lose money if more than 75% of the used beverage containers were recovered. Furthermore, an official at the MMSB indicated that the break-even point may currently be less than 75%. Therefore, if the MMSB becomes more successful in increasing its recovery rates beyond 75%, it will likely require either a subsidy from Government or an increase in the beverage container levy.

---

### Recommendations

The Multi-Materials Stewardship Board should:

- improve efforts to increase the actual used beverage container recovery rate and reduce the number of units finding their way into landfills;
  - develop initiatives to increase the target recovery rate beyond 70%; and
  - address the issue of a declining break-even point with the objective of increasing financial viability of the Program beyond a 75% recovery rate.
-

### 2. Recycling Contracts

**Overview** The MMSB is a government funded body as defined in the *Public Tender Act* because it is an agent of the Crown.

The MMSB has contracted services in three areas in delivery of the Used Beverage Container Recycling Program. Figure 6 provides information on the three contract areas.

**Figure 6**

#### Contract Information

Contract Area	Number	Effective Date	Expiry Date	Publicly Tendered
Depot Operators	37	1 April 2000	31 March 2005	No
Depot Operators	2	18 July 2007	Open	No
Processing	3	15 January 2004	31 March 2009	Yes
Transportation	3	15 January 2004	31 March 2009	Yes

Source: MMSB contract documents

There were a number of issues with regards to the contracts in place at MMSB as at 31 March 2008. For example:

- Depot Operator contracts expired three years ago**
- Contrary to the *Public Tender Act*, 37 Green Depot Operator contracts which expired on 31 March 2005 have been extended without any public tender call.

In January 2005 the Board decided that it would not be in the public interest to place the expiring contracts up for open tender due to the experience gained and the investments made by the existing operators. As a result, the Board indicated that it would seek the support of the Minister of Environment and Conservation to obtain Cabinet approval for removal of the Green Depot contracts from the requirements of the *Public Tender Act*.

## Used Beverage Container Recycling Program

Although extensions to a contract may be authorized by the board of directors of a “government funded body”, there was no evidence on file at the MMSB to indicate that such authority was given other than for a three-month extension to 30 June 2005. Since 30 June 2005, these contracts have been extended on a month-to-month basis. To October 2008, the contracts have been extended for 43 months beyond their original term.

---

### Approval of Cabinet not obtained for RFPs

- Contrary to the *Public Tender Act*, two Green Depot Operator contracts were awarded in 2007 by way of a Request for Proposal (RFP) instead of the required call for public tenders.

The *Public Tender Act* specifies that “a government body is not required to invite tenders ... where ... inviting a tender would not achieve the best value and the government funded body has, through the minister responsible for it, obtained the approval of the Lieutenant-Governor in Council to carry out a request for proposals ... instead of a tender call”.

However, the MMSB was unable to provide evidence that such Cabinet approval had been obtained prior to issuance of the RFPs and award of the contracts.

### House of Assembly not advised

Furthermore, the *Public Tender Act* requires that “where ... goods or services are acquired ... and a tender is not required to be invited ... the head of the government funded body shall inform the Chief Operating Officer of the Government Purchasing Agency ... and the Chief Operating Officer shall send a report indicating ... the reasons why a tender was not invited, to the Speaker of the House of Assembly for tabling”.

However, the Chief Operating Officer of the Government Purchasing Agency was not informed of the reasons why a tender was not invited so that the information could be tabled in the House of Assembly.

---

### New contracts have no expiry date

- Contrary to the spirit and intent of the *Public Tender Act*, the 2 contracts issued in 2007 have no identifiable expiry date and may continue for an indefinite period. This situation therefore will prevent other parties with an interest in participating in the recycling program from the opportunity to compete.

## Used Beverage Container Recycling Program

Furthermore, an official at the MMSB has confirmed that the Board intends to re-issue the other 37 Green Depot contracts that have been extended since April 2005 with new contracts without expiry dates. All existing Green Depot contractors will have the opportunity to be “grandfathered-in”.

The Government Purchasing Agency, in its “*Guide to Government Purchasing*” states that “*the main goal of the public tender legislation is to ensure procurement is conducted in an open and competitive environment while maintaining fair and equitable opportunities for suppliers to compete for government business*”. The issue of contract expiry dates is not specifically addressed in the *Public Tender Act*.

---

### Recommendation

The MMSB should comply with the *Public Tender Act*.

---

## 3. Administration of Recycling Contracts

---

### Overview

As part of the bid process for Green Depot Operator services, processing services and transportation services, the MMSB has specific requirements that bidders must meet. In particular, bidders are required to provide:

- evidence of commercial general liability and property damage insurance of specified values;
- a performance bond or a performance deposit of specified values; and
- a certificate of good standing from the Workplace Health Safety and Compensation Commission.

When a contract is awarded by the MMSB, there is a requirement that the contractor must maintain insurance coverage. In the case of Green Depot Operator contracts, there is a requirement to maintain coverage of \$1 million, and processing and transportation contractors must maintain insurance coverage of \$2 million. Contracts also required that the MMSB be a named insured on the policy.

---

## Used Beverage Container Recycling Program

### Required insurance not maintained

We reviewed documentation relating to 9 Green Depot Operators contracts (including the 2 Green Depot Operator contracts issued in 2007), the 3 processing contracts and the 3 transportation contracts. Our review indicated the following:

- the MMSB is not proactive in determining whether the required insurance is in place for all service contracts beyond the initial year of the contract. As a result, the information on file at the MMSB was limited and not complete. We identified the following issues:
  - There was no evidence of insurance on file for the current year for 14 of the 15 service contracts reviewed. A certificate of insurance was provided by 1 Green Depot operator during our review.
  - One insurance certificate related to a processing contract expired one day after the contract began and no subsequent insurance certificates were on file.
- The MMSB did not require all service providers to provide proof of insurance during the term of the contract.
- Although the MMSB was aware that a service operator was not carrying the required level of insurance, the MMSB has neither implemented risk management procedures to reduce its exposure from litigation by a third party nor has it been proactive in ensuring that the service providers carry the required level of insurance. Ensuring that its contractors have adequate and current insurance coverage would reduce exposure to the MMSB and Government.

A report prepared for the MMSB by an external consultant in its review of the Green Depot recycling system in December 2003, highlighted issues regarding insurance. The consultant reported that of the *“thirteen Green Depots interviewed for this project, eight provided information on insurance. Each of the eight depots reported that their liability insurance rates had increased, seven of them significantly. Five of the depots reported that insurance has also become more difficult to obtain”*. The consultant also stated that *“insurance costs and the difficulty in obtaining insurance could have significant consequences”* and *“some Green Depots...may be tempted to operate without insurance. According to the MMSB, at least one depot operator has reported that he no longer has insurance for his depot.”*

## Used Beverage Container Recycling Program

### Evidence of performance bonds not maintained

- Although the MMSB requires a performance bond or performance deposit from potential service providers during the bid process, there is no requirement in the transportation contracts that the service provider who supplied a performance bond during the bid process maintain that bond during the term of the contract. As a result, the MMSB is not ensuring it is adequately protected from possible financial loss due to the inability of a contractor to fully complete their obligations.

The purpose of a performance bond is to provide assurance that the MMSB will not sustain a loss but will have the equivalent of full completion of the contract in the event of default or inability of the contractor to complete their obligations. This financial loss could include, but is not limited to, such things as additional costs of storage in the event that there are delays in retaining a replacement contractor, increased costs due to new contracts with higher fees, or the loss of revenues.

We note that in 7 of the 15 contracts examined, the contractor provided a performance security deposit; therefore, the MMSB has protection related to these service providers. Seven of the 15 contracts examined related to a time prior to the assumption of operations by the MMSB and therefore the information was not on file.

In 1 case there was an exception relating to a transportation contract which does require that the contractor provide proof of a performance bond annually within 30 days prior to the anniversary date of the contract. However, we found that there was no evidence on file at the MMSB to show that this requirement had been met.

---

### Evidence of WHSCC compliance not maintained

- The MMSB does not require service providers to provide a certificate of good standing from the Workplace Health, Safety and Compensation Commission (WHSCC) during the term of the contract. We do note that a certificate of good standing from the WHSCC was required during the bid process.

As a result, the MMSB is not fulfilling its responsibility with regards to ensuring that its service providers are in full compliance with the requirements of the *Workplace Health, Safety and Compensation Act*, and it may have potential exposure to worker injury claims related to its contracts.

## Used Beverage Container Recycling Program

### Recommendations

The Multi-Materials Stewardship Board should implement policies and procedures to ensure contractor compliance with legislation, and to minimize risk exposure.

## 4. Coastal Labrador School Program

### Overview

The MMSB has set up a system whereby coastal Labrador schools and certain organizations participate in the Used Beverage Container Recycling Program. The schools can act as environmental depots and/or participate in the Green School Program.

- **Environmental Depots** which collect used beverage containers in their community and issue refunds to residents. In this case the schools are eligible for a 5¢ refund on non-alcoholic containers and a 10¢ refund on alcoholic containers. The schools are also entitled to a special collection and storage fee of 2¢ per container.
- **Green School Program participants** which receive a matching refund for containers given to the school as a donation (i.e. where no refund is paid to the donor). In this case the schools are eligible for either a 10¢ refund on non-alcoholic containers or a 20¢ refund on alcoholic containers.

The containers are held at the schools before being sent to either the Green Depots in Happy Valley-Goose Bay or L'Anse au Loup for sorting.

The way the schools receive payment in Labrador varied depending on whether they were in southern or northern Labrador. For example, schools in northern Labrador would bill the MMSB monthly for its eligible refunds and collection and storage fees, while the payment process in southern Labrador varied. In some cases, schools received payment directly from the Green Depots while in other cases payment was received directly from the MMSB.

### Green Depot Operators and schools overpaid/underpaid

Our review indicated the following:

- In December 2005, the MMSB identified a potential problem with the number of units being reported by Green Depots and schools in Labrador which would have financial implications.

## Used Beverage Container Recycling Program

In April 2006, the MMSB hired external auditors to determine potential overpayments and recommend options for recovery. The auditors submitted their report in June 2006 which concluded that there were a number of overpayments totalling \$212,081 occurring since 2002 as a result of weaknesses in controls. The report also indicated that there was the possibility that the discrepancies existed before 2002 when NewBRI operated the program. Since the NewBRI records were unavailable, the Board decided to limit the scope of the investigation to the period 2002-2005.

In July 2006, the MMSB requested the external auditors to conduct a “root cause” review and present recommendations for changes in procedures and controls. The MMSB decided to defer taking any action until after the receipt of the requested report.

Figure 7 provides details of the total overpayment.

**Figure 7**

### **Coastal Labrador School Program Details of Overpayments and Underpayments 2002 to 2005**

<b>Organization</b>	<b>Over (under) Payment</b>
Rodgers Recycling Limited	\$ 154,941
Normore Enterprises Ltd.	43,974
Eagle River Development Association	8,678
St. Lewis Academy	8,617
Mary’s Harbour Recreation	1,055
William’s Harbour Integrated	456
William Gillette Academy	145
Amos Comenius Memorial	(4,212)
D.C. Young School	(790)
Lodge Bay School	(477)
J.C. Erhardt Memorial	(306)
	<b>\$ 212,081</b>

Source: MMSB external auditor report

## Used Beverage Container Recycling Program

As Figure 7 shows, there were some significant overpayments to Green Depot operators, schools and organizations.

### Collection/ repayment process delayed

In December 2006, the external auditors provided their report relating to the root cause analysis of duplicate recycling payments for recyclables collected from Labrador Coastal Schools. The report concluded that, as a result of weaknesses in the procedures and internal controls of the Coastal Labrador School Program, the following issues occurred:

- “...beverage refund fee payments were issued by [the] MMSB to both Coastal Labrador schools and Rodgers Recycling Limited for the same units beginning with implementation of the scanning system in January 2004.” This resulted in duplicate payments to Rodgers Recycling Limited.
- “...beverage refund fee payments were erroneously reimbursed by [the] MMSB to Normore Enterprises for units that had not been reimbursed by Normore Enterprises to Coastal Labrador Schools.” This resulted in an overpayment to Normore Enterprises and an underpayment to the schools.
- “[The] MMSB was also remitting beverage refund fee payments to some Coastal Labrador schools... without validating if refund fee payments had already been received from Normore Enterprises.” This resulted in an overpayment to the schools.

Between December 2006 and May 2007, the MMSB considered the findings and held discussions with stakeholders to determine the approach to addressing the various issues involved.

---

In May 2007, the MMSB commenced discussions with the entities involved in the over (under) payments with a view to recovering all overpayments. Our review identified the following:

### Collection agreements lengthy and not enforceable

**Rodgers Recycling Limited** had overpayments totalling \$154,941 that occurred over a two year period in 2004 (\$76,454) and 2005 (\$78,487). The arrangement to recover this amount was finalized in November 2007 and provided that the recovery would be made in the form of a reduction in amounts owing to the operator by the MMSB as Rodgers Recycling Limited collected used beverage containers and used tires in the Happy Valley-Goose Bay area. The repayment schedule is as follows:

## Used Beverage Container Recycling Program

- \$2,000 per month for the period June to September; and
- \$1,500 per month for the period October to May.
- There is no formal agreement for this arrangement and as a result collection on default may be more difficult.
- The repayment schedule will result in the MMSB not fully recovering the overpayment until in excess of seven years.

**Normore Enterprises Ltd.** had overpayments totalling \$43,974 that occurred over a 4 year period from 2002 to 2005. The arrangement to recover this amount was finalized in January 2008 and provided that recovery would be made at a rate of \$700 per month in the form of a reduction in amounts owing to the operator by the MMSB for travel rebates.

- There is no formal agreement for this arrangement and as a result collection on default may be more difficult.
- The repayment schedule will result in the MMSB not fully recovering the overpayment until nearly four years.
- We note that in May 2007, the MMSB agreed to pay a flat travel rebate of \$700 per month to Normore Enterprises for travel throughout coastal Labrador to continue collecting used beverage containers. The overpayment will be recaptured from this rebate.

**The Eagle River Development Association** had overpayments totalling \$8,678. The arrangement to recover this amount was finalized in April 2008 and provided that recovery would be made over a two year period.

**St. Lewis Academy** had overpayments totalling \$8,617. The overpayment was reduced to \$2,810 by the MMSB because it was not able to substantiate the remaining \$5,807 which related to a period when NewBRI operated the program. The amount will be recovered by the end of 2008.

The MMSB paid underpayments totalling \$5,308 to the schools in November 2007. The \$477 to Lodge Bay School was not repaid as the school has since closed.

## Used Beverage Container Recycling Program

### Weaknesses in controls still exist in Labrador

Although the external auditor made a recommendation that would reduce the likelihood of a recurrence of these overpayments in Labrador, the MMSB did not implement the recommendation.

In its review, the auditor had recommended that the consumer refunds should be paid by Rodgers Recycling Limited to the schools as is the required procedure for other operators throughout the island portion of the Province and Labrador. This would reduce the risk that the MMSB would make duplicate payments because it would eliminate the need to reconcile the quantities processed by the operator and amounts due to it.

The MMSB chose to continue remitting the consumer refund to the coastal Labrador schools, resulting in the introduction of a manual process in an electronic system. The auditor indicated that “*additional risk and complexity is created when manual adjustments, timing differences and inconsistent application across green depots is introduced to the process*” and “*increases the potential for duplicate payments*”. We note that MMSB did implement additional procedures in an attempt to mitigate the risk.

However, while MMSB has strengthened controls in an attempt to address the weaknesses, there is still a risk for overpayments.

### Recommendations

The MMSB should ensure that:

- policies and procedures are applied consistently across its Program;
- business arrangements are made with entities having the financial capacity to operate efficiently; and
- it has adequate controls in place over manual adjustments, and that reconciliations are performed on a timely basis.

### MMSB's Response

#### **1. Used Beverage Container Recovery Rates**

##### **1.1 Overview - Comparison with Nova Scotia Recovery Rates**

*While operationally similar, there are factors which significantly affect the comparison of MMSB to Nova Scotia. In particular, the combination of a higher refund level, a more mature program, and province-wide access to curbside recycling would result in Nova Scotia enjoying higher recovery rates than Newfoundland and Labrador. Due to the aforementioned factors the recovery rates of these two provinces are not comparable.*

##### **1.2 Beverage containers "not" returned increasing**

*While MMSB is very concerned with the number of containers that are going into the landfill, it is important to note that the policy objective of the Used Beverage Recycling Program is to achieve a set recovery rate, which is in keeping with other jurisdictions in Canada. It is also important to mention that the positive side to the Auditor General's observation is the fact that MMSB continues to collect and recycle an increased number of containers through its Program each year.*

##### **1.3 Recovery rates stagnate**

*While MMSB did spend in excess of \$500,000 dollars annually on marketing and communications less than 10% of these expenditures were spent specifically on the Used Beverage Recycling Program, while the remaining was spent on a province wide waste reduction education initiatives (school outreach programs, Get to Half campaign, community sponsorship, website, etc). Drawing a connection to the stagnate recovery rate and dollars invested in marketing is therefore not accurate.*

*The Auditor General also noted that officials indicated that the Green School Program, which cost in excess of \$600,000 annually, does not play a significant role in improving the overall recovery rate for the Used Beverage Container Recycling Program. Of the current recovery rate of 68% almost 10% of it is attributable to*

*what is captured through the Green School Program. The Green School Program plays a very important role in sustaining the current recovery levels. Without this Program the Recovery Rate of MMSB would be closer to 60%.*

### **1.4 Costs of the Used Beverage Recycling Program**

*The Auditor General identified that revenues from 2003 to 2008 are not keeping pace with increases in expenditures. Revenue increased from 20.4% over this period while expenses increased by 31.3%, a difference of 11%. This difference can be explained in terms of an increasing recovery rate, which results in more money being spent on handling fees, transportation and processing. Combined with the manner in which previous years expenses specific to the Green School Program cost were treated and presented brings (not included in the financial information presented in Figure 3 for 2003, 2004 and 2005) the differential between revenue and expenses to less than 3%.*

## **2. Recycling Contracts**

### **2.1 Approval of Cabinet not obtained for RFPs**

*The Auditor General noted that contrary to the Public Tender Act certain permission were not granted by Cabinet. Section 16 of the Waste Management Regulations under the Environmental Protection Act provides the Multi-Materials Stewardship Board with the legislative authority to license (issue a permit) to parties that wish to operate a Green Depot, with the Board also having the legislative authority to prescribe terms and conditions in the license (permit). The policy of the Board has been to do so through an open and transparent RFP process where MMSB also prescribes the price (rates) to be paid as opposed to asking for competitive prices (rates). In this context, where a licensing (permitting) regime governs the establishment and operation of Green Depots, and also in consideration of the fact that all materials collected through Green Depots are acquired for the purpose of resale in the marketplace (Section 3(2)(g) of the Public Tender Act refers), it is the Board's view that the Green Depot contracts are not captured under the Public Tender Act, thereby not requiring Cabinet approval for the issuance of an RFP.*

### **3. Administration of Recycling Contracts**

#### **3.1 Required insurance not maintained**

*The Auditor General noted that “Although the MMSB was aware that a service provider was not carrying the required level of insurance, the MMSB has neither implemented risk management procedures to reduce its exposure from litigation by a third party nor has it been proactive in ensuring that the service providers carry the required level of insurance.” Upon being notified of the service provider not having insurance the party was contacted and insurance was immediately secured. Furthermore, MMSB has since identified that all service providers have insurance and that insurance verification is on file.*

### **4. Coastal Labrador School Program**

#### **Weaknesses in controls still exist in Labrador**

*The Auditor General noted that “However, while MMSB has strengthened controls in an attempt to address the weaknesses, there is still a risk for duplicate payments.” Upon realizing that there were overpayments or underpayments being made to Green Depot Operators and schools MMSB did implement new controls to ensure that these types of discrepancies would be less likely to occur in the future. In addition, subsequent to the Auditor General’s cut-off date associated with its current review (March 31, 2008), MMSB has continued to take steps to strengthen its internal controls by creating a full time Audit Technician position within the organization.*

## Used Beverage Container Recycling Program



## Highlights

Highlights of a review of MMSB's Newfoundland and Labrador Waste Management Trust Fund for the period 1 April 2005 to 31 March 2008.

### Why our Office Did this Review

The objectives of our review were to determine whether the MMSB: complied with the *Environmental Protection Act* and the *Waste Management Regulations, 2003*; complied with the established guidelines for the approval of funding from the Trust Fund; has established criteria for the monitoring and inspection of approved projects for compliance with funding conditions and whether such criteria is being complied with; and has a strategy for how the Trust Fund will be used for waste management initiatives.

### What our Office Recommends

Following are highlights of recommendations included in the Report that the MMSB should address.

- The offices of Chairperson and Chief Executive Officer of the MMSB should not be held simultaneously by the same person;
- There should be a good working relationship between the MMSB and the Department of Environment and Conservation, including clear lines of reporting and a co-ordinated effort in internal and external reporting;
- The MMSB should be proactive in identifying and pursuing significant waste management initiatives in the Province; and
- The Minister of Environment and Conservation and the MMSB should consider adopting a formal process for the transfer of funds from the MMSB recycling operations to the Waste Management Trust Fund.

### What the MMSB Said

To provide balance to this report and to ensure full disclosure, the MMSB was asked to formulate a response to our findings and conclusions. The MMSB's response, verbatim, is included at the end of this report. Readers are encouraged to consider the MMSB's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

### Chapter 2, Part 2.8

#### DEPARTMENT OF ENVIRONMENT AND CONSERVATION

##### Multi-Materials Stewardship Board

##### Newfoundland and Labrador Waste Management Trust Fund

The Multi-Materials Stewardship Board (MMSB) was created in 1996 with a mandate to support and promote the protection, enhancement and wise use of the environment through the development, implementation and management of effective waste management programs. In addition to administering programs such as the Used Beverage Container Program, the MMSB is responsible for the Newfoundland and Labrador Waste Management Trust Fund (Trust Fund) from which projects meeting established criteria can be approved for funding.

Project applications must relate directly to the basic objectives of waste management and include support for such things as: the development of a municipal, institutional or regional recycling program which supports existing programs approved by the Minister; the planning, development and upgrading of a regional or municipal waste management system; workshops, seminars, or educational or promotional programs or activities which would enhance waste management; community service groups, municipalities, schools and others for waste material cleanup activities; government or board initiatives for waste management; the investigation and demonstration of new technologies that would enhance waste management; and market analysis and feasibility studies related to business development opportunities resulting from a waste management activity

### What We Found

At 31 March 2008, the MMSB had significant funds of \$18.6 million of which \$12.5 million was included in its Trust Fund. Our review at the MMSB identified issues with Board governance and the relationship between the Department of Environment and Conservation and the MMSB, and Trust Fund issues. Details are as follows:

**Board Governance:** Contrary to good governance practice which requires that the same person not hold the offices of Chairperson and Chief Executive Officer simultaneously, at the MMSB one individual serves as both Board Chair and CEO.

**Relationship between the Department of Environment and Conservation and the MMSB:** The MMSB Strategic Plan for 2004-2010 identified a number of significant concerns relating to the relationship between the Department of Environment and Conservation and the MMSB. For example, in relation to achievement of the MMSB's organizational objectives, the Plan indicated that the "*present reporting structure/relationship between MMSB and government is not conducive to the achievement of organizational objectives*".

**Trust Fund:** The MMSB has significant funds in its accounts and in its Trust Fund which, at 31 March 2008 totalled \$18.6 million. The MMSB continues to have annual surpluses and as a result the funds on hand continue to increase. From 1997 to 2008 the MMSB had surpluses totalling approximately \$31.2 million of which \$25.2 million was transferred to the Trust Fund. Over the same period, only \$12.9 million was used to fund approved projects.

The MMSB does not appear to be proactive and other than reviewing applications for funding, the MMSB does not itself identify or pursue any significant waste management initiatives. It focuses on educating the public on waste management and supporting regional authorities with regards to initiatives that are in line with the Provincial Waste Management Strategy.

MMSB officials indicated that without clear policy direction from Government, as MMSB has requested, they were not in a position to proceed with significant waste management initiatives.

### Background

#### MMSB Waste Management Trust Fund

The Multi-Materials Stewardship Board (MMSB) was created in 1996. The MMSB's mandate is to support and promote the protection, enhancement and wise use of the environment through the development, implementation and management of effective waste management programs. The MMSB operates under the authority of the *Environmental Protection Act*. The MMSB develops, manages, and administers Provincial waste diversion programs as prescribed in the *Waste Management Regulations, 2003 (Regulations)* or as authorized by the Minister of Environment and Conservation.

The MMSB is responsible for a number of programs including:

- Used Beverage Container Recycling Program - 1997
- Used Tire Recycling Program - 2002
- Household Hazardous Waste Program - 2005
- Residential Backyard Composting Program - 2005

In addition, the MMSB is responsible for the Newfoundland and Labrador Waste Management Trust Fund (Trust Fund) from which projects meeting established criteria can be approved for funding. Section 10 of the *Waste Management Regulations, 2003* indicates that, in making a decision, the Board shall include consideration of whether the application relates directly to the basic objectives of waste management, and whether the application includes support for:

- the development of a municipal, institutional or regional recycling program which supports existing programs approved by the Minister;
- the planning, development and upgrading of a regional or municipal waste management system;
- workshops, seminars, or educational or promotional programs or activities which would enhance waste management;

## Newfoundland and Labrador Waste Management Trust Fund

- community service groups, municipalities, schools and others for waste material cleanup activities;
- government or board initiatives for waste management;
- the investigation and demonstration of new technologies that would enhance waste management; and
- market analysis and feasibility studies related to business development opportunities resulting from a waste management activity.

The Board makes recommendations for the Minister's review and approval.

---

### **MMSB Board of Directors**

The MMSB is overseen by a Board of Directors that consists of a minimum of eight (8) voting members and includes the Deputy Minister of Environment and Conservation (or designate) and not fewer than seven (7) members appointed by the Minister.

On an annual basis, the MMSB is required to submit to the Minister of Environment and Conservation both an operating budget for approval and a report on its activities, and the results of financial operations for the previous year. Commencing in 2007-08, the MMSB is also considered a Category 1 Government Entity under the *Transparency and Accountability Act*, and must provide a three-year strategic plan setting out its goals and objectives to the Minister and to Government.

---

At 31 March 2008, the MMSB had substantial cash and cash equivalents (bank balances and short-term deposits). A summary of information contained in the MMSB audited consolidated statement of financial position is contained in Figure 1 which follows.

## Newfoundland and Labrador Waste Management Trust Fund

**Figure 1**

**Multi-Materials Stewardship Board  
Consolidated Statement of Financial Position  
As at 31 March  
(\$000's)**

	2005	2006	2007	2008
<b>Assets</b>				
Current				
Cash and cash equivalents	\$ 14,827	\$ 15,339	\$ 17,261	\$ 18,603
Short term investments	409	421	-	-
Receivables	1,673	2,242	2,271	2,951
Inventories	70	227	200	119
Prepays	55	57	51	54
	17,034	18,286	19,783	21,727
Long term investments	-	-	433	445
Note receivable	-	60	60	-
Property and equipment	356	444	262	410
<b>Total assets</b>	<b>17,390</b>	<b>18,790</b>	<b>20,538</b>	<b>22,582</b>
<b>Liabilities</b>				
Current				
Payables and accruals	440	710	706	591
Grants payable	175	564	423	984
Unearned revenue	1,433	1,557	1,487	1,615
	2,048	2,831	2,616	3,190
Performance bonds payable	405	421	433	457
<b>Total liabilities</b>	<b>2,453</b>	<b>3,252</b>	<b>3,049</b>	<b>3,647</b>
<b>Net assets</b>				
Net assets invested in capital				
assets	356	444	262	410
Unrestricted net assets	14,581	15,094	17,227	18,525
	14,937	15,538	17,489	18,935
	<b>\$ 17,390</b>	<b>\$ 18,790</b>	<b>\$ 20,538</b>	<b>\$ 22,582</b>

Source: MMSB audited financial statements

## Newfoundland and Labrador Waste Management Trust Fund

As Figure 1 shows, the MMSB had cash and cash equivalents of \$18.6 million as at 31 March 2008. The Trust Fund balance at 31 March 2008 was \$12.5 million and is included as part of the \$18.6 million.

The MMSB currently generates approximately \$20.0 million in annual revenues. Details of the MMSB audited consolidated statement of operations for the years ended 31 March 2005 to 31 March 2008 are outlined in Figure 2.

**Figure 2**

**Multi-Materials Stewardship Board  
Consolidated Statement of Operations  
Years Ended 31 March  
(\$000's)**

Category	2005	2006	2007	2008
<b>Revenue</b>				
Gross revenue from deposits	\$ 16,715	\$ 17,491	\$ 18,251	\$ 19,067
By-product revenue	1,943	2,232	2,428	2,210
Residential Background Composting Program	-	186	124	73
Household Hazardous Waste Program	-	56	68	67
Grant Revenue, Environment Canada	-	55	25	-
	18,658	20,020	20,896	21,417
Cost of sales	14,148	15,841	16,710	16,985
<b>Gross margin</b>	4,510	4,179	4,186	4,432
Miscellaneous income	346	370	801	664
Income before expenses	4,856	4,549	4,987	5,096
<b>Expenses</b>				
Administrative	2,085	2,295	2,324	2,515
Grant disbursements	1,206	1,664	712	1,134
	3,291	3,959	3,036	3,649
<b>Excess of revenue over expenses</b>	<b>\$ 1,565</b>	<b>\$ 590</b>	<b>\$ 1,951</b>	<b>\$ 1,447</b>

Source: MMSB audited financial statements

As Figure 2 shows, MMSB had excess of revenues over expenses in each of the last four years, including \$1.4 million for the year ended 31 March 2008.

### Audit Objectives and Scope

#### Audit objectives

The objectives of our review were to determine whether the MMSB:

- complied with the *Environmental Protection Act* and the *Waste Management Regulations, 2003*;
- complied with the established guidelines for the approval of funding from the Trust Fund;
- has established criteria for the monitoring and inspection of approved projects for compliance with funding conditions and whether such criteria is being complied with; and
- has a strategy for how the Trust Fund will be used for waste management initiatives.

#### Audit scope

Our review included an examination of the Waste Management Trust Fund applications, as well as the review and approval process for these applications. Our review covered the period 1 April 2005 to 31 March 2008. We completed our review in October 2008.

Our review included interviews with officials at the Multi-Materials Stewardship Board.

### Overall Conclusions

At 31 March 2008, the MMSB had significant funds of \$18.6 million of which \$12.5 million was included in its Trust Fund. Our review at the MMSB identified Board governance issues, issues with regards to the relationship between the Department of Environment and Conservation and the MMSB, and Trust Fund issues. Details are as follows:

#### Board Governance

Contrary to good governance practice which requires that the same person not hold the offices of Chairperson and Chief Executive Officer simultaneously, at the MMSB one individual serves as both Board Chair and CEO. As a result:

- there is an inherent conflict of interest making it very challenging for the Board chaired by the CEO to monitor and assess CEO and senior management performance; and
- the Board of the MMSB is not independent of management and its ability to be effective in its governance role and to appoint and monitor management and create the public perception that the Board functions independently from management is diminished.

### **Relationship between the Department of Environment and Conservation and the MMSB**

The MMSB Strategic Plan for 2004-2010 identified a number of significant concerns relating to the relationship between the Department of Environment and Conservation and the MMSB. We note that when the 2004-2010 Strategic Plan was revised for 2007-08 all references to issues between the Department and the MMSB were not brought into the new plan. This new plan was provided to Members of the House of Assembly for the first time as required under the *Transparency and Accountability Act*.

The issues identified in the 2004-2010 Strategic Plan are as follows:

- Achievement of the MMSB's organizational objectives: the Plan indicated that the *"present reporting structure/relationship between MMSB and government is not conducive to the achievement of organizational objectives"*.
- Reporting lines between the Department and the MMSB: the Plan indicated that *"Over the past number of years there have been a number of occasions where the absence of clearly defined reporting lines between the senior staff at the MMSB and the Department of Environment has resulted in operational delays, inconsistencies in the interpretation of MMSB programs and policies and on occasion misinformation in the media and amongst members of Government and the general public."*
- Internal and external reporting: the Plan indicated that *"At the present time the reporting process appears to be inconsistent in some cases and non-existent in other cases. As a result, communication lines are being crossed and misinformation and or misinterpretation is the by product - both internally and externally"*.

### Trust Fund Issues

The MMSB has significant funds in its accounts and in its Trust Fund which, at 31 March 2008 totalled \$18.6 million. The MMSB continues to have annual surpluses and as a result the funds on hand continue to increase. From 1997 to 2008 the MMSB had surpluses totalling approximately \$31.2 million of which \$25.2 million was transferred to the Trust Fund. Over the same period, only \$12.9 million was used to fund approved projects. The issues identified are as follows:

- The MMSB does not appear to be proactive and other than reviewing applications for funding, the MMSB does not itself identify or pursue any significant waste management initiatives. It focuses on educating the public on waste management and supporting regional authorities with regards to initiatives that are in line with the Provincial Waste Management Strategy. MMSB officials indicated that without clear policy direction from Government, as MMSB has requested, they were not in a position to proceed with significant waste management initiatives.
- There is no established criteria as to how much or how often surplus funds will be transferred from the MMSB operations to the Trust Fund. Instead, the MMSB annual budget submission recommends an amount to be transferred for the Minister's approval. For example, at 31 March 2008, the MMSB had surplus funds of approximately \$6.0 million which were available to be transferred to the Trust Fund.
- Contrary to the *Waste Management Regulations, 2003*, the MMSB Board did not review all applications and make recommendations to the Minister.
- Although identified in our prior review in 2002, the MMSB still does not have a formal method of site inspections or other monitoring for funded initiatives from the Trust Fund.
- Our review of applications approved for funding for waste management committees identified issues with regards to the adequacy of supporting documentation and compliance with program guidelines.
- There was an instance where applicants appeared to be treated inconsistently. In one instance a company was provided with a \$60,000 loan to cover projected operating losses while a similar request for \$100,000 funding (to cover operating losses) from another company was denied.

---

### Detailed Observations

---

**Audit findings** This report provides detailed audit findings and recommendations in the following sections:

1. Board Governance
  2. Relationship between the Department and the MMSB
  3. Trust Fund
- 

#### 1. Board Governance

---

**The Board Chair and CEO is the same individual**

Good governance practice requires that the same person not hold the offices of Chairperson and Chief Executive Officer simultaneously. This is considered best practice in order to have an independent Board and a CEO who is accountable to the Board.

The *Regulations* state that the Minister shall appoint a Board of Directors which consists of a minimum of eight (8) voting members and includes the Deputy Minister of Environment and Conservation (or designate) and not fewer than seven (7) members appointed by the Minister as follows:

- one representative of consumers;
- one representative of distributors;
- one representative of the Newfoundland and Labrador Federation of Municipalities; and
- four or more representatives-at-large, one of whom shall be a resident of Labrador.

The Minister shall designate one member of the Board to be Chairperson.

Our review at the MMSB indicated the following:

- The CEO and Chair of the Board is the same individual. As a result, there is an inherent conflict of interest making it very challenging for the Board chaired by the CEO to monitor and assess CEO and senior management performance.

- The MMSB Board cannot function independently of management with the CEO being Chair of the Board. As a result, the ability of the Board to be effective in its governance role and create the public perception that the Board functions independently from management is diminished.

---

### Recommendation

The offices of Chairperson and Chief Executive Officer of the Multi-Materials Stewardship Board should not be held simultaneously by the same person.

---

## 2. Relationship between the Department and the MMSB

---

Our review of the MMSB Strategic Plan for 2004-2010 identified a number of significant concerns relating to the relationship between the Department of Environment and Conservation and the MMSB. Until required under the *Transparency and Accountability Act* for 2007-08, the MMSB was never required to provide its strategic plan to the House of Assembly. The issues identified are as follows:

---

**The Minister must approve all initiatives**

### Achievement of the MMSB's Organizational Objectives

The MMSB does not have the authority to fund waste management initiatives without the prior approval from the Minister of Environment and Conservation. The MMSB Board can only make recommendations for the Minister's consideration. Therefore, the MMSB is effectively controlled by the Department with regards to any funding initiatives. We would therefore expect that there would be a good working relationship between the Board and the Department.

However, this does not appear to be the case as evidenced by the fact that the MMSB Strategic Plan for 2004-2010 indicated that the "*present reporting structure/relationship between MMSB and government is not conducive to the achievement of organizational objectives*".

---

### Lines of reporting not clear

#### Reporting Lines between the Department and the MMSB

Given the relationship between the Department and the MMSB, we would expect that there would be clear lines of reporting.

However, this does not appear to be the case as evidenced by the fact that the MMSB Strategic Plan for 2004-2010 indicated that *“Over the past number of years there have been a number of occasions where the absence of clearly defined reporting lines between the senior staff at the MMSB and the Department of Environment has resulted in operational delays, inconsistencies in the interpretation of MMSB programs and policies and on occasion misinformation in the media and amongst members of Government and the general public.”*

---

### Internal and external reporting not coordinated

#### Internal and External Reporting

We would expect a coordinated effort between the Department and the MMSB in internal and external reporting.

However, this does not appear to be the case as evidenced by the fact that the MMSB Strategic Plan for 2004-2010 indicated that *“At the present time the reporting process appears to be inconsistent in some cases and non-existent in other cases. As a result, communication lines are being crossed and misinformation and or misinterpretation is the by product - both internally and externally”*.

We note that when the 2004-2010 Strategic Plan was revised for 2007-08 none of the references to issues between the Department and the MMSB were brought into the new plan. This new plan was provided to Members of the House of Assembly.

---

#### Recommendation

There should be a good working relationship between the Multi-Materials Stewardship Board and the Department of Environment and Conservation, including clear lines of reporting and a co-ordinated effort in internal and external reporting.

### 3. Trust Fund

---

Under the *Environmental Protection Act* and the *Waste Management Regulations, 2003*, the MMSB is responsible for developing, implementing, and managing waste diversion programs in Newfoundland and Labrador. The MMSB has worked with committees and communities to develop and implement recycling and waste diversion programs.

The Trust Fund was established through the Beverage Container Recycling Program to use surplus funds from the program to fund waste management initiatives. Funding can be provided as either a grant or a loan to approved applicants. Waste management initiatives include such things as:

- regional waste management coordinator positions and related expenses;
  - regional waste management studies;
  - regional capacity building;
  - dump site closures;
  - promotional activities;
  - special Government initiatives;
  - household hazardous waste initiatives;
  - regional/community waste diversion;
  - pilot projects; and
  - research and development.
-

## Newfoundland and Labrador Waste Management Trust Fund

**Who can receive funding** The following groups have received funding under the Trust Fund for waste management initiatives:

- communities within Newfoundland and Labrador;
- regional waste management committees;
- Government departments;
- Crown agencies;
- private corporations; and
- non-profit / charitable organizations.

**The MMSB has an operating surplus each year**

The MMSB continues to have an operating surplus each year which has resulted in a significant amount of cash and cash equivalents on hand at 31 March 2008. These excess funds are, at the direction of the Minister of Environment and Conservation, transferred from the MMSB to the Newfoundland and Labrador Waste Management Trust Fund. The amount and the timing of the transfers are at the discretion of the Minister.

A total of \$25.2 million in surplus funds have been transferred into the Trust Fund since it was created in 1997. Since 1997, a number of waste management initiatives have also been funded from the Trust Fund. In addition to funding waste management initiatives, certain administrative expenses are also paid from the Trust Fund.

Figure 3 shows the Trust Fund's financial position from 1 April 2000 to 31 March 2008.

## Newfoundland and Labrador Waste Management Trust Fund

**Figure 3**

**Waste Management Trust Fund  
Financial Information  
Years Ended 31 March  
(\$000's)**

	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Revenues</b>	\$ 61	\$ 160	\$ 127	\$ 101	\$ 84	\$ 54	\$ 297	\$ 514	\$ 616
<b>Expenses</b>									
Distributions from the Trust Fund	1,369	1,908	2,410	1,126	1,083	1,206	1,934	712	1,134
Administrative expenses	61	162	120	139	138	176	271	296	403
	1,430	2,070	2,530	1,265	1,221	1,382	2,205	1,008	1,537
<b>Excess of expenses over revenues</b>	<b>(1,369)</b>	<b>(1,910)</b>	<b>(2,403)</b>	<b>(1,164)</b>	<b>(1,137)</b>	<b>(1,328)</b>	<b>(1,908)</b>	<b>(494)</b>	<b>(921)</b>
Surplus net assets transferred to Trust Fund	3,000	4,000	-	3,000	-	2,940	8,931	1,722	1,582
Retained net assets	-	1,631	3,721	1,318	3,154	2,017	3,629	10,652	11,880
<b>Sub-total</b>	3,000	5,631	3,721	4,318	3,154	4,957	12,560	12,374	13,462
<b>Total Trust Fund net assets</b>	1,631	3,721	1,318	3,154	2,017	3,629	10,652	11,880	12,541
<b>Total MMSB unrestricted net assets<sup>1</sup></b>	<b>\$ 1,631</b>	<b>\$3,820</b>	<b>\$ 406</b>	<b>\$11,172</b>	<b>\$12,945</b>	<b>\$14,580</b>	<b>\$15,094</b>	<b>\$17,227</b>	<b>\$18,525</b>

Source: MMSB audited financial statements

Note 1: In 2003, the net assets of NewBRI were transferred to MMSB.

## Newfoundland and Labrador Waste Management Trust Fund

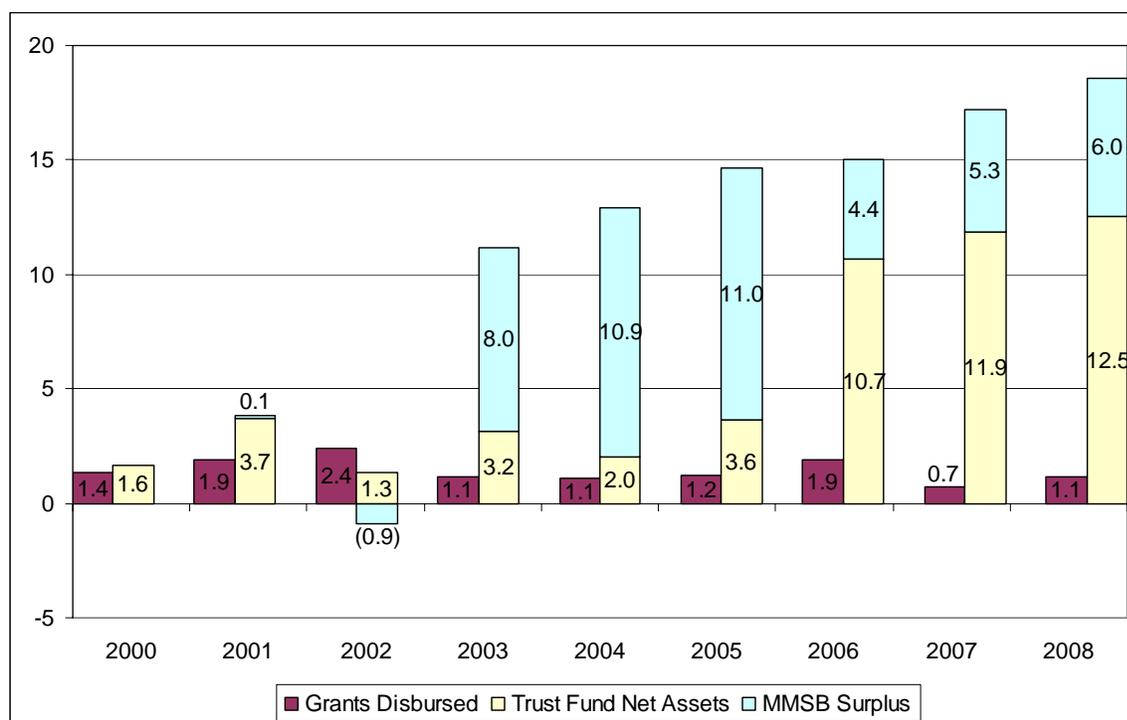
As Figure 3 shows, during the past nine years, the financial position of the Fund has increased steadily from \$1.6 million in 2000 to \$12.5 million in 2008. In 2004, no money was transferred to the Trust Fund, in 2005 only \$2.9 million was transferred to the Trust Fund, while in 2006 \$8.9 million was transferred to the Trust Fund.

The Figure also shows that the amount of funding provided varied from a high of \$2.4 million in 2002 to a low of \$712,000 in 2007.

Figure 4 shows the grants between 2000 and 2008 and compares them to the Trust Fund balance.

**Figure 4**

**Waste Management Trust Fund  
Grants Disbursed, Trust Fund Net Assets and MMSB Surplus  
Years Ended 31 March  
(\$ millions)**



Source: MMSB audited financial statements

Note: In 2003, the net assets of NewBRI were transferred to MMSB.

## Newfoundland and Labrador Waste Management Trust Fund

As Figure 4 shows, the balance of the Trust Fund and the surplus at the MMSB is continuing to grow. In particular, in 2006 the Trust Fund received a significant injection when \$8.9 million was transferred from the MMSB surplus funds as directed by the Minister of Environment and Conservation.

---

Our review of the Trust Fund identified the following issues:

**The MMSB does not appear to be proactive**

- The MMSB does not appear to be proactive in identifying waste management initiatives for funding. Other than reviewing applications for funding, the MMSB does not itself identify or pursue any significant waste management initiatives. It seems as though its focus is on educating the public on waste management and supporting regional authorities with regards to initiatives that are in line with the Provincial Waste Management Strategy. MMSB officials indicated that without clear policy direction from Government, as MMSB has requested, they were not in a position to proceed with significant waste management initiatives.

**There is no established criteria for the transfer of surplus funds**

- There is no established criteria as to how much or how often surplus funds will be transferred from the MMSB operations to the Trust Fund. Instead, the MMSB annual budget submission recommends an amount to be transferred for the Minister's approval. For example, in 2004, no money was transferred to the Trust Fund while in 2006, \$8.9 million was transferred to the Trust Fund. Furthermore, at 31 March 2008 the MMSB had surplus funds of approximately \$6.0 million which are also available to be transferred to the Trust Fund.

---

**Funding rounds**

As applications are received, they are separated into one of four funding rounds. Funding rounds are based on a high level priority initiative established by the Board and approved by the Minister. Funding rounds can run many years and the initiatives can overlap. The first three funding rounds were primarily directed at funding:

- Round 1: cleanup activities
- Round 2: dump cleanups
- Round 3: Provincial Waste Management Strategy initiatives

Since Round 3, regardless of the project focus, all applications are received and assessed on an individual basis. For financial statement reporting purposes, these projects are listed as a "Round 4" initiative.

## Newfoundland and Labrador Waste Management Trust Fund

Figure 5 shows the number of applications over the eight year period and the total funding provided by Round.

**Figure 5**

**Waste Management Trust Fund  
Application Funding  
1 April 2000 to 31 March 2008**

	Applications				Total
	Round 1 2000 - 2001	Round 2 2001 - 2002	Round 3 2003 - 2004	Round 4 2005 - 2008	
Total number of applications received	303	192	84	78	657
Total number of applications approved	137	87	58	66	348
<b>Total amount approved</b>	<b>\$2,366,868</b>	<b>\$3,050,338</b>	<b>\$2,582,845</b>	<b>\$4,880,640</b>	<b>\$12,880,691</b>

Source: MMSB audited financial statements and internal documents

As Figure 5 shows, since the implementation of the “Round” system in 2000, 657 applications have been received and 348 have been approved.

---

### Monitoring and Inspection

---

#### Introduction

In our 2002 Annual Report, we noted that the MMSB did not have a formal method of site inspections or other monitoring for funded initiatives from the Trust Fund. It was determined that inspections were necessary as they were one of the few means at the MMSB's disposal to determine whether funding guidelines were adhered to. Monitoring is important to determine whether the funds were used for authorized expenditures in accordance with program guidelines.

Our review indicated that the MMSB still does not have a formal method of site inspections or other monitoring for funded initiatives from the Trust Fund.

---

We also reviewed 6 Trust Fund monitoring files for the following Regional Waste Management Committees:

- Burin Regional Waste Management Committee
- Central Newfoundland Regional Waste Management Committee
- Green Bay Waste Authority
- NorPen Waste Management Inc. (2 positions)
- Greater Avalon Regional Waste Management Committee

These Waste Management Committees had applied for and received funding from the Trust Fund to hire a regional waste management coordinator and support Committee operations. Grant funding for this program was limited to a maximum \$50,000 annually, comprised of \$35,000 for salaries and \$15,000 for operational expenses.

We found that all six (6) Trust Fund monitoring files had deficiencies with regard to supporting documentation and compliance with program guidelines. Details are as follows:

- 2 of the 6 Trust Fund monitoring files (both for NorPen) had instances of travel expenditures totalling \$1,175 for the Coordinator and Board members for which there was no supporting documentation;
- 5 of the 6 Trust Fund monitoring files included expenditures totalling \$833 for office supplies for which there was no supporting invoice documentation;
- 1 Trust Fund monitoring file (Burin) did not include any supporting documentation for the in-kind support totalling \$900 outlined in the initial application;
- Contrary to program guidelines, 2 of the 6 Trust Fund (Burin and NorPen) monitoring files included expenditures, totalling \$110, for incorporation fees for the Committee;
- 2 of the 6 Trust Fund (Burin and NorPen) monitoring files included travel expenditures, totalling \$330, for the Chair of the Waste Management Committee that had been approved by the Chair;

- 1 Trust Fund monitoring file (NorPen) included expenditures for supplies and services, totalling \$661, that were not within program guidelines; and
- 1 Trust Fund monitoring file (Greater Avalon) included a request for only \$35,000 of the available \$50,000 in program funding for salaries. In this case, contrary to the assessment criteria for Regional Waste Management Coordinators which stipulates that the Department of Municipal and Provincial Affairs (MAPA) will not be a funding partner for these projects, the remaining \$15,000 was provided by MAPA.

---

### Trust Fund Loan

---

#### Introduction

Under the *Waste Management Regulations, 2003*, the MMSB has the authority to recommend, for approval by the Minister, grants or loans from the Trust Fund to applicants that meet the funding guidelines. During our review of Trust Fund applications it was noted that the MMSB received grant applications rather than loan applications. For example, of the 78 applications received in Round 4, only 1 was a loan request.

#### Loan arrangement

In March 2006, Boland's Security Services (BSS) applied to the MMSB for a \$60,000 loan to fund their projected operating losses for a three-month period (April, May and June 2006) related to the company's paper and fibre recycling operation. During this period, BSS was developing a new business plan for its paper and fibre recycling operation. Part of the reasoning of the MMSB in approving the loan was that BSS represented approximately 15% of the Northern Avalon fibre recycling capacity.

The loan was approved by the Board and the Minister in April 2006. The loan was structured as non-interest bearing with repayment to be made over a 2 year period in 24 equal installments starting in July 2007. BSS was not required to repay the loan if, in the opinion of the MMSB, the new business plan was not "completed, adopted and commenced".

The \$60,000 loan amount was to be provided by way of 3 monthly payments to BSS; the first payment of \$20,000 was made in April 2006, the second payment of \$20,000 was made in advance in May 2006 while the remaining \$20,000 was made as a \$15,000 payment in July 2006 and a \$5,000 payment in August 2006. Our review indicated the following:

- documentation at the MMSB indicated that this loan was considered high-risk. The BSS business plan was not “completed, adopted and commenced” and as a result the MMSB wrote off the \$60,000 loan.
- this was the only loan ever made by the MMSB from the Trust Fund. All other funding provided was by way of a grant.
- although BSS requested additional funding in September 2006, neither the MMSB nor the Department of Environment and Conservation would provide any funds.

We note that a similar request for funding (to cover operating losses) was made by Ever Green Recycling in January 2008 for \$100,000 over eight months until their new paper recycling centre was completed. The MMSB rejected this request prompting Ever Green Recycling to halt their fibre collection service responsible for an estimated 1,000 tonnes of material a year.

---

### Approval of Projects by the Board

---

The MMSB *Waste Management Regulations, 2003 (Regulations)* require that the Board of Directors review all applications and make recommendations to the Minister. However, we identified 7 applications which, although sent to the Minister by the MMSB and approved by the Minister, had not been reviewed and recommended by the MMSB Board as required as follows:

- 5 of the applications were received between the monthly Board meetings and reviewed by MMSB officials. The CEO/Chair decided to not wait for the regular monthly Board meeting and approval. Instead, the CEO/Chair sent the applications to the Minister after canvassing available Board members. Although the applications were ratified at the next Board meeting, the process was in contravention to requirements of the *Regulations*. The applications were as follows:
  - Cape St. Mary's Enterprises Limited - feasibility study for waste shell processing facility (\$5,000)
  - Central Regional Waste Management Committee - environmental assessment registration document (\$12,800)
  - City of Corner Brook - paper/fibre curbside recycling program (\$161,282)

## Newfoundland and Labrador Waste Management Trust Fund

- Green Bay Authority Inc. - campground pilot recycling project (\$34,469)
- Town of Fleur de Lys - waste dump site closure amendment (\$25,100)
- For 2 applications, the Board abdicated its requirements to review applications and make recommendations. For these applications the CEO/Chair approached the Board and indicated that an application was expected to be submitted for approval before the next Board meeting. The CEO/Chair requested that the Board allow the applications to be forwarded to the Minister for approval without further reference to the Board. The Board agreed to this request. As a result, the Board contravened the *Regulations* by not reviewing the applications and making recommendations before being sent to the Minister for approval. The applications were as follows:
  - Burin Peninsula Waste Management Corporation - regional waste management coordinator (\$50,000)
  - Central Regional Waste Management Committee - regional waste management coordinator (\$50,000)

### Recommendations

The MMSB should be proactive in identifying and pursuing significant waste management initiatives in the Province.

The Minister of Environment and Conservation and the MMSB should consider adopting a formal process for the transfer of funds from the MMSB recycling operations to the Waste Management Trust Fund.

All applications for funding from the Waste Management Trust Fund should be reviewed by the MMSB Board of Directors before a recommendation is sent to the Minister of Environment and Conservation.

The MMSB should consider a formal method for site inspections or other monitoring for funded initiatives from the Waste Management Trust Fund.

The MMSB monitoring activities should ensure that program expenditures for funded initiatives meet program guidelines.

The MMSB should ensure that the process used for grant or loan funding from the Waste Management Trust Fund is applied consistently.

### MMSB's Response

#### **1. Board Governance**

*We recognize the Auditor General's views on the potential conflict of interest that exists by having the Chair of the Board and the CEO as the same individual and we are taking his views under advisement.*

#### **2. Relationship between the Department and MMSB**

*The issues identified by the Auditor General emanate from a 2003 report prepared by the Board of Directors based on circumstances that existed over five years ago. The Board, in the same document, also outlined a number of approaches to address these issues, all of which have been acted upon over the intervening period. A series of other measures have also been adopted over time by the Minister and the Board to clarify and strengthen reporting relationships and to ensure well coordinated approaches are in place, many of which have been formally incorporated in the Board's Governance Policy Manual. As well, the decision to create a full time and combined Chair-CEO position in 2004 was intended to address some of these same structural issues. The Board of Directors did not bring this issue forward in its 2007-08 strategic plan (or subsequently) as it no longer considered the issue to be relevant in present day circumstances as an impediment to the achievement of the organization's objectives.*

#### **3. Trust Fund**

##### **3.1 Investment Plan**

*One of the stated objectives of the Auditor General's review was to determine whether the MMSB "has a strategy for how the Trust Fund will be used for waste management initiatives". While the Auditor General does not directly address this issue, and suggests that the "MMSB does not appear to be proactive in identifying waste management initiatives for funding", the Board has a well developed "rolling" three-year investment plan for the Trust Fund to help fulfill MMSB's mandate and to support the core goals and objectives of the provincial Waste Management Strategy as directed by the Minister.*

*In this regard, over \$7.7 million has been committed to a wide range of waste management initiatives through this investment plan over the past several years. Part of this plan also saw the launch by MMSB of a number of significant new waste reduction and recycling initiatives, including: (i) an expanded Household Hazardous Waste (HHW) Collection Program; (ii) a new province-wide Residential Backyard Composting Program; (iii) a new Regional-Community Fibre (Cardboard and Paper) Recycling Program; and (iv) a major province-wide waste reduction education initiative under the “Get to Half” banner. The strategic investments made by MMSB through the Trust Fund in the past several years are documented in detail in MMSB’s Annual Reports.*

*Final decisions on the use of the remaining funds available in the Trust Fund (\$8.6 million) were held in abeyance until government firmed up its detailed implementation plan for the provincial Waste Management Strategy in May 2007. The Board subsequently updated its “rolling” three year investment plan and has earmarked the full \$8.6 million over the next three years to a variety of programs and initiatives in direct support of the provincial Waste Management Strategy. Further details are provided in MMSB’s 2007-08 Annual Report as well as MMSB’s updated strategic plan that was tabled in the House of Assembly in September 2008. Of particular note is a new \$3.3 million Regional Waste Management Capacity Building Program that will support the initial planning and organizational development needs of the 15 regional waste management authorities and which will position them to put in place the necessary infrastructure to implement modern waste management systems throughout the province, including comprehensive curbside recycling services for their residents.*

*The balance of MMSB’s surplus funds (approximately \$6.0 million at March 31, 2008) are being held by the Board in an operating account to support future anticipated operating needs of MMSB’s Used Beverage Container Recycling Program and the Used Tire Recycling Program. More specifically, these funds will be used to help deal with the ultimate plan approved for the recycling of the used tires presently being stockpiled within the province, and to support a major new investment planned for the Green Depot system over the next several years to help strengthen and improve the Used Beverage Container Recycling Program.*

*Any future surpluses generated beyond current levels will, in accordance with established policy and practice of the Board, be examined as part of the Board’s annual three year financial planning process and, subject to the approval of the Minister, be allocated first to*

*any ongoing operational needs associated with the Used Beverage Container Recycling Program and/or the Used Tire Recycling Program, and secondly (to the extent residual funds are available) to the Trust Fund to support the ongoing implementation of the provincial Waste Management Strategy.*

### **3.2 Monitoring and Inspection**

*In response to the Auditor General's 2002 annual report, MMSB developed formal new policies and procedures as a framework to guide the monitoring of funded initiatives under the Trust Fund. Notwithstanding this action, the Auditor General's current report notes that some weaknesses still exist in the full implementation of these new procedures. MMSB has taken note of these matters and has initiated steps internally to strengthen project funding monitoring in all instances and to rectify the specific project issues flagged by the Auditor General.*

### **3.3 Trust Fund Loan**

*The Board reviews and considers all Trust Fund applications individually based on merit in keeping with policy direction established through the provincial Waste Management Strategy and the Board's own three year "rolling" investment plan as approved by the Minister. The Board also strives to ensure consistency in its decision-making at all times. In the case of the two specific applications referenced by the Auditor General, the nature, form, circumstances and purposes for which the funds were being requested were substantively different and these considerations led the Board to the decisions it rendered on each of them.*

### **3.4 Approval of Projects by the Board**

*The Waste Management Regulations state that "subject to the approval of the Minister, the Board may grant or refuse in whole or in part an application ..., or may grant the application subject to conditions". The procedural manner by which applications are to be reviewed by the Board is not prescribed in the Waste Management Regulations and is, therefore, at the discretion of the Board itself. In that regard, the Board's Governance Policy Manual provides for circumstances where specific matters may need to be addressed between regularly scheduled meetings of the Board:*

*"A special meeting by way of telephone or e-mail canvass may be called by the Chair when a matter requiring urgent attention arises. Decisions taken*

*through such a canvass shall be kept by the Recording Secretary and shall be ratified by the Board at the next regular Board meeting.”*

*This approach was pursued for the five specific applications referenced by the Auditor General, given various timing sensitivities and extended periods between Board meetings at the time (up to three months in some cases), and with the benefit of the same information and decision-making process as if the Board had met in person. Accordingly, it is the Board’s view that it acted in full compliance with the Waste Management Regulations in respect of these specific applications. The Board also acted in a prudent manner financially in consideration of the fact that a special “in person” meeting of the Board to deal with each of these five separate applications would have resulted in a Board meeting cost of approximately \$7,500 each.*

*With regard to the two other applications referenced by the Auditor General, the Board did delegate its authority to the Chair due to timing sensitivities associated with each anticipated application, but did so “subject to the application(s) meeting all established criteria under the Regional Waste Management Coordinators Program” of the Trust Fund, which were subsequently met. The Board acknowledges, upon reflection, that this process may not have met the strict technical requirements for the review of an application by the full Board as prescribed under the Waste Management Regulations and hence the Board will not, in future, delegate such authority to the Chair.*

---



## Highlights

Highlights of a review of the development of an aquaculture industry in the Province during the period 1 January 2004 to 30 November 2008.

### Why our Office Did this Review

The objective of our review was to determine whether the Department was ensuring that the aquaculture industry was developing in accordance with strategic objectives and whether deficiencies identified in our 2004 report were addressed.

### What our Office Recommends

We recommend that the Department should:

- review and make recommendations to update the *Aquaculture Act* and *Regulations*;
- complete and approve the Aquaculture Health Management Plan;
- develop a code of practice for the aquaculture of shellfish;
- obtain approval and implement the recommendations necessary to support an orderly and sustainable expansion in the salmonid aquaculture industry;
- complete the development, start-up and operation of a commercial scale Atlantic Cod demonstration farm; and
- develop and implement a strategy to promote and support the orderly and sustainable expansion of the Blue Mussel industry.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail.gov.nl.ca](mailto:adg@mail.gov.nl.ca)

### Chapter 2, Part 2.9

## DEPARTMENT OF FISHERIES AND AQUACULTURE

### Aquaculture Development

Aquaculture is the cultivation of aquatic plants or animals. In Newfoundland and Labrador, aquaculture activity relates mainly to finfish and shellfish cultivation. Finfish includes such species as Atlantic Salmon and Steelhead Trout (salmonids), and Atlantic Cod. Shellfish includes such species as Blue Mussels and Scallops.

The mandate of the Aquaculture Branch of the Department of Fisheries and Aquaculture (Department) is to provide for the orderly development of the Province's aquaculture sector. The Department, through its Aquaculture Branch is responsible for supporting, regulating and monitoring development of the aquaculture industry. Total expenditures for Aquaculture Development within the Department for the year ended 31 March 2008 were \$10.1 million (2007 - \$2.1 million). In addition, as at 31 March 2008, the Department had guaranteed the debt of a company in the aquaculture sector in the amount of \$6.6 million (2007 - \$6.6 million).

### What We Found

We identified a number of issues that, although known by the Department, have not been addressed in a timely manner. For example, the lack of infrastructure to support the current or future aquaculture operations and the Department's failure to finalize the Aquaculture Health Management Plan. These issues will have to be addressed if the aquaculture industry is going to expand in an orderly and sustainable manner.

Details of our findings are as follows:

**Atlantic Salmon and Steelhead Trout (salmonids):** There has been an increase in investment in the salmonid aquaculture industry since our report in 2004 and the industry is expanding, with established aquaculture companies undertaking operations in Newfoundland and Labrador. However, we identified issues such as the lack of legislation and the failure to update and complete management plans and codes of practice that are necessary to support an orderly and sustainable expansion.

Our review indicated that priority issues identified in the 2005 review of the Industry Strategic Plan have still not been addressed. For example, the Department indicated that there are not enough properly located wharves dedicated to aquaculture on the south coast of the Province, that new roads will be required to access new wharves and that aquaculture development is placing a burden on existing waste management systems.

**Atlantic Cod:** The Department has done little to advance the development of Atlantic Cod Aquaculture in the Province. We found that construction of a cod hatchery ceased in 2003 due to legal issues between private industry proponents and that approximately \$1 million will be required to complete construction of the hatchery. Furthermore, the Department did not complete the strategic development, start-up and operation of a commercial scale Atlantic Cod demonstration farm as planned. Given that industry has failed to complete construction of a cod hatchery, and that there is no other cod hatchery in the Province to provide the number of cod the demonstration farm will require annually, the Department indicated it is exploring options to obtain cod from hatcheries in other parts of Atlantic Canada.

**Blue Mussels:** There is no management plan or code of practice to guide shellfish site operators in the aquaculture of shellfish in the Province. While the Department did prepare a draft document identifying investment initiatives required to expand the salmonid industry, no such document was prepared for Blue Mussels.

---

### Background

---

Aquaculture is the cultivation of aquatic plants or animals. In Newfoundland and Labrador, aquaculture activity relates mainly to finfish and shellfish cultivation. Finfish includes such species as Atlantic Salmon and Steelhead Trout (salmonids), and Atlantic Cod. Shellfish includes such species as Blue Mussels and Scallops.

The mandate of the Aquaculture Branch of the Department of Fisheries and Aquaculture (Department) is to provide for the orderly development of the Province's aquaculture sector. The Department, through its Aquaculture Branch is responsible for supporting, regulating and monitoring development of the aquaculture industry. The Branch has two Divisions: Aquaculture Development and, Licensing and Inspection. The main Aquaculture Branch Office is located in Grand-Falls Windsor with regional Offices in St. John's, St. Alban's and Corner Brook.

Total expenditures for Aquaculture Development within the Department for the year ended 31 March 2008 were \$10.1 million (2007 - \$2.1 million). In addition, as at 31 March 2008, the Department had guaranteed the debt of a company in the aquaculture sector in the amount of \$6.6 million (2007 - \$6.6 million).

As Figure 1 indicates, on 31 December 2007 there were 146 aquaculture sites in the Province operated by 62 individuals or companies. Of the 146 sites, 111 sites had a valid licence and 35 did not have a valid licence. Most of the 35 sites did not have a valid licence because they were either inactive or the site operator had failed to pay the required licence renewal fee and/or provide the required licence renewal information.

**Figure 1**

**Aquaculture  
Number of existing (licensed and unlicensed) sites by species  
As at 31 December 2007**

Species	Aquaculture Sites			Number of site operators
	Licensed as at 31 December 2007	Unlicensed as at 31 December 2007	Total	
Salmonids	38	10	48	12
Atlantic Cod	9	12	21	17
Blue Mussels	54	10	64	27
Other	10	3	13	9
<b>Totals</b>	<b>111</b>	<b>35</b>	<b>146</b>	<b>65</b>
Less: Operators with different species at more than one site				<b>(3)</b>
<b>Total site operators</b>				<b>62</b>

Source: Department of Fisheries and Aquaculture

Note: Certain sites may culture more than one species

Aquaculture site licences are issued annually and expire on 31 March of each year. There are three classes of licences available:

- Commercial – for use by bona fide aquaculturists who are harvesting and marketing aquaculture products. Of the 111 licences issued at 31 December 2007, 108 were commercial.
- Developmental – for use by prospective commercial aquaculturists in assessing site potential prior to entering into a full scale commercial operation. Of the 111 licences issued at 31 December 2007, 3 were developmental.
- Research – for use by research institutions or government or companies, for the non-commercial culture of any species. Of the 111 licences issued at 31 December 2007, none were for research.

Since 31 December 2003, there has been no significant fluctuation in the quantity and type of commercial licences issued. There has been a significant decline in the number of developmental and research licences issued by the Department because development and research has shifted to commercial facilities and sites.

## Aquaculture Development

In March 2000, a Newfoundland Aquaculture Strategic Plan (Industry Strategic Plan) was developed in response to needs identified by the Newfoundland Aquaculture Industry Association (NAIA), the Department, the Federal Department of Fisheries and Oceans, and various other government departments and agencies. The Industry Strategic Plan provided recommendations to address industry and species development concerns and also identified four species as offering the best opportunity for aquaculture success in Newfoundland and Labrador: Atlantic Salmon, Steelhead Trout, Atlantic Cod and Blue Mussels. The Industry Strategic Plan was reviewed in 2005 when it was recognized that the aquaculture industry was expanding within the Province. Priority issues were identified and responsibilities for actions to address these issues were assigned to NAIA and the Department.

The Department, in its own Strategic Plan 2006 – 2008 (Department Strategic Plan), identified the need for increased private and public sector investment and the commercialization of cod aquaculture as two strategic issues in connection with aquaculture development in Newfoundland and Labrador.

A five year history of aquaculture production in Newfoundland and Labrador is shown in Figure 2.

**Figure 2**

### Aquaculture

#### Annual Production by species (metric tonnes and sales value) Years Ended 31 December

Species	2003		2004		2005		2006		2007	
	mt	\$000	mt	\$000	mt	\$000	mt	\$000	mt	\$000
<b>Salmonid</b>	2,600	14,133	3,329	16,980	4,991	26,505	7,300	44,517	4,857	30,054
<b>Blue Mussels</b>	1,300	2,880	2,300	5,055	3,157	6,960	3,200	7,772	3,390	8,401
<b>Atlantic Cod</b>	30	30	0	0	0	0	0	0	0	0
<b>Total</b>	<b>3,930</b>	<b>\$17,043</b>	<b>5,629</b>	<b>\$22,035</b>	<b>8,148</b>	<b>\$33,465</b>	<b>10,500</b>	<b>\$52,289</b>	<b>8,247</b>	<b>\$38,455</b>

Source: Department of Fisheries and Aquaculture

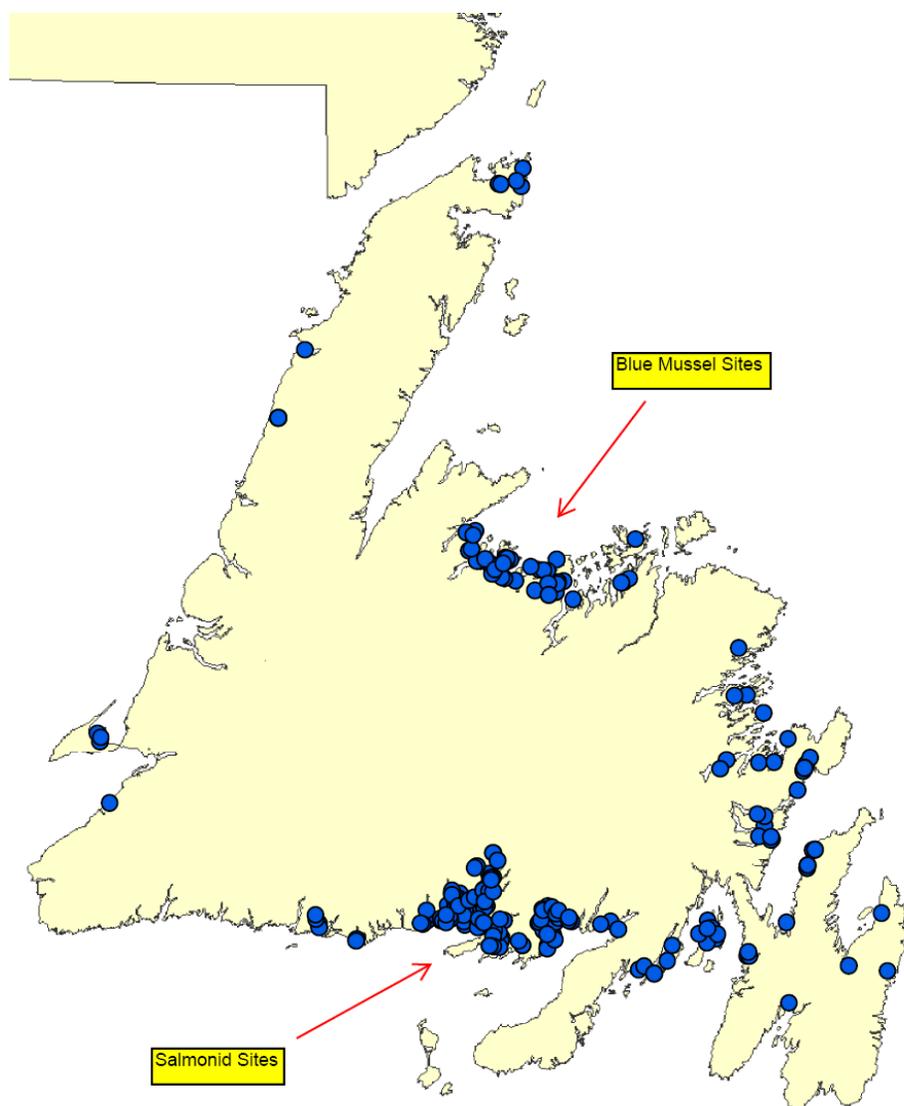
As Figure 2 indicates, total aquaculture production has increased from 3,930 metric tonnes and a sales value of \$17 million in 2003 to 8,247 metric tonnes and a sales value of \$38.5 million in 2007, which represents a production increase of 110% in metric tonnes and 126% in sales value over the five year period.

## Aquaculture Development

As Figure 3 shows, aquaculture sites are dispersed throughout the Island portion of the Province with a heavy concentration of sites in two areas. Most of the salmonid sites occupy the Bay D’Espoir and Fortune Bay area along the southeast coast of Newfoundland and most of the productive Blue Mussel sites occupy the Notre Dame Bay area along the northeast coast of Newfoundland. There are no aquaculture sites in Labrador.

**Figure 3**

### **Aquaculture Site Locations Newfoundland and Labrador**



Source: Department of Fisheries and Aquaculture

### Audit Objectives and Scope

**Audit objectives** The objective of our review was to determine whether the Department was ensuring that the aquaculture industry was developing in accordance with strategic objectives and whether deficiencies identified in our 2004 report were addressed.

**Audit scope** Our review covered the period 1 January 2004 to 30 November 2008 and included an analysis of aquaculture management and development. We completed our review in December 2008.

We reviewed the Industry Strategic Plan and the Department Strategic Plan, including related reviews and reports to determine whether goals, objectives and issues stated in the plans were met or addressed. We also reviewed various Department and industry aquaculture management plans and codes of practice to determine whether these plans and practices were regularly reviewed and up to date.

### Overall Conclusions

We identified a number of issues that, although known by the Department, have not been addressed in a timely manner. For example, the lack of infrastructure to support the current or future aquaculture operations and the Department's failure to finalize the Aquaculture Health Management Plan. These issues will have to be addressed if the aquaculture industry is going to expand in an orderly and sustainable manner.

In the course of our discussions with Departmental officials, we experienced significant delays in obtaining information necessary to complete our audit.

Details of our findings are outlined in the following sections:

#### **Atlantic Salmon and Steelhead Trout (salmonids)**

There has been an increase in investment in the salmonid aquaculture industry since our report in 2004 and the industry is expanding, with established aquaculture companies undertaking operations in Newfoundland and Labrador.

However, we identified issues such as the lack of legislation and the failure to update and complete management plans and codes of practice that are necessary to support an orderly and sustainable expansion. The *Aquaculture Act* and *Regulations* are not as extensive in comparison with aquaculture legislation in other jurisdictions in Canada, and management plans and codes of practice for the aquaculture of salmonids, which site operators are required to comply with as a condition of their licence, are no longer current.

A 2005 review of the Industry Strategic Plan identified priority issues that needed to be addressed in order to support an expanding salmonid aquaculture industry. Our review indicated that these priority issues have still not been addressed. The Department indicated that, among other things:

- there are not enough properly located wharves dedicated to aquaculture on the south coast of the Province;
- new roads will be required to access new wharves. Existing roads will require improvements to support increased traffic;
- aquaculture development is placing a burden on existing waste management systems;
- only two of the four processing plants operating in close proximity to the heavily populated aquaculture area along the south coast of the Province have a wastewater treatment system; and
- there is only one hatchery for Atlantic Salmon and the industry must therefore import most of the juvenile fish that it farms, which increases disease and supply risks. There are plans for an additional hatchery in 2010.

The Department has developed a draft document identifying various strategic initiatives needed to expand the salmonid aquaculture industry in Newfoundland and Labrador. Recommendations in the draft document address the priority issues identified in the 2005 Industry Strategic Plan review. However, these recommendations have not been fully implemented to date.

### **Atlantic Cod**

The Department has done little to advance the development of Atlantic Cod Aquaculture in the Province.

## Aquaculture Development

In response to findings in our 2004 report, the Department indicated that, private industry was making significant progress towards construction of a commercial cod hatchery in Bay Roberts, and that this was needed to advance the commercialization of full cycle cod aquaculture in Newfoundland and Labrador. We found that construction of the cod hatchery ceased in 2003 due to legal issues between private industry proponents and that approximately \$1 million will be required to complete construction of the hatchery.

The Department reported in its 2007-08 annual report that it did not meet its strategic goals in completing the strategic development, start-up and operation of a commercial scale Atlantic Cod demonstration farm because agreements had not been reached to determine private industry and Federal contributions. Given that industry has failed to complete construction of a cod hatchery, and that there is no other cod hatchery in the Province to provide the number of cod the demonstration farm will require annually, the Department indicated it is exploring options to obtain cod from hatcheries in other parts of Atlantic Canada.

### **Blue Mussels**

The Department recognizes that Blue Mussel production increases have been and will continue to be moderate for the next few years because of increased competition, a weakening dollar and the current level of infrastructure can only support a moderate level of expansion.

There is no management plan or code of practice to guide shellfish site operators in the aquaculture of shellfish in the Province.

The Department did not develop and implement an expanded aquaculture investment strategy as outlined in its Strategic Plan 2006-2008. While the Department did prepare a draft document identifying investment initiatives required to expand the salmonid industry, no such document was prepared for Blue Mussels. The Department indicated that it expects to complete a Blue Mussel strategy document in 2009-10.

### Detailed Observations

---

This report provides detailed findings and recommendations in the following sections:

1. Aquaculture Management
  2. Salmonid Development
  3. Atlantic Cod Development
  4. Blue Mussel Development
- 

### 1. Aquaculture Management

---

#### Introduction

The *Aquaculture Act and Regulations* governs the aquaculture industry in the Province. The purpose of the Act is “...to govern the conduct of aquaculture in the province...” and to “...promote, in consultation with the private sector, the prudent and orderly development of an aquaculture industry.” In addition to legislation, the Department has established policies and procedures including references to various management plans and codes of practice which are intended to guide the aquaculture industry in its development. Management plans and codes of practice include policies, procedures and best practices that site operators are required to follow in their aquaculture operations. For example, site operators must, among other things, use proper cages and nets to hold fish, properly dispose of fish waste, allow sites to fallow or recover following the harvesting of fish, and keep diving and feed records.

Management plans and codes of practice for Atlantic Salmon and Steelhead Trout (salmonids) are provided to site operators and compliance with these plans is a condition of the aquaculture license. They include the:

- Industry Code of Practice (1995);
- Bay D’Espoir Management Plan for Salmonids (1997);
- Roti Bay Aquaculture Management Plan for Salmonids (1998); and
- Provincial Code of Containment for Salmonids (2005).

Management plans for shellfish deal with the identification and utilization of existing aquaculture sites. These plans are not distributed to site operators and are for internal use only. They include the:

- Green Bay Blue Mussel Management Plan (2005);
- Eastern Notre Dame Bay Blue Mussel Industry Management Plan (2007); and
- Coast of Bays Blue Mussel Industry Management Plan (2008).

We reviewed the *Aquaculture Act* and *Regulations* and the various management plans and codes of practice identified in the Department's aquaculture policy and procedures manual. We held discussions with Department officials. Our review indicated the following:

### Lack of legislation

The *Aquaculture Act* and *Regulations* are not as extensive in comparison with aquaculture legislation in other jurisdictions in Canada such as New Brunswick and British Columbia, where operations are carried out on a larger scale than in Newfoundland and Labrador. For example the *Act* and *Regulations* do not, among other things:

- absolutely prohibit fish escapes;
- prescribe standards for fish waste disposal and control;
- require that site operators carry out daily inspections and keep records;
- require that site operators develop and maintain best management practice plans and fish health management plans; and
- require that site operators provide an annual report to the Minister.

Since our 2004 report, the Department has developed regulations to remove hazardous shore fastened moorings and to improve the licence renewal process. In response to an update of our 2004 report, the Department indicated that the growth of aquaculture in the Province required a significant level of flexibility to ensure Government remained responsive to the needs of the aquaculture industry, and that entrenching management plans and policies in legislation was not deemed appropriate at the time. There has been no improvement in this area since our last report in 2004.

## Aquaculture Development

### Management Plans and Codes of Practice not updated

Management plans and codes of practice for the aquaculture of salmonids require review and updating. For example, while the Bay D'Espoir Management Plan (1997) was last reviewed and revised in 2003, these revisions were never formally approved by the Department and the Department has recently stopped providing site operators with this Management Plan because it is outdated. The Department indicated that the Bay D'Espoir and Roti Bay Management Plans and sections of the Code of Containment are currently under review and relevant updates will be included in an overall Aquaculture Health Management Plan which is currently under development.

There is no management plan or code of practice to guide site operators in the aquaculture of shellfish in this Province. The Department indicated that there are minimal known risks associated with shellfish production because there is clean water and an absence of feeding or chemical use.

### Recommendations

The Department should:

- review and make recommendations to update the *Aquaculture Act* and *Regulations*;
- complete and approve the Aquaculture Health Management Plan; and
- develop a code of practice for the aquaculture of shellfish.

## 2. Salmonid Development

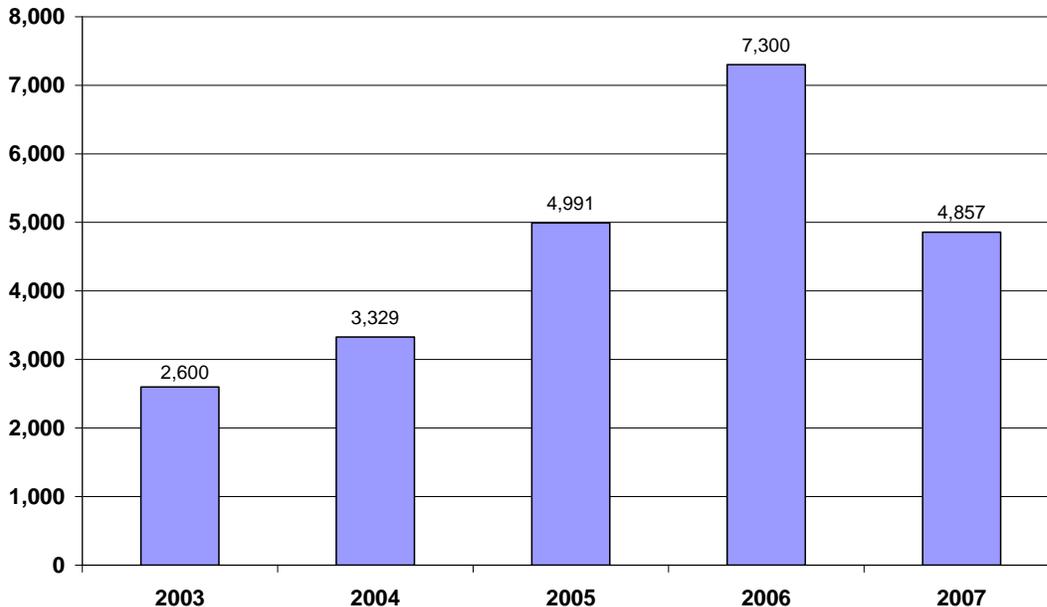
### Overview

Salmonid aquaculture in Newfoundland and Labrador includes Atlantic Salmon and Steelhead Trout.

As Figure 4 indicates, total salmonid production increased from 2,600 metric tonnes in 2003 to 4,857 metric tonnes in 2007, which represents an overall increase of 87% in five years.

**Figure 4**

**Aquaculture**  
**Five year history of salmonid production (metric tonnes)**  
**Years Ended 31 December**



Source: Department of Fisheries and Aquaculture

Salmonid aquaculture sites are mainly located along the south coast of Newfoundland including Bay D'Espoir, Connaigre Bay, Fortune Bay, and Placentia Bay, as these locations offer favorable marine conditions. As of 31 December 2007, there were a total of 38 licensed salmonid sites. There were an additional 10 active or inactive sites that were not licensed as at 31 March 2007. In total, 12 companies had 48 salmonid sites in various stages of operation. Four or 33% of the 12 companies with 30 or 63% of the 48 salmonid sites contributed to production in 2007 and were holding approximately 8.8 million fish in marine cages at the end of the year.

Our review of salmonid development included a review of the Industry Strategic Plan, including industry's review of this plan in 2005. We also reviewed the Department's Strategic Plan and the Department's annual reports. We held discussions with Department officials. Our findings are outlined in the following sections:

- A. Priority issues identified by the Industry
- B. Goals in the Department's Strategic Plan

---

### 2A. Priority issues identified by the Industry

---

#### Introduction

In 2000, the Industry Strategic Plan indicated that capital investment was required in order to further expand the salmonid aquaculture industry. The plan also recommended that the greatest focus should be on producing Steelhead Trout and not Atlantic Salmon because environmental conditions in the Bay D'Espoir area of the Province are better suited for Steelhead Trout and it was felt that a marketing advantage was available with Steelhead Trout in North America. Industry reviewed its strategic plan in 2005 and identified priority issues for an expanding salmonid industry, including, among other things:

- increasing marine infrastructure to accommodate increased production and to reduce bio-security and safety risks (e.g. building wharves that are dedicated to aquaculture use);
- increasing hatchery capacity in order to meet industry demand and reduce disease transfer risks related to importing fish;
- increasing fish health resources and industry awareness of the fish health program, including developing an industry wide emergency response plan to deal with possible disease outbreaks; and
- completing and adhering to aquaculture codes of practice and various management plans.

Our review indicated the following:

---

#### Salmonid industry is expanding

There has been an increase in investment in the salmonid aquaculture industry since our report in 2004 and the industry is expanding with established aquaculture companies undertaking operations in Newfoundland and Labrador. Government is encouraging this investment through financial support programs such as the Aquaculture Capital Investment Program and the Aquaculture Loan Guarantee Program.

## Aquaculture Development

### **Industry focus is on Atlantic Salmon which is contrary to the Industry Strategic Plan**

Although the Industry Strategic Plan indicated that industry should focus on the aquaculture of Steelhead Trout, the industry is focused on producing Atlantic Salmon. The Department indicated that at the time the plan was prepared in 2000, the majority of salmonid aquaculture was carried out in Bay D'Espoir where conditions were more suitable to the aquaculture of Steelhead Trout. Since 2000, the Department indicated that it carried out environmental assessments outside of Bay D'Espoir and identified areas suitable for the aquaculture of Atlantic Salmon. Given that the global market is greater for Atlantic Salmon, the Department is supporting the change in focus, but continues to support the aquaculture of Steelhead Trout in Bay D'Espoir.

### **Priority issues not addressed**

Government has not addressed priority issues that were identified by the Industry in its 2005 review of the Industry Strategic Plan. We found:

### **Marine Infrastructure**

### **Current infrastructure cannot support current or projected levels of operation**

The aquaculture industry requires access to, among other things, wharves, roads, waste management and waste processing. The Department indicated that the infrastructure currently available to the aquaculture industry is inadequate and therefore cannot sustain current or projected levels of operation. For example:

- There are not enough properly located wharves dedicated to aquaculture in the south coast of the Province. Existing wharves are being used by the fishery and marine ferry system and therefore cannot provide the strong bio-security needed to prevent potential health risks.
- Roads used by transport trucks to deliver aquaculture equipment, fish and feed were not designed to support the nature and volume of traffic associated with the aquaculture industry and require upgrading. New roads will be required to access new wharves.
- Aquaculture development is a burden on existing waste management systems. Empty feed bags and used equipment have the potential to overburden landfill sites.
- Only two of the four processing plants operating in close proximity to the heavily populated aquaculture area along the south coast of the Province have completed the installation of a wastewater treatment system.

- St. Alban's – complete
- Harbour Breton – complete
- Gaultois – in process of being completed
- Hermitage – in process of being completed

**The Province has only one hatchery for Atlantic Salmon**

---

### Hatchery Capacity

The Province currently has one hatchery (Daniel's Harbour) for Atlantic Salmon and the industry must therefore import most of the juvenile fish that it farms. Importing juvenile fish increases the risk of disease transfer and there may be issues with availability of supply as the industry continues to expand in the Province. Our review indicated that the Department has an agreement with an aquaculture company to construct an Atlantic Salmon hatchery and supply juvenile fish by 31 March 2010; however, detailed plans for the hatchery were not available at the time of our review.

**Aquaculture health management plan not completed**

---

### Fish Health Program

The Department has an Aquaculture Health Unit (AHU) that is responsible for fish health. The AHU issues bio-security protocols to industry members and carries out routine fish health surveillance and bio-security audits to ensure fish health. The Department has recently hired additional AHU staff and there are plans to construct a new Fish Health Diagnostics Facility in St. Alban's.

The AHU is currently developing an Aquaculture Health Management Plan which will be provided to site operators upon completion and approval by the Department. This plan will include an industry-wide emergency response plan.

---

### Codes of Practice and Management Plans

The Department has not completed its review and update of management plans and codes of practice to support the industry in its development.

---

### 2B. Goals in the Department's Strategic plan

---

#### Introduction

The *Transparency and Accountability Act* requires that the Department prepare a strategic plan every three years and set strategic goals, objectives and related performance measures that it must meet during the period covered by the plan. The *Act* also requires the Department to annually report on the extent to which it was successful in achieving the goals, objectives and performance measures stated in the strategic plan.

The Department's Strategic Plan 2006-2008 stated that it would develop an expanded aquaculture investment strategy and support its implementation by 2008. Our review indicated the following:

---

#### Aquaculture investment strategy not developed

The Department has not developed and implemented an expanded aquaculture investment strategy as outlined in its Strategic Plan 2006-2008.

The Department did develop, for discussion purposes, a draft document identifying various strategic initiatives, including an investment initiative, required to expand the salmonid aquaculture industry in Newfoundland and Labrador. The draft document indicated that salmonid production will increase from 4,857 metric tonnes in 2007 to 15,000 metric tonnes in 2008, and that the Province has an opportunity to develop and sustain a salmonid industry of 50,000 metric tonnes valued at \$250 million by 2012. In order to support and sustain this expansion the draft document further recommends that Government, among other things:

- review provincial regulations and policies to optimize and sustain aquaculture development;
- implement a regime to ensure the adoption of best management practices in all farm operations;
- review and plan for increased infrastructure needs in the area of hatcheries, processing plants, wharves, roads and waste management;
- implement an environmental plan to reduce risks related to the disposal of waste from farm operations and processing plants; and
- ensure the aquaculture health unit can support industry expansion.

## Aquaculture Development

---

Our review indicated that the recommendations made under each strategic initiative proposed in the draft document address many of the priority issues identified in the 2005 Industry Strategic Plan review. However, the Department indicated that the draft document has not been approved by Government and that working groups were only recently established to prepare more detailed recommendations for Government approval in 2009. As a result, not all recommendations have been fully implemented to date.

---

### Recommendation

The Department should obtain approval and implement the recommendations necessary to support an orderly and sustainable expansion in the salmonid aquaculture industry.

---

## 3. Atlantic Cod Development

---

### Introduction

Up until 2003 there was limited commercial aquaculture of Atlantic Cod through the seasonal grow-out of captured wild cod, which was dependent on wild fishery quotas. As Figure 2 indicates, there has been no commercial production of Atlantic Cod since 2003 because of a moratorium imposed by the Federal Government on the harvesting of wild cod in the Province. As of 31 December 2007, there were a total of 9 licensed Atlantic Cod sites. There were an additional 12 inactive sites that were not licensed as at 31 March 2007. In total, 17 companies had 21 Atlantic Cod sites in various stages of operation throughout the Province.

In 2000, the Industry Strategic Plan recognized the need for a cod hatchery in the Province so that cod aquaculture could move from the seasonal grow-out of wild cod to a full cycle operation. In response to findings in our 2004 report, the Department indicated that private industry was making significant progress towards construction of a commercial cod hatchery in Bay Roberts and that this was needed to advance the commercialization of full cycle cod aquaculture in Newfoundland and Labrador. The industry reviewed its strategic plan in 2005 and did not address the aquaculture of Atlantic Cod other than indicating that a cod demonstration farm was the next step for the Province.

## Aquaculture Development

The Department's Strategic Plan stated it would initiate the strategic development, start-up and operation of a commercial scale Atlantic Cod demonstration farm by 2008. The purpose of such a farm is to demonstrate to private and public investors that full scale cod aquaculture can be carried out successfully in this Province.

Our review indicated the following:

---

**No development of Atlantic Cod aquaculture**

The Department has done little to advance the development of Atlantic Cod aquaculture in the Province. At the time of our review only 3 of the 21 Atlantic Cod sites were actively cultivating Atlantic Cod. The Department is currently reviewing inactive Atlantic Cod sites to determine whether they should be closed in accordance with its site utilization policy.

**Cod hatchery not completed**

The Department indicated that construction of the cod hatchery in Bay Roberts ceased in 2003 and has not been completed due to legal issues between private industry proponents, including NAIA. The hatchery was a private initiative and the Department had no involvement in the design or construction. However, approximately \$1.6 million in funding was provided to the proponents through Federal loans and Federal/Provincial non-repayable contributions. We found that approximately \$1 million will be required to complete construction of the hatchery; however, there were no plans for its completion at the time of our review.

**Cod demonstration farm not completed**

The Department reported in its 2007-08 annual report that it did not meet its strategic goals in completing the strategic development, start-up and operation of a commercial scale Atlantic Cod demonstration farm because the Federal Government had not committed funding to the project. Officials indicated that while the Department has committed \$2 million towards the project, agreements had not been reached to determine private industry and Federal contributions.

The cod demonstration farm is expected to stock approximately 500,000 cod annually over a 5 year period. Given that industry has failed to complete construction of a cod hatchery, and that there is no other cod hatchery in the Province to provide the number of cod the demonstration farm will require annually, the Department indicated it is exploring options to obtain cod from hatcheries in other parts of Atlantic Canada.

---

### Recommendation

The Department should complete the development, start-up and operation of a commercial scale Atlantic Cod demonstration farm.

### 4. Blue Mussel Development

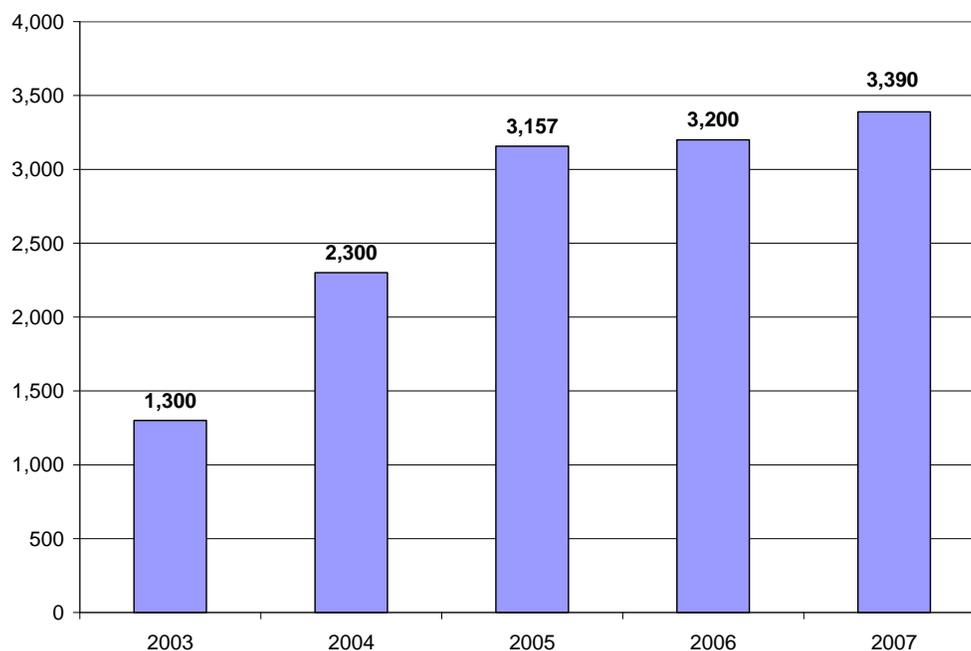
#### Introduction

Most of the productive Blue Mussel aquaculture sites are concentrated in the Nore Dame Bay area along the northeast coast of Newfoundland. As of 31 December 2007, there were a total of 54 licensed Blue Mussel sites. There were an additional 10 active or inactive sites that were not licensed as at 31 March 2007. In total, 27 individuals or companies had 64 Blue Mussel sites in various stages of operation. Thirteen, or 48% of the 27 individuals companies with 40 or 63% of the 64 Blue Mussel sites contributed to production in 2007.

As Figure 5 indicates, Blue Mussel production has increased from 1,300 metric tonnes in 2003 to 3,157 metric tonnes in 2005, which represents an increase of 143% in three years. However, from 2005 to 2007, Blue Mussel production has only increased 7% from 3,157 metric tonnes to 3,390 metric tonnes.

Figure 5

#### Aquaculture 5 year history of Blue Mussel production (metric tonnes) Year Ended 31 December



Source: Department of Fisheries and Aquaculture

In 2000, the Industry Strategic Plan recognized that the Blue Mussel industry was undercapitalized and recommended that a targeted investment prospecting program be carried out. In response to findings in our 2004 report, the Department indicated that its investment prospecting program was mainly focused on the salmonid industry and that no investment capital had been raised for Blue Mussels. Furthermore, we found that Blue Mussel production was stagnated because processors couldn't sell newly developed value-added Blue Mussel products following a decision to market these products instead of fresh Blue Mussels. Industry reviewed its strategic plan in 2005 and identified the need to increase land and marine infrastructure as a priority issue to support industry expansion.

The Department's Strategic Plan stated it would develop an expanded aquaculture investment strategy and support its implementation by 2008.

Our review indicated the following:

---

### Industry expansion

**No significant growth in Blue Mussel industry**

The Department indicated that the 143% increase in Blue Mussel production between 2003 and 2005 was partially the result of the sale of value-added Blue Mussels that processors couldn't sell in 2003, which were being held in inventory. In addition, some new markets for value-added Blue Mussels had developed in 2004 and 2005. The Department recognizes that Blue Mussel production increases have been and will continue to be moderate for the next few years because of increased competition, a weakening dollar and the current level of infrastructure can only support a moderate level of expansion.

---

### Investment Strategy

**No investment strategy for Blue Mussels**

The Department did not develop and implement an expanded aquaculture investment strategy as outlined in its Strategic Plan 2006-2008. While the Department did prepare a draft document identifying investment initiatives required to expand the salmonid industry, no such document was prepared for Blue Mussels. The Department indicated that it expects to complete a Blue Mussel strategy document in 2009-10.

### Recommendation

The Department should develop and implement a strategy to promote and support the orderly and sustainable expansion of the Blue Mussel industry.

### Department's Response

*The Department should review and make recommendations to update the Aquaculture Act and Regulations.*

*Provincial frameworks governing aquaculture in various jurisdictions across the country differ, to reflect the roles and mandates of different departmental structures working at different capacities, all in the public interest. Therefore, Newfoundland and Labrador has a different regulatory framework to govern aquaculture than does other jurisdictions but it has a regulatory framework that is appropriate for this province. Harmonization of the regulatory framework governing aquaculture is a national and provincial priority. The NL framework is arguably leading in this regard, with little duplication in codes, guidance, monitoring programs, and regulation among the participating federal and provincial Departments. The Province has taken a leadership position on this matter nationally as Chair of the Task Group on Aquaculture under the auspices of the Canadian Council of Fisheries & Aquaculture Ministers.*

*Legislation and regulations must be responsive to a changing world and the NL aquaculture industry is developing rapidly. To ensure this responsiveness, the Department is currently reviewing all legislation, regulations and policies to ensure that they support development and the sustainable management of the NL aquaculture industry in a comprehensive manner.*

*The Department should complete and approve the Aquaculture Health Management Plan*

*The Aquaculture Health Management Plan has been developed from a thorough review of management plans used in NL and other jurisdictions. The Plan will be approved and released by the Department in 2009. The Emergency Response Plan component has been in place since 2006 and will be incorporated.*

***The Department should develop a code of practice for the aquaculture of shellfish.***

*The Department recognizes the value of a well-managed industry. It has developed three regional management plans for mussel aquaculture to guide development. These have been in place since the late 1990's and are updated regularly. In addition, the industry has developed a Blue mussel best practice manual to guide farm practices of the industry.*

*The Department is expanding the management of the industry from beyond licensing and development perspectives to include sustainable management. In 2007, it developed a Blue mussel guide to environmental management planning. This approach will result in company-specific environmental management plans being integrated into farm management plans first, and later integrated into the regulatory process. This approach is a harmonized approach that recognizes existing standards, and at the same time, will promote and monitor the establishment of best/better practices.*

***The Department should obtain approval and implement the recommendations necessary to support an orderly and sustainable expansion in the salmonid industry.***

*The recommendations of the Industry Strategic Plan have been considered and are being implemented. To address the need for marine infrastructure, the Department has;*

- *allocated funding to determine infrastructure requirements;*
- *financially supported the addition to the Poole's Cove wharf;*
- *worked with Belleoram community and federal Small Craft Harbours to develop a wharf expansion plan;*
- *secured funding in the 2008/09 budget to complete a wharf infrastructure assessment;*
- *lobbied for federal financial support for wharf construction;*
- *financial programs have been established to improve access by industry to investment;*
- *surveys of potential hatchery sites have been completed and financial programs expanded to include hatchery construction;*
- *additional fish health resources have been committed to the industry including specialized personnel, equipment and the construction of a new diagnostic facility.*

*Finally, management approaches in the areas of development; licensing, fish health, and sustainable management have been developed and will be adopted as policy.*

*The Department has also launched a dedicated approach to engage the resources of other Departments in the areas of roads, communications, investment and sustainable management. This approach has been approved by Government, and is underway, thus ensuing the development of the strategy in 2009.*

***The Department should complete the development, start-up and operation of a commercial scale Atlantic Cod demonstration farm.***

*The Department disagrees with the Auditor General's finding that it has done little to advance the development of Atlantic Cod aquaculture in the Province. It has taken a leadership role in the development of this opportunity and has accomplished the following:*

- *provided funding to NAIA to complete the strategy for the demonstration farm;*
- *allocated \$ 2 M to the establishment and operation of that farm;*
- *completed a Request for Proposals to identify and secure an industry partner;*
- *lobbied the federal government to become a partner in the project;*
- *provided financial support (\$ 0.5 M) to cod genomics;*
- *provided fish health services to cod research at the Ocean Sciences Centre of Memorial University, and;*
- *completed R&D to develop health approaches for cod culture.*

***The Department should develop and implement a strategy to promote and support the orderly and sustainable expansion of the Blue Mussel industry.***

*While the Department has not yet completed a specific strategy for Blue mussel development, it has been working towards the resolution of some of the elements that have been identified as issues. Specifically, a study of the available area for development has been completed, the infrastructure needs have been assessed, the Aquaculture Capital Equity Program is available to provide investment capital to industry, regional management plans have been updated, a dedicated fish health approach is in place and the Department has supported the industry in developing a market approach. In addition, the Department has provided applied R & D funding to help mussel companies assess and adopt innovative techniques and approaches.*

*Finally, the Department recognizes that all of these elements must be developed further in a strategic plan for the industry that will encourage development and expansion while ensuring sustainability. This strategy will be completed in fiscal 2009/10.*



## Highlights

Highlights of a review of inspection of aquaculture sites by the Department of Fisheries and Aquaculture for the period 1 January 2004 to 30 November 2008.

### Why our Office Did this Review

The objective of our review was to determine whether the Department was complying with inspection requirements and whether deficiencies identified in our 2004 report were addressed.

### What our Office Recommends

Following are highlights of recommendations included in the Report that the Department should address. The Department should:

- ensure inspectors accurately complete the Aquaculture Site Inspection and Directive Report;
- revise the Aquaculture Site Inspection and Directive Report;
- ensure site operators acknowledge inspection results in the Aquaculture Site Inspection and Directive Report;
- inspect aquaculture sites annually as required;
- inspect aquaculture sites when they are closed to ensure closed sites have been returned to their natural state as required;
- ensure hazards and deficiencies identified during inspections are corrected as required;
- review, update and comply with the Code of Containment;
- revise the Cage System Audit Report; and
- review and make improvements to the Aquaculture Licensing Information System to ensure that all information entered into the system is captured and that reports produced from the system are complete, accurate and timely.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

Chapter 2, Part 2.10

### DEPARTMENT OF FISHERIES AND AQUACULTURE

#### Aquaculture Inspections

Inspector(s) of the Department's Fisheries Branch carry out inspections at all aquaculture sites in the Province to determine whether there is compliance with the *Aquaculture Act* and *Regulations* and Department policy. Staff of the Aquaculture Branch carry out inspections of marine cages to determine whether there is compliance with the Code of Containment. Aquaculture sites are inspected to determine whether, among other things, sites are properly maintained, located and marked so that they do not become a navigation or safety hazard; sites that were closed have been restored to their natural state by the most recent site operator; and sites with fish are contained in marine cages to prevent loss through escapement and possible harm to wild fish stocks.

### What We Found

We identified a number of issues with regards to the Department's aquaculture inspection activities. For example:

**Aquaculture Site Inspections:** The Department only completed 125 or 86% of the 146 annual inspections that were required in 2007 and officials indicated that the Department was not successful in inspecting all aquaculture sites in 2005 and 2006. In addition:

- The Department does not know whether closed aquaculture sites have been returned to their natural state as required under the *Aquaculture Act*.
- Inspectors are not accurately completing Aquaculture Site Inspection and Directive Reports (Inspection Report) and the Inspection Report is not adequate to support inspection activity. We had difficulty determining whether deficiencies and hazards did or did not exist.
- Our review of 163 Inspection Reports prepared in connection with inspections of aquaculture sites in 2007 indicated that directives are not always included in the Inspection Report to site operators to correct identified deficiencies. Contrary to Departmental policy, follow-up inspections are not always carried out to ensure identified deficiencies are corrected.
- The Department provides little guidance in its policy manuals as to what would be considered a hazard at an aquaculture site. Notwithstanding the lack of clarity with regards to the definition of a hazard, our review indicated that 30 or 18% of 163 aquaculture sites inspected in 2007 were identified as having a hazard at the time of the inspection. There was no immediate correction at any of the 30 sites and, contrary to Department policy, site operators were not asked to provide an action plan to indicate how the hazard was to be mitigated. Furthermore, we found that 16 of the 30 sites still had the same hazards noted in their 2008 annual inspection.

**The Code of Containment:** There are no established guidelines for the amount of weight to be used by site operators in the weighing of nets secured to marine cages; there are no established standards for mooring systems to hold marine cages in place; the Department has no mooring system inspection program; and there is no requirement that the Department carry out a subsurface dive inspection to ensure that site operators are maintaining cage systems in accordance with the Code.

The Department is not always carrying out the required number of annual cage systems inspections as required under its Code of Containment. Cage System Audit Reports did not always indicate whether repairs were required to cages and nets and, where repairs to cages and nets were required, compliance dates were not always given and follow-up inspections were not always indicated as being carried out.

**Aquaculture Licensing Information System:** Information recorded in the Aquaculture Licensing Information System database is neither complete nor accurate. Information entered into the system is not always captured and reports produced from the system do not always contain the information requested.

### Background

Aquaculture is the cultivation of aquatic plants or animals. In Newfoundland and Labrador, aquaculture activity relates mainly to finfish and shellfish cultivation. Finfish includes such species as Atlantic Salmon and Steelhead Trout (salmonids), and Atlantic Cod. Shellfish includes such species as Blue Mussels and Scallops.

The mandate of the Aquaculture Branch of the Department of Fisheries and Aquaculture (Department) is to provide orderly development of the Province's aquaculture sector. The Department, through its Aquaculture Branch, is responsible for supporting, regulating and monitoring development of the aquaculture industry. The Branch has two Divisions: Aquaculture Development and, Licensing and Inspection. The main Aquaculture Branch Office is located in Grand-Falls Windsor with regional Offices in St. John's, St. Alban's and Corner Brook.

As Figure 1 indicates, on 31 December 2007 there were 146 aquaculture sites in the Province. These 146 sites are operated by 62 individuals or companies. Of the 146 sites, 111 sites had a valid licence and 35 did not have a valid licence. Most of the 35 sites did not have a valid licence because they were either inactive or the site operator had failed to pay the required licence renewal fee and/or provide the required licence renewal information. The Province closed 28 inactive Atlantic Cod sites in 2007.

**Figure 1**

#### Aquaculture

**Number of existing (licensed and unlicensed) and closed sites by species**

**As at 31 December 2007**

Species	Aquaculture Sites			Number of sites closed in 2007
	Licensed as at 31 December 2007	Unlicensed as at 31 December 2007	Total	
Salmonids	38	10	48	0
Atlantic Cod	9	12	21	28
Blue Mussels	54	10	64	3
Other	10	3	13	2
<b>Totals</b>	<b>111</b>	<b>35</b>	<b>146</b>	<b>33</b>

Source: Department of Fisheries and Aquaculture

## Aquaculture Inspections

Aquaculture sites are inspected to determine whether, among other things:

- sites are properly maintained, located and marked so that they do not become a navigation or safety hazard;
- sites that were closed have been restored to their natural state by the most recent site operator; and
- sites with fish contained in marine cages comply with the Department's Code of Containment to prevent loss through escapement and possible harm to wild fish stocks.

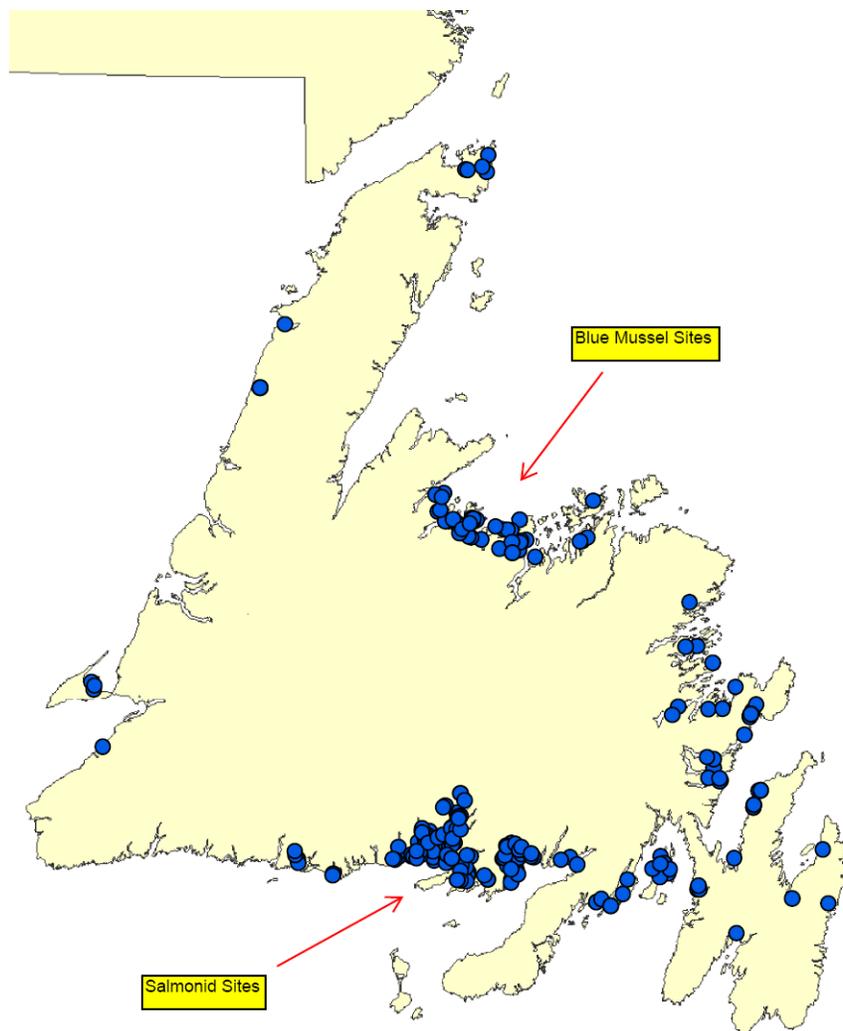
Inspector(s) of the Department's Fisheries Branch carry out inspections at all aquaculture sites in the Province. Inspections of marine cages to determine whether there is compliance with the Code of Containment are carried out by staff of the Aquaculture Branch.

Figure 2 shows that aquaculture sites are dispersed throughout the island portion of the Province, with a heavy concentration of sites in two areas. Most of the salmonid sites occupy the Bay D'Espoir and Fortune Bay area along the southeast coast of the Province and most of the productive mussel sites occupy the Notre Dame Bay area along the northeast coast of the Province. There are no aquaculture sites in Labrador.

---

**Figure 2**

**Aquaculture Site Locations  
Newfoundland and Labrador**



Source: Department of Fisheries and Aquaculture

### Audit Objectives and Scope

<b>Audit objectives</b>	The objective of our review was to determine whether the Department was complying with inspection requirements and whether deficiencies identified in our 2004 report were addressed.
<b>Audit scope</b>	Our review covered the period 1 January 2004 to 30 November 2008 and included an analysis of the Department's aquaculture inspection program and the Code of Containment. We reviewed a sample of aquaculture inspection reports to determine compliance with the <i>Aquaculture Act</i> and <i>Regulations</i> , established policies and procedures and the Code of Containment. We completed our review in December 2008.

### Overall Conclusions

We identified a number of issues with regards to the Department's aquaculture inspection activities. For example, not all aquaculture sites were inspected annually as required by policy, not all issues identified during inspections were followed up, the inspection reports did not address all inspection areas and documentation of inspection results requires improvement.

Details of our findings are outlined in the following sections:

#### **Aquaculture Site Inspections**

The Department only completed 125 or 86% of the 146 annual inspections that were required in 2007. Furthermore, the Division indicated that it was not successful in inspecting all aquaculture sites in 2005 and 2006. Since 2005, the Licensing and Inspection Division has been reporting to Department executive that the annual inspection program was not successful because there was only one inspector dedicated to aquaculture inspections and there were problems with equipment. The Department was not successful in hiring another inspector until the summer of 2008.

The Department does not know whether closed aquaculture sites have been returned to their natural state as required under the *Aquaculture Act* because the underwater camera and vessel sonar used to detect aquaculture gear in deep water or at the ocean floor are not effective.

Inspectors are not accurately completing Aquaculture Site Inspection and Directive Reports (Inspection Report). We found instances where yes/no answers to questions on the report were either not answered, were answered as yes and no, or contradicted the narrative provided or the directive given. As a result, we had difficulty determining whether deficiencies and hazards did or did not exist.

The Inspection Report is not adequate to support inspection activity. For example, the report does not list or reference known safety hazards and whether they exist or not. There has been no improvement in this area since our last report in 2004.

There is no requirement that the site operator sign the Inspection Report acknowledging the inspection results and related directives, and the Department does not take measures to ensure site operators received the reports that were mailed to them, as is required by Department policy. Therefore, it is possible that some site operators may not know the results of site inspections and whether they are required to take action to correct any deficiencies or hazards that may exist.

Our review of 163 Inspection Reports (relating to existing and closed sites) prepared in connection with inspections of aquaculture sites in 2007 indicated that directives are not always included in the Inspection Report to site operators to correct identified deficiencies. Contrary to Departmental policy, follow-up inspections are not always carried out to ensure identified deficiencies are corrected.

The Department provides little guidance in its policy manuals as to what would be considered a hazard at an aquaculture site and relies on the judgment of the inspector to determine whether a hazard exists or not.

Notwithstanding the lack of clarity with regards to the definition of a hazard, a review of Inspection Reports indicated that 30 or 18% of 163 aquaculture sites inspected in 2007 were identified as having a hazard at the time of inspection. There was no immediate correction at any of the 30 sites and, contrary to Departmental policy, site operators were not asked to provide an action plan to indicate how the hazard was to be mitigated. Furthermore, we found that 16 of the 30 sites still had the same hazards noted in their 2008 annual inspection. One site has not been inspected since hazards were identified in June 2007.

### The Code of Containment

There are no established guidelines for the amount of weight to be used by site operators in the weighing of nets secured to marine cages. In the Winter of 2007, an experienced site operator, new to aquaculture in this Province, experienced a loss of fish resulting from a winter storm which caused cage nets to move about excessively, creating stressful conditions that resulted in fish death.

There are no established standards for mooring systems to hold marine cages in place, and the Department has no mooring system inspection program. Mooring systems have a finite lifespan and failure of any component could result in navigation hazards, cage loss and/or fish death or escapement.

There is no requirement that the Department carry out a subsurface dive inspection to ensure that site operators are maintaining cage systems in accordance with the Code. While the Code does require, and site operators do carry out, cage system dive inspections, the Code does not specify what specific subsurface areas of cage systems should be inspected, and whether site operators should keep records of these inspections for review by the Department.

Department officials indicated that the Code's Federal fish recapture plan in the event of fish escapement, has never been proven to be very effective in actual escape events or in trials conducted by the Federal Government, and there has been little work done to improve recapture gear and technology since 2001.

The Department has not established fish handling best practices which would be required for the salmonid aquaculture industry. Instead, the Department requires site operators to use fish handling best practices outlined in the Industry Code of Practice. Department officials indicated that the Industry Code of Practice needs to be updated in order to bring fish handling standards in line with higher standards that exist in other jurisdictions in Canada.

The Department is not always carrying out the required number of annual cage system inspections as required under its Code of Containment. We found:

- instances where there was no inspection at all during the year;
- Cage System Audit Reports were not always signed by the site operator;

## Aquaculture Inspections

---

- Cage System Audit Reports did not always indicate whether repairs were required to cages, surface moorings and nets. Where the Department indicated that repairs were required, compliance dates were not always given and follow-up inspections were not always indicated as being carried out to ensure the repairs were made.
- the Cage System Audit Report is inadequate in that it does not address whether nets in use at sites are properly tagged, of sufficient strength, are UV / antifoulant treated and of the appropriate mesh size.
- annual net inventories provided by site operators are not sufficiently audited by the Department to determine whether the age and strength of nets listed in the inventory are satisfactory. For example, only 3% (4 of 128) of nets in the inventory of one site operator were audited by the Department.

### **Aquaculture Licensing Information System**

Information recorded in the Aquaculture Licensing Information System database is neither complete nor accurate. Information entered into the system is not always captured and reports produced from the system do not always contain the information requested. We experienced delays in getting inspection reports and other information requested from the Department because the system could not provide the information, or the information provided was so inaccurate that it had to be thoroughly reviewed by staff before it was forwarded to our Office for review.

---

## Detailed Observations

---

This report provides detailed findings and recommendations in the following sections:

1. Site Inspections
2. The Code of Containment
3. Aquaculture Licensing Information System

### 1. Site Inspections

---

#### Overview

Aquaculture site inspections are carried out annually by an inspector(s) of the Department's Fisheries Branch. Inspections focus on ensuring sites are properly maintained, located and marked so that they do not become a navigation or safety hazard. Inspections are carried out in accordance with the Aquaculture Policy and Procedures Manual and the Aquaculture Inspection Program Procedures Manual. The manuals are designed to ensure aquaculture facilities comply with Department policies and procedures and the *Aquaculture Act* and *Regulations*. All existing aquaculture sites are required to be inspected at least once annually to determine, among other things, whether:

- there are any fixed structures in close proximity to the site that may be an environmental risk;
- aquaculture equipment installed on the site is in good condition;
- equipment is installed within the coordinates that were approved for the site;
- there are buoys that clearly identify and mark the site on the water;
- the site is in compliance with the terms and conditions of the aquaculture licence, such as whether the site is configured and maintained in accordance with documents approved for the site under the Federal *Navigable Waters Protection Act* (NWPA); and
- there are no hazardous shore fastened moorings present.

Figure 3 shows the number and percentage of existing sites that were inspected annually by the Department in the three year period ending 31 December 2007.

## Aquaculture Inspections

**Figure 3**

**Aquaculture  
Number and percentage of existing sites inspected annually  
Years Ended 31 December**

<b>Number of sites where inspection was completed or not completed</b>	<b>2005</b>	<b>%</b>	<b>2006</b>	<b>%</b>	<b>2007</b>	<b>%</b>
Completed	160	92	140	79	125	86
Not completed	13	8	37	21	21	14
<b>Totals</b>	<b>173</b>		<b>177</b>		<b>146</b>	

Source: Licensing and Inspection Division Aquaculture Inspection Program Review Report

Note: Figures for 2007 were compiled from the results of our review procedures

In addition, the Department carries out inspections of aquaculture sites that were closed by the Department during the year. The Department must ensure that closed aquaculture sites have been restored to their natural condition as required under the *Aquaculture Act*.

The Licensing and Inspection Division carries out a review of its inspection program each year. Inspection results are reported and recommendations for improvements to the inspection program are made to the Department.

We reviewed inspection reports in connection with 163 aquaculture sites (125 existing sites and 38 closed sites) that were inspected in 2007 to determine whether the Department was carrying out annual inspections to determine whether site operators were complying with the Department policies and procedures and the *Aquaculture Act* and *Regulations*. Our findings are outlined in the following sections:

- A. Inspection Reports
- B. Annual Inspections
- C. Closed Aquaculture Sites
- D. Identified Deficiencies
- E. Identified Hazards

---

### 1A. Inspection Reports

---

#### Introduction

Department policy requires aquaculture inspectors to document the results of their inspection on an Aquaculture Site Inspection and Directive Report Form (inspection report) and provide the site operator with a copy of the report. If any deficiencies and/or hazards are identified, directives are to be issued to the site operator to take corrective action. If the site operator is not available to sign the inspection report, then it must be hand delivered or placed in registered mail as soon as possible following the inspection.

We reviewed the inspection report to determine whether key assessment areas were clearly outlined in the report and whether the inspector was required to indicate on the report that the site was in compliance with these key areas. We also reviewed whether inspectors were accurately completing inspection reports. Our review indicated the following:

---

#### Inspection reports not accurately completed

Inspectors are not accurately completing inspection reports. The report includes a checklist which requires a yes or no answer to questions such as: whether fixed structures exist; whether aquaculture equipment is located within the approved site location; and whether safety hazards are present. We found instances where there was no yes/no answer provided, where both a yes and no answer were provided, and where a yes or no answer provided contradicted the narrative provided or the directive given. As a result, we had difficulty determining whether deficiencies and hazards did or did not exist.

#### Inspection report is weak because it does not identify or reference support for key inspection areas

The inspection report is weak in the following areas:

- There is no place for the inspector to indicate the number and nature of fixed structures found to be in close proximity to the site and whether any of the fixed structures are an environmental risk to the site. We reviewed 163 inspection reports prepared in 2007 and found that in 83 or 51% of 163 reports, the inspector indicated that a fixed structure existed in close proximity to the aquaculture site; however, in most cases there was no indication as to what those structures were and whether the structures were an environmental risk to the site. In 15 of 163 reports there was no indication as to whether a fixed structure existed or not.

- The report does not specify or reference the conditions that must exist for aquaculture equipment to be in good condition. The Department could not explain what “good condition” means.
- The report does not indicate whether the site is in compliance with the terms and conditions of the licence with respect to NWPA requirements. For example, whether perimeter and corner buoys have reflective tape and/or flashing lights to allow safe navigation at night.
- The report does not list or reference known safety hazards and whether they exist or not. The Department indicated it was not in a position to provide us with a list of typical safety hazards found at aquaculture sites and we found no guidance in the policy manuals as to what would be considered a hazard at an aquaculture site. The Department indicated that such guidance would constrict the inspector from using his/her judgment in determining whether a hazard exists or not.
- The report is not adequate for reporting on inspections of closed sites. The report does not have a place where it can be clearly indicated that the site is closed and whether all aquaculture gear has been removed from the surface and from below the surface of the site.

**Department does not ensure site operators receive the results of inspections**

Finally, inspection reports are not delivered to site operators at the time of the inspection, rather the reports are brought back to the branch or field office where they are completed electronically and then mailed to the site operator. This may take up to a week following the inspection. There is no requirement that the site operator sign the inspection report acknowledging the inspection results and related directives, nor does the Department take measures to ensure site operators received the reports that were mailed to them. Therefore, it is possible that some site operators may not know the results of site inspections and whether they are required to take action to correct any deficiencies or hazards that may exist.

There has been no improvement in this area since our last report in 2004.

---

### 1B. Annual Inspections

---

#### Introduction

Department policy requires that all existing aquaculture sites be inspected at least once annually. Site deficiencies or hazards observed during the course of an inspection are required to be documented on the inspection report.

Site inspections normally occur during the period April to December as they are not practical during the winter months of January to March. During the period of our review, the Department had one inspector dedicated to carry out inspections of aquaculture sites. The Department indicated that another aquaculture inspector was hired in the summer of 2008.

The Department indicated that there were 146 existing aquaculture sites that required an inspection in 2007. We reviewed the 2007 inspection reports to determine whether inspections were carried out annually as required. Our review indicated the following:

---

#### All sites not inspected annually as required

The Department only completed 125 or 86% of the 146 inspections that were required in 2007. The Division indicated in its 2007 inspection program report that the primary reason for not achieving full inspection coverage was because there was only one inspector dedicated to carry out aquaculture inspections; however, ongoing problems with boat, truck and trailer equipment also contributed.

Furthermore, the Division reported that only 160 or 92% of 173 aquaculture sites were inspected in 2005, and that only 140 or 79% of 177 aquaculture sites were inspected in 2006. Since 2005, the Division has been reporting to Department executive that annual inspections of aquaculture sites were not being completed as required because there was only one inspector dedicated to aquaculture inspections and there were problems with equipment. The Department was not successful in hiring an additional aquaculture inspector until the summer of 2008.

---

### 1C. Closed Aquaculture Sites

---

#### Introduction

The *Aquaculture Act* states that, “Where a person does not renew an aquaculture licence or where an aquaculture licence is cancelled...the person who held the last valid aquaculture licence for a site shall remove from that site all aquaculture gear and shall restore that site to its natural state”.

The Department carries out inspections of aquaculture sites that have been closed to ensure that all aquaculture gear has been removed from the water surface and from below the water surface. Aquaculture gear at the water surface may include such things as buoys, ropes, and cages. The Department determines whether surface aquaculture gear has been removed from the aquaculture site through visual inspection via boat. Aquaculture gear below the water surface may include such things as mooring anchor blocks, submerged buoys, nets, ropes and chains. The Department determines whether subsurface aquaculture gear has been removed from the aquaculture site through the use of underwater camera and/or vessel sonar.

In the 5 year period ending 31 December 2007, the Department indicated that a total of 84 aquaculture sites had been closed and required inspection to determine whether the site was returned to its natural state. Our review indicated the following:

**Department cannot determine whether closed sites are returned to natural state**

The Department indicated that it cannot determine whether closed aquaculture sites are free of aquaculture gear below the surface because methods used to detect aquaculture gear in deep water or at the ocean floor are not effective. The Department indicated that the underwater camera is difficult to control in deep water and does not provide a wide angle photo; therefore, it is unreliable in its coverage. While the vessel sonar can detect objects below the water surface and along the ocean floor, the inspector is not able to determine what the objects are.

**Closed sites not inspected**

Our review also indicated that 33 of the 84 closed aquaculture sites were closed in 2007 and therefore would require an inspection in 2007 to determine whether the site was returned to its natural state. We found that 14 or 42% of the 33 sites closed in 2007 have not been inspected since they were closed to determine whether the sites are free of aquaculture gear.

### 1D. Identified Deficiencies

**Introduction**

The Department's policy manual defines a deficiency as "*Any condition which is a contravention of the Aquaculture Licence, the Aquaculture Act, the Aquaculture Regulations, or other Federal/Provincial legislation*". However, there is insufficient guidance in the policy manuals as to what would be considered a deficiency at an aquaculture site. Therefore, we asked the Department to provide us with examples of typical deficiencies found at aquaculture sites.

Officials at the Department indicated they were not in a position to provide us with a list of typical deficiencies because such guidance could constrict the inspector from using their judgment in determining whether a deficiency exists or not. As a result, we reviewed inspection reports and found that inspectors were describing a deficiency to include, among other things, the following conditions:

- corner buoys not marked with company name and aquaculture licence number;
- perimeter buoys not properly spaced and not of the appropriate size; and
- disorganized aquaculture gear within the site perimeter.

The Department's Aquaculture Policy and Procedure Manual requires that deficiencies be corrected within 30 days from the date of inspection, or as directed by the inspector. Follow-up activity must occur to ensure corrective actions have been completed.

We reviewed 163 inspection reports prepared in connection with existing and closed aquaculture sites in 2007. Where a deficiency was identified in the inspection report, we reviewed subsequent inspection reports to determine whether the deficiency was corrected. Our review indicated the following:

---

67 or 41% of 163 aquaculture sites inspected in 2007 had a total of 107 deficiencies identified at the time of inspection. Of the 67 sites that had 107 deficiencies, we found the following:

**Directives to correct deficiencies not always issued**

- In 43 of the 107 deficiencies identified, no directives were issued to 37 sites to correct the deficiencies. Furthermore, 28 of the 43 deficiencies still existed in 25 sites following inspections in 2008, while 2 sites with 4 deficiencies were not inspected since 2007. As a result, we were unable to determine whether these 27 sites had corrected the 32 deficiencies at the time of our report. The remaining 11 deficiencies were corrected in subsequent inspections in 2007 and 2008.

**Follow-up inspections not carried out**

- In 64 of the 107 deficiencies identified, where directives were issued to 53 sites to correct the deficiencies by a specified compliance date, we found that no follow-up inspection was carried out by the inspector by that date. Furthermore, no follow-up inspections were carried out for 51 of the 53 sites containing 60 of the 64 deficiencies.

**Deficiencies not always corrected as required**

We also found that 35 of the 64 deficiencies still existed in 30 sites following inspections in 2008, while 2 sites with 2 deficiencies were not inspected since 2007. As a result, we were unable to determine whether these 32 sites had corrected the 37 deficiencies at the time of our report. The remaining 27 deficiencies were corrected in subsequent inspections in 2007 and 2008.

---

### 1E. Identified Hazards

---

**Introduction**

The Department's policy manual defines a hazard as "*Any condition that constitutes a health/safety issue or obstructs, impedes, or renders navigation in navigable waters more difficult or dangerous*". However, there is no guidance in the policy manuals as to what would be considered a hazard at an aquaculture site. Therefore, we asked the Department to provide us with examples of typical hazards found at aquaculture sites.

Officials at the Department indicated they were not in a position to provide us with a list of typical hazards because such guidance could constrict the inspector from using their judgment in determining whether a hazard exists or not. As a result, we reviewed inspection reports and found that inspectors were describing a hazard to include, among other things, the following conditions:

- a shore fastened mooring line attached to the shore or anchored to the seabed at a depth of less than two vertical meters below the low water mark;
- a site with no perimeter markings; and
- floating rope or tangled gear and equipment outside the site perimeter.

The Department's Aquaculture Policy and Procedure Manual requires that hazards be corrected immediately. Where immediate correction is not practical the site operator is required to submit an action plan to the Department, specifying time frames for correction and steps to mitigate the hazard(s) in the short term. In addition, the Canadian Coast Guard must be notified immediately.

## Aquaculture Inspections

We reviewed 163 inspection reports prepared in connection with existing and closed aquaculture sites in 2007. Where a hazard was identified in the inspection report, we reviewed subsequent inspection reports to determine whether the hazard was corrected. Our review indicated the following:

---

In 30 or 18% of 163 aquaculture sites inspected in 2007 there were identified hazards at the time of inspection. Of the 30 sites with hazards, we found the following:

**Directives to correct hazards not always issued**

- In 9 of the 30 sites with hazards, no directive was issued to the site operator to immediately correct or prepare an action plan to correct the hazards identified. Furthermore, 5 of the 9 sites had the same hazards identified during inspections in 2008, and we were unable to determine whether the hazards had been corrected at the time of our report. For two of the remaining four sites, the inspector found the site to be free of hazards in a follow-up inspection in 2007, while the remaining two sites were found to be free of hazards following inspections in 2008.

**Hazards not always corrected as required**

- In 21 of the 30 sites with hazards, a directive was issued to the site operator to correct the hazards identified; however, immediate correction did not occur and no action plan was obtained from the site operators to mitigate the hazard until correction could occur. Furthermore, 11 of the 21 sites had the same hazards identified during inspections in 2008, and one site was not inspected since hazards were identified in June 2007. As a result, we were unable to determine whether these 12 sites had corrected the hazards at the time of our report. The remaining 9 sites were found to be free from hazards following inspections in 2007 and 2008.

---

### Recommendations

The Department should:

- ensure inspectors accurately complete the Aquaculture Site Inspection and Directive Report;
- revise the Aquaculture Site Inspection and Directive Report to address the weaknesses noted in our report;

- ensure site operators acknowledge inspection results in the Aquaculture Site Inspection and Directive Report;
- inspect aquaculture sites annually as required;
- inspect aquaculture sites when they are closed and obtain the equipment necessary to ensure closed sites have been returned to their natural state as required by the *Aquaculture Act*;
- ensure hazards and deficiencies identified during inspections are corrected as required under Department policy; and
- update Department policy to assist inspectors in determining whether deficiencies or hazards exist at aquaculture sites.

## 2. The Code of Containment

### Overview

Atlantic Salmon and Steelhead Trout (salmonids) are cultured in various bays throughout the south coast of Newfoundland and must be contained in marine cages to prevent loss through escapement and possible harm to wild fish stocks. In 1999, the Department developed a management strategy known as the “Code of Containment” (Code) for the cage culture of salmonids in Newfoundland and Labrador. The Department reviewed and updated the Code in 2003 and in 2005.

The Code establishes standards in the area of cage equipment, fish handling practices, inspections, documentation, and reporting / recapture plans in the event of escapement. Site operators must adhere to the Code as a condition of their annual licence. The Department determines whether site operators adhere to the Code by carrying out inspections of cage systems twice a year and reviewing annual net and fish inventories submitted by site operators. Inspections are carried out by staff in the Aquaculture Branch. The results of inspections and inventory reviews are reported in an annual compliance report to the Department.

We reviewed and discussed the Code with Department officials. We also reviewed Cage System Audit Reports and net inventory reports in connection with inspections carried out at active aquaculture sites during the three year period ending 31 December 2007 to determine whether site operators are complying with the Code. Our findings are outlined in the following sections:

- A. Code of Containment
- B. Cage System Inspections

---

### 2A. Code of Containment

---

#### Introduction

Under the Code, the Department is responsible for:

- developing procedures necessary to meet Code objectives;
- monitoring and enforcing cage sites to ensure containment practices and procedures specified in the Code are followed; and
- reviewing and updating of the Code.

Our review indicated the following:

---

#### Weighing of Nets

The proper weighing of nets secured to marine cages is necessary to maintain net volume (size and shape) so that captive fish are free to move about in a stress free manner. Improperly weighted nets could result in a loss of fish through death/escapement. We found:

#### No guidelines for weighing of nets

- There are no established guidelines for the amount of weight to be used by site operators in the weighing of nets secured to marine cages. Department officials indicated that the amount of weight used to weigh nets is decided by site operators and would be dependent on marine conditions that vary between site locations.

### Loss of fish due to improperly weighed nets

In the Winter of 2007, an experienced site operator, new to aquaculture in this Province, experienced a loss of fish resulting from a winter storm which caused cage nets to move about excessively, creating stressful conditions that resulted in fish death. The site operator concluded that the nets holding the fish were not sufficiently weighted, that a mistake had been made in calculating the amount of weight required to hold net volume in the marine conditions that transpired and that contract divers had not properly installed the weights.

### Mooring systems

### No standards or inspection program for mooring systems

A mooring system consists of heavy weight anchors, chains, shackles, lines and buoys which are designed to work together and hold marine cages in place in marine environments. Mooring systems have a finite lifespan and failure could result in navigation hazards, cage loss and/or fish death or escapement. In 2000, the Department purchased a remote operated vehicle (ROV) at a cost of approximately \$60,000 in order to carry out inspections of mooring systems in deep water. We found:

- There are no established standards for mooring systems, and the Department has no mooring system inspection program.

The Department indicated that most of the salmonid aquaculture sites in the Province are in waters that are too deep for divers to carry out sub-surface inspections of mooring systems.

- The ROV purchased in 2000 was found to be ineffective and has been in storage since 2005.

Department officials indicated that mooring systems have been under review since 2002. During this time, officials indicated that the Department has reviewed mooring system design standards of other countries and has surveyed site operators in the Province to develop a catalogue of the mooring systems components that are being used here in this Province.

The Department also indicated it has tried to obtain mooring system lifespan standards from the Federal Government, which could be used to assess the lifespan of mooring system components used by site operators in this Province; however, these lifespan standards were not provided by the Federal Government.

The Department indicated that, in the history of aquaculture in the Province, there has never been a mooring failure resulting in damage or escapes and that there is minimal risk of fish death or escapement due to mooring failure.

### **Subsurface dive inspections**

**Department not able to demonstrate site operators in compliance with Code**

The Code requires that site operators carry out cage system inspections daily, weekly and monthly and carry out dive inspections of nets when possible. Subsurface dive inspections are necessary to ensure that, among other things, mooring components are in good shape, there is proper net tension and weighing of nets, there are no net tears and there is no excessive debris build-up on nets and equipment. Department officials indicated that site operators are keeping records of dive inspections as a matter of industry best practice. We found:

- The Code is weak in that it does not specify what specific subsurface areas of cage systems should be inspected, and whether site operators should keep records of these inspections for review by the Department.
- The Department is not reviewing dive inspection records maintained by site operators to determine whether they are complying with the inspection frequency and other requirements of the Code.
- There is no requirement, and the Department does not carry out its own subsurface dive inspections relating to the Code of Containment to ensure that site operators are maintaining cage systems in accordance with the Code.

As a result of these issues, the Department is not able to demonstrate that site operators were in compliance with subsurface areas of the Code.

### **Recapture plan in the event of fish escapement**

**Fish recapture plan not reviewed for effectiveness**

The Federal Department of Fisheries and Oceans (DFO) is responsible for the preparation and monitoring of the fish recapture component of the Code of Containment in the event of an escapement.

In 2005 a Department official expressed concern that recapture gear specified in the DFO fish recapture plan had never been proven to be very effective in actual escape events or in trials conducted by DFO, and that there had been little work done to improve recapture gear and technology since 2001. The official recommended that the recapture plan be reviewed by the Department in order to determine whether there should be revisions to address weaknesses in the plan. However, we found that no review of the DFO fish recapture plan has been carried out.

As a result, the Department still does not know whether the DFO fish recapture plan is appropriate for responding to a significant fish escapement event in this Province.

### **Fish Handling Practices**

**Industry Code  
of Practice  
outdated**

The Department has not established fish handling best practices which would be required for the salmonid aquaculture industry. Instead, the Department requires site operators to use fish handling best practices outlined in the Industry Code of Practice that was developed by the Newfoundland Aquaculture Industry Association in 1995. Practices outlined in the Industry Code of Practice includes, among other things:

- transportation of fish from the hatchery through to processing;
- site selection, cage structures and stocking densities;
- grading and harvesting of fish;
- amount and frequency of feeding fish; and
- monitoring fish and cages through dive inspections.

In 2003, the Department recognized that practices and procedures for the transporting, holding, handling, feeding and monitoring of fish had improved since the original Industry Code of Practice was developed in 1995 and that a review of this Code was required in order to bring fish handling standards in line with higher standards that exist in other jurisdictions in Canada.

Department officials indicated that this review has not been completed and the Industry Code of Practice remains outdated.

---

### 2B. Cage System Inspections

---

#### Introduction

The Code requires that the Department inspect cage systems at aquaculture sites that are actively engaged in culturing fish at least twice yearly. Aquaculture sites that have cages in the water, but are not actively engaged in culturing fish, do not require this inspection. Results of inspections are recorded in a Cage System Audit Report which is signed by the Department and the site operator. The Department determines through visual surface inspection whether, among other things:

- cages and surface mooring components are in good condition;
- nets are properly secured to cage collars;
- nets near the surface are free of holes and tears; and
- nets in use are less than 3 years old or have been strength tested if greater than 3 years old. Tag numbers of nets found in use during cage system inspections are verified as being the proper age and strength through comparison with proof of purchase and strength test data included with the site operator's annual net inventory that is provided to the Department at the beginning of each year.

Where non-compliance is identified, the Department provides the site operator with the details of action required to correct the non-compliance area and a date by which compliance is expected. A follow-up inspection is carried out to ensure the site operator carried out the corrective action.

We reviewed 23 Cage System Audit Reports prepared in connection with inspections carried out at 8 of 24 aquaculture sites that were actively engaged in culturing fish during a period of time in the three year period ending 31 December 2007 to determine whether:

- the Department was carrying out the required number of annual inspections to determine whether site operators were complying with the Department's Code of Containment; and

## Aquaculture Inspections

- key assessment areas were clearly outlined in the Cage System Audit Report and whether the Department is required to indicate on the report that the site was in compliance with these key areas. We also reviewed whether the Department was accurately completing Cage System Audit Reports.

Our review indicated the following:

---

### **Inspections not completed as required**

- Aquaculture sites actively engaged in culturing fish are not always inspected twice a year as required under the Code of Containment. We found:
  - 4 or 50% of the 8 sites actively engaged in culturing fish did not receive two inspections as required during 2006. One of the 4 sites was not inspected at all during the year; and
  - 2 or 25% of the 8 sites actively engaged in culturing fish did not receive two inspections as required during 2007. One of the 2 sites was not inspected at all during the year.

### **Cage System Audit Reports not accurately completed**

- Cage System Audit Reports are not always accurately completed by the Department and the report does not address all of the key assessment areas in the Code of Containment. We found:
  - 7 or 30% of the 23 Cage System Audit Reports indicated that repairs were required to cages or nets. However, in 3 Cage System Audit Reports there was no compliance date given by the Department and in all 7 Cage System Audit Reports there was no indication that a follow-up inspection was ever carried out to determine whether the repairs were made;
  - 11 or 48% of the 23 Cage System Audit Reports did not indicate whether repairs were required to cages, surface moorings and nets; and
  - 6 or 26% of the 23 Cage System Audit Reports were not signed by the site operator acknowledging the inspection results.

### Cage System Audit Reports inadequate

We reviewed the Cage System Audit Reports and found the following:

- The Cage System Audit Report is not adequate because it does not address whether nets in use at sites are properly tagged and verified as being less than three years old or strength tested if greater than three years old. We found that Department staff are drawing diagrams of cages on the Cage System Audit Report and recording the tag numbers for those cages; however, there is no clear indication on the report as to whether the nets are of the required age or strength.
- There were instances where staff identified nets in use that were not tagged or had failed a net strength test and there was no indication whether these issues were resolved.
- The Department could not demonstrate that nets in use were UV / antifoulant treated and of the appropriate mesh size as specified in the Code because Cage System Audit Reports do not address this area.

### Annual net inventories not sufficiently audited

With regard to the Department's audit of the annual net inventory as submitted by site operators to determine whether the age and strength of nets listed in the inventory are satisfactory, we identified the following:

- The sample size used by the Department does not appear to be sufficient. For example, the Department only requested proof of purchase and strength test verification in 4 or 3% of 128 nets in the inventory submitted by one site operator.
- The Department does not, as a minimum, ensure that all the nets in the water, at the time of inspection, are of the proper strength or age.

## Recommendations

The Department should:

- review and update the Code of Containment to address the weaknesses noted in our report;
- comply with the Code of Containment; and
- revise the Cage System Audit Report to address the weaknesses noted in our report.

---

### 3. Aquaculture Licensing Information System

---

**Introduction** The Department records and maintains aquaculture licence, inspection and other statistical information in an electronic Aquaculture Licensing Information System (ALIS). Information from new licence applications, licence renewal applications and inspection reports are entered into the system by Department staff as they are received. As with any information system, reports are available to the Department for review and analysis.

We reviewed ALIS reports provided by the Department and held discussions with Department officials. Our review indicated the following:

---

**Information in the ALIS not complete or accurate** Information recorded in the ALIS is not complete or accurate. Department staff indicated that there is insufficient information entry field space and that information entered into the system is not always captured. Furthermore, staff indicated that reports produced from the system are inaccurate and are often missing the information requested.

We experienced delays in getting inspection reports and other information requested from the Department because the system could not provide the information, or the information provided was so inaccurate that it had to be thoroughly reviewed by staff before it was forwarded to our Office for review.

For example, the Department spent weeks trying to get the system to print inspection reports and the terms and conditions for typical licences, following our request for such information. Furthermore, following significant delay, we found an aquaculture site listing report received from the Department to be incomplete and inaccurate when compared with a site inspection listing maintained in separate database. We had to return the aquaculture site listing report to the Department for further review to ensure completeness and accuracy.

Finally, the Department was unable to provide production data by site operator for the years 2003 to 2006 because of issues with the ALIS system. As a result, we were unable to determine which site operators were contributing to production, and thereby utilizing their aquaculture sites during those years.

There has been no improvement in this area since our 2004 report.

---

### Recommendation

The Department should review and make improvements to the Aquaculture Licensing Information System to ensure that all information entered into the system is captured and that reports produced from the system are complete, accurate and timely.

## Department's Response

***Ensure inspectors accurately complete the Aquaculture Site Inspection and Directive Report.***

***Revise the Aquaculture Site Inspection and Directive Report to address the weaknesses outlined in our report.***

*The DFA implemented changes to the report form after the 2004 AG review. Based on the comments provided, we will review the inspection report form prior to the start of the 2009 inspection season and make further changes where necessary. Deficiencies in how inspection reports are completed have been, and will continue to be, addressed by the Inspection Coordinator as they arise.*

***Ensure site operators acknowledge inspection results in the Aquaculture Site Inspection and Directive Report.***

*Delivering inspection reports to site owners in a timely manner is a recognized issue. Since an inspection of an aquaculture facility does not require the presence of a company employee, most inspections occur when no company representatives are on site. In addition, the company headquarters may be a significant distance from the actual site and/or from where inspectors launch the inspection vessel, which impedes the ability of an inspector to deliver the report immediately upon completion of the inspection. Due to these factors, the requirement to have the report signed was removed – the Inspection Policy, AP 15, will be revised to reflect this change.*

***Ensure hazards and deficiencies identified during inspections are corrected as required under Department policy.***

*Where any inspection identifies a hazard, inspection staff are instructed to directly notify the owner/operators, at the earliest opportunity, either by phone, fax, email or direct contact, to ensure that they are aware of the hazard and to advise them to take the appropriate course of action to have it corrected.*

*If an inspection report notes a deficiency it would also indicate a correction timeframe if the noted deficiency is part of provincial jurisdiction. Many deficiencies fall under the regulatory authority of Transport Canada. To facilitate interagency communication, the DFA inspection report may document these deficiencies as a form of notification to Transport Canada. Copies of all DFA inspection reports are provided to Transport Canada so that they may take the actions they deem necessary to address the deficiencies that fall under their regulatory authority.*

***Inspect Aquaculture Sites annually as required.***

*The DFA now has a second dedicated inspector in place and the 2008 inspection program completed 151 out of 155 general inspections. Three of the sites not inspected did not require a general inspection because the nature of the aquaculture activity does not involve placing any gear in the water. The only site not inspected was closed at the licensee's request which will now require a gear removal verification inspection.*

*In addition to overall general inspection mandate, the Aquaculture Health Unit, of the Department, conducts an annual health inspection of all the stocked cultured finfish sites in NL. The inspections occur at marine cage sites and on-land facilities. In 2007, all finfish sites with stock, a total of 29 sites, were inspected.*

*The Aquaculture Health Unit conducts an annual health inspection of all sentinel health shellfish sites in NL. The inspections occur at marine sites. In 2007, all 9 shellfish sentinel health sites were inspected.*

*594 health/biosecurity and surveillance diagnostic visitations were conducted in 2007.*

*779 health/biosecurity and surveillance diagnostic visitations were conducted in 2008.*

***Inspect aquaculture sites when they are closed and obtain the equipment necessary to ensure closed sites have been returned to their natural state as required by the Aquaculture Act.***

*The majority of closed sites have all aquaculture gear removed. It is, however, extremely difficult, in some circumstances, to assess the ocean bottom to determine if it is entirely free of gear related to a former aquaculture operation. Closed and abandoned sites can range anywhere from 4 to 100+ hectares in size which means large areas of ocean bottom, at depths ranging from 20m to 100+m, require inspection. Purchase of an underwater camera proved to be an inadequate tool for such assessments. The DFA will consider its options in addressing this limitation and determine if there is suitable equipment available that will facilitate these assessments in a cost effective manner.*

*Ensure hazards and deficiencies identified during inspections are corrected as required under Department policy.*

*Update Department policy to assist inspectors in determining whether deficiencies or hazards exist at aquaculture sites.*

*The DFA Aquaculture Policy and Procedure Manual (AP 15) specifically define a hazard as “any condition that constitutes a health/safety issue or obstructs, impedes, or renders navigation in navigable waters more difficult or dangerous”. This definition provides inspection staff with the guidance necessary for them to use their knowledge and experience to make assessments of the conditions that exist at aquaculture facilities. Monitoring and enforcement activities are ongoing where any failure to comply with directives is identified.*

### ***The Code of Containment***

*Review and update the Code of Containment to address weaknesses noted.*

*Comply with the Code of Containment.*

*The Code of Containment was established in 1999 to minimize the risk of escape for cultured salmonids. Since that time, the frequency and number of escaped fish has been reduced drastically (by 83%). The Newfoundland and Labrador Code of Containment has been utilized by other jurisdictions, such as New Brunswick, in the development of their own codes. The Code of Containment has also been recognized internationally for its adequacy in addressing the issue of escaped fish. The World Wildlife Fund and Atlantic Salmon Federation produced a report in 2005 entitled “Protecting Wild Atlantic Salmon from Impacts of Salmon Aquaculture: A Country-by-Country Progress Report 2nd Edition”. This is an international report that ranks nations for their compliance against 8 criteria that relate to the countries efforts to regulate their aquaculture industries in order to lessen the impact on wild salmon stocks. This report recognized that Newfoundland and Labrador had “established all of the elements for the criterion 7 as of 2003”. Criterion 7 addresses the “Adequacy of national plan for minimizing escapes in regard to management, operations, site-specific contingency plans and notification of escapes.” The Code of Containment for the Culture of Salmonids in Newfoundland and Labrador is a recognized, effective, and leading document that addresses containment and escapes in Canada.*

*The Code focuses efforts on areas of farming that pose the greatest potential for fish escapement, specifically nets and cage system surface components. The weighting of nets has not been recognized as a source of escapement for cage culture of salmonids in NL. The weighting of nets is dependent on the size and type of net, the environment and the environmental conditions at the specific site. Because of this, prescribing mandatory net weights in general terms is not an appropriate management tool. DFA does check to see if net weights are in place during Cage System Audit inspections.*

*Mooring systems are designed for the sites and environmental conditions in which they are deployed. Water depths in NL prevent the inspection of moorings by divers. Aquaculture companies have been designing and deploying mooring systems since the industry began without incident of mooring failure that led to damage or loss of fish. Consultation during the development of the Code of Containment and subsequent Code meetings which included federal and provincial agencies and the industry concluded that mooring systems did not pose a substantial risk for fish escape.*

*The Department does not conduct sub surface inspection of mooring and cage components. The Department recognizes that operators frequently carry out dive inspections and mortality dives on their cage systems and records such inspections when they occur. These records are available for inspection at any time by DFA staff. The Department also ensures that all nets in use are included in net inventories and are of the appropriate strength based on the requirements laid out in the Code of Containment.*

*The Department and industry have recognized the ineffectiveness of the current recapture technology. There have been several attempts over the years to refine the recapture technology with marginal improvement. The Department plans to address this with industry and federal counterparts at the next meeting of the committee governing the Code of Containment.*

*Codes of Practices across the country are industry developed documents that reflect the industries most ideal or best practice. The NL Code of Containment references only the fish handling and transport practices in the Industry Code of Practice as acceptable for the purposes of the Code of Containment. The Department recognizes that the Code of Practice is outdated and that practices have changed and evolved. Despite the lack of an updated Code of Practice, the practices as outlined in the existing Code are and have been approved as adequate for the purposes of the Code of Containment. The intent of revising the Code of Practice is to reflect the new standards to which the NL industry now operates which meet and surpass earlier specifications in the first Code of Practice.*

*The Department has expended a great deal of effort in ensuring that all of the nets in the water are listed within companies' net inventories and are tested for appropriate strength. The 2006 inspection year saw all sites in operation inspected. The second inspection for several sites in 2006 was postponed until early 2007 due to weather issues. While the second inspection occurred in early 2007, it was intended to complete the second round of inspection for the 2006 calendar year and ensure that sites were secure for the winter months. The Department is aware of only one year where there was one inspection performed on active sites and where one site was not inspected – this was in 2007 due to staffing and weather issues.*

***Revise the Cage System Audit Report to address weaknesses noted.***

*The Department acknowledges that the cage site inspection forms are sometimes not signed by site personnel. This occurs when site personnel leave the site during the inspection and are not available to sign the form. Each form is faxed and mailed to the farm operator so that they are aware of the results of the inspections. The Department does follow up with each and every directive for cage repairs and documents this follow up through email and letters, however the Department acknowledges that a second Cage System Audit form is not always filled out. This will be remedied this coming year.*

*Cage Systems Audit reports contain only data that is visually inspected during the cage visit. Information on net age and strength testing is found in net inventories submitted to the Department which are consistently cross referenced with recorded net tags recorded on the audit forms during system inspections. The Department performs a comprehensive review of all nets on sites and verifies net age and testing through the net inventories. Should discrepancies be found, operators are informed in writing and requested to provide accurate information with regards to their net age and strength. The Department is confident that the integrity of nets on site is assessed in a comprehensive and clear manner as described in the Code of Containment equipment requirements.*

*The Department recognizes that the auditing of net inventories may require review. The industry is growing at a fast rate, with much larger inventories than in previous years. The Department will review the process of auditing nets and provide recommendations for amendments, as may be indicated.*

### *Aquaculture Licensing Information System*

*The Department should review and make improvements to the Aquaculture Licensing Information System to ensure all information entered into the system is captured and the reports produced from the system are complete, accurate and timely.*

*The Department recognizes issues related to the Aquaculture Licensing Information System (ALIS) and has been actively involved with the OCIO since 2007 to identify and acquire a suitable replacement for its information management systems. This work is ongoing.*

---

## Aquaculture Inspections



## Highlights

Highlights of a review of enforcement activities under the school bus safety program since our last report in 2004 to the year ended 31 March 2008.

### Why our Office Did this Review

The objectives of our review were to determine whether there were established policies, procedures, standards and guidelines in place to adequately reflect school bus safety processes; practices in place were adequate in addressing program objectives; and management received information necessary for planning, decision making, control, and ensuring compliance with legislative responsibilities.

### What our Office Recommends

Following are highlights of recommendations included in the Report that the Department should address. The Department should:

- increase its efforts in the area of surprise school bus inspections;
- develop a policy and procedures manual to provide further guidance on the school bus safety program to Highway Enforcement Officers;
- monitor the brake meter maintenance program in place to ensure that all brake meters are recalibrated at least every two years as recommended by the manufacturer;
- review procedures in place to ensure that all inspections of Official Inspection Stations are performed as required;
- maintain an accurate account of safety rating for commercial carriers; and
- conduct the follow-up facility audits on a timely basis.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.11

### DEPARTMENT OF GOVERNMENT SERVICES

#### School Bus Safety

The Motor Registration Division (MRD) of the Department of Government Services is responsible for administering all activities and legislation respecting vehicles and drivers including driver licensing, vehicle registration, driver examination, and highway safety. The MRD performs inspection and enforcement activities in relation to several legislative authorities including those governing the *Highway Traffic Act*, *Motor Carrier Act*, and the *Dangerous Goods Transportation Act*. School bus inspections represent a significant portion of all vehicle inspections and are carried out in the Province by Highway Enforcement Officers in four regions.

### What We Found

Although there have been some improvements since our 2004 report, there is still no comprehensive school bus safety strategy plan in place. We note, however, that such a plan is being developed and is currently in draft form. In addition, we continue to be concerned about the high incidence of defects identified by Highway Enforcement Officers during school bus inspections.

During 2007-08, 864 school bus inspections resulted in 867 defects being identified - an average of about 1 defect per inspection. In addition, 113 licensed school buses were placed out of service as a result of significant deficiencies noted during the inspections. The deficiencies included such items as issues with brakes and exhaust. This is particularly significant considering that almost all school bus inspections are arranged by advance appointment. Although private contractors operated 660 (66%) of the 1,007 licensed school buses, they accounted for 92 (81%) of the 113 licensed school buses placed out of service.

Other findings include:

- MRD did not perform the required annual inspection for 3 of the 42 Official Inspection Stations operated by school bus operators for the 2008 year;
- not all Official Inspection Stations have their annual license renewed as required by the *Official Inspection Station Regulations*;
- a significant number of older licensed school buses are operating in the Province. For example, 360 (36%) were model year 1998 or older (10 years or older). The 360 licensed school buses are comprised of 323 (90%) operated by private contractors and 37 (10%) operated by school boards. Only private contractors had licensed school buses 12 years and older. There were 135 of these licensed school buses of which 98 were 12 years old, 28 were 13 years old, and 9 were 14 years old;
- deficiencies were identified with the school bus inspection program such as: surprise inspections represent a very small percentage of total inspecting; all Highway Enforcement Officers were not consistently completing the individual inspection items on the school bus inspection form as required by policy; there was no coordinated effort to ensure the optimum deployment of Highway Enforcement Officers; and there is no overall policy and procedures manual to provide guidance on all areas of the school bus inspection program. A particular area of weakness noted was with planning and assignment of school bus inspections;
- the specially designed brake meters used to test the braking efficiency of a school bus are not always being recalibrated at least every two years as required by the manufacturer; and
- in relation to the National Safety Code carrier safety rating system for commercial motor carriers within the Province, which includes school bus operators, we found that, contrary to MRD policy, for 3 school bus operators assigned a "conditional" safety rating, significant delays of 9, 8 and 5 years have occurred without a follow-up facility audit.

### Background

---

The Motor Registration Division (MRD) of the Department of Government Services is responsible for administering all activities and legislation respecting vehicles and drivers including driver licensing, vehicle registration, driver examination, and highway safety. The MRD performs inspection and enforcement activities in relation to several legislative authorities including those governing the *Highway Traffic Act*, *Motor Carrier Act*, and the *Dangerous Goods Transportation Act*.

There are a significant number of regulations under the *Highway Traffic Act* including those governing: vehicle weight and dimensions; hours of service; load security; carrier safety; maintenance standards; driver requirements; licensing and equipment; insurance; trip inspections; and regulations for specific vehicles such as buses and ambulances.

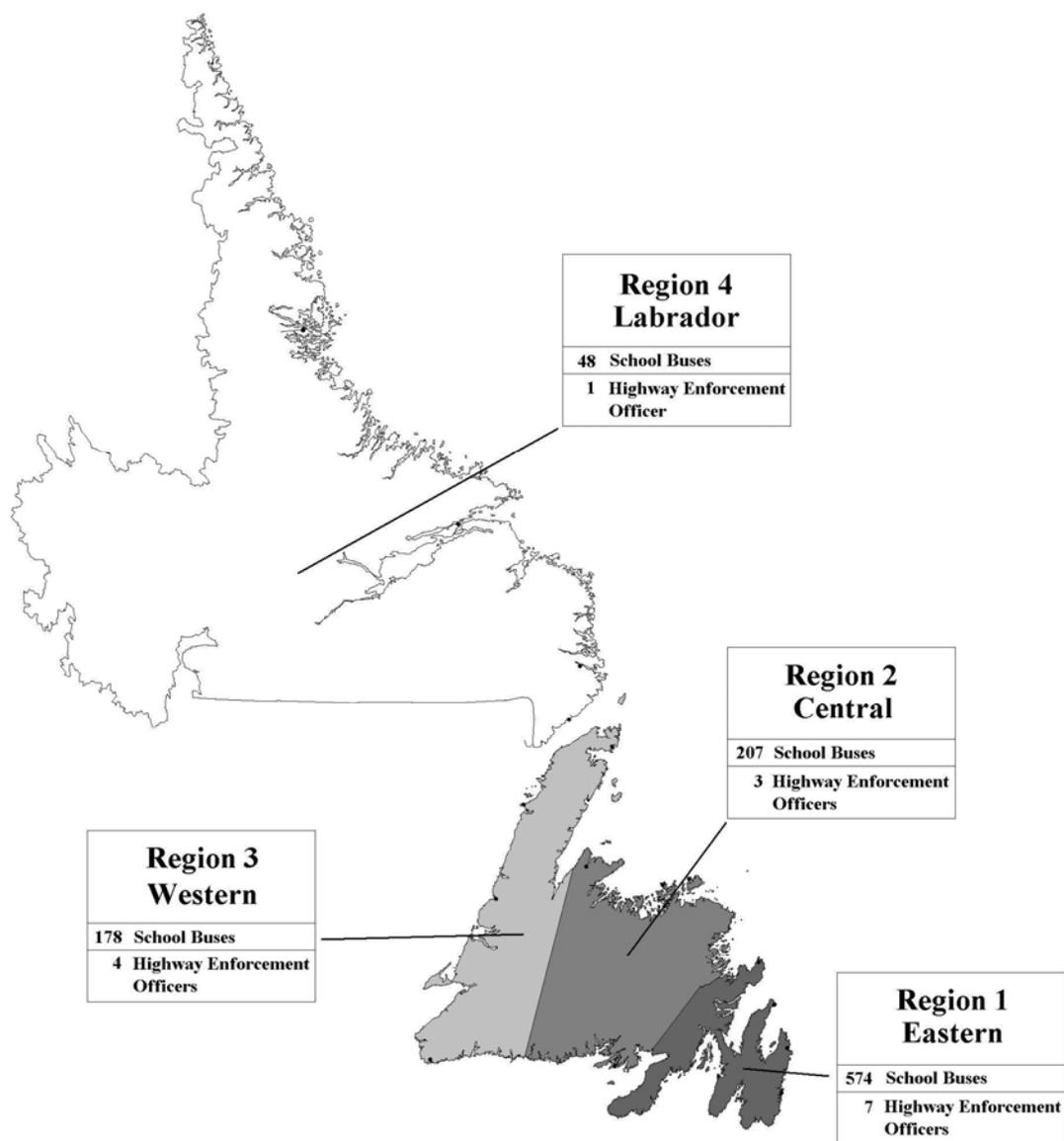
Primary functions of the MRD highway safety program include setting driver and vehicle licensing standards, and conducting programs which enforce those standards. Enforcement programs include such measures as vehicle inspections, commercial carrier audits, and portable and fixed weigh scale operations.

---

School bus inspections represent a significant portion of all vehicle inspections and are carried out in the Province by Highway Enforcement Officers in four regions. Figure 1 shows the four regional boundaries along with the number of licensed school buses and Highway Enforcement Officers in each region as at 31 October 2008.

**Figure 1**

**Motor Registration Division  
Regional Boundaries**



MRD incurred a total net expenditure of \$7.8 million in carrying out its programs for the year ended 31 March 2008. Figure 2 provides a breakdown by expenditure type.

**Figure 2**

**MRD Expenditure  
Year Ended 31 March 2008  
(\$000s)**

Description	Amount
Salaries and employee benefits	\$ 5,513
Transportation and communications	736
Supplies	584
Purchased services	946
Property, furnishings and equipment	109
Grants and subsidies	61
Revenue-Federal	(193)
<b>Net expenditure</b>	<b>\$ 7,756</b>

Source: Statement of Expenditure and Related Revenue

**Previous  
Report of the  
Auditor  
General**

In 2004, we reviewed the Provincial school bus safety program administered through MRD. As a result of our review, we concluded the following:

- There was a high incidence of serious defects identified during school bus inspections performed by MRD staff. Given the fact that most operators were given advance notice of upcoming inspections, it was likely that there were licensed school buses on the Province's highways that did not meet the required safety standards.
- Brake meters used by MRD to assess braking efficiency were not being recalibrated every two years as recommended by the manufacturer to ensure they were accurate.
- Not all school bus inspections were completed by an authorized inspection station in that the Official Inspection Stations were not licensed at the time the inspections were completed
- MRD did not perform the required annual inspection for all Official Inspection Stations operated by school bus contractors.

---

### Audit Objectives and Scope

---

#### Audit objectives

The objectives of our review were to determine whether:

- there were established policies, procedures, standards and guidelines in place to adequately reflect school bus safety processes;
  - practices in place were adequate in addressing program objectives; and
  - management received information necessary for planning, decision making, control, and ensuring compliance with legislative responsibilities.
- 

#### Audit scope

Our review focused on enforcement activities under the school bus safety program since our last report in 2004 to the year ended 31 March 2008.

Our review included discussions with MRD officials and an examination of documentation maintained at the MRD office in Mount Pearl. The review was completed in December 2008.

---

### Overall Conclusions

Since our 2004 report, we note that there have been some improvements in the age of licensed school buses, in the annual audits of Official Inspection Stations, the establishment of a consolidated out of service criteria to provide guidance in the consistent treatment of deficiencies identified during school bus inspections, the commencement of unscheduled school bus inspections and the documentation of school bus inspections. However, there is still no comprehensive school bus safety strategy plan in place; although, we note that such a plan is being developed and is currently in draft form.

We continue to be concerned about the high incidence of defects identified by Highway Enforcement Officers during school bus inspections. During 2007-08, there were a total of 864 school bus inspections completed by Highway Enforcement Officers. The results are as follows:

- 867 defects were identified during the inspections - an average of about 1 defect per inspection; and

- 113 licensed school buses were placed out of service as a result of significant deficiencies noted during the inspections. The deficiencies included such items as issues with brakes and exhaust. This is particularly significant considering that almost all school bus inspections are arranged by advance appointment. Although private contractors operated 660 (66%) of the 1,007 licensed school buses, they accounted for 92 (81%) of the 113 licensed school buses placed out of service.

As a result, we conclude that it still remains likely that there are licensed school buses operating on the Province's highways that do not meet the required safety standards.

MRD did not perform the required annual inspection for 3 of the 42 Official Inspection stations operated by school bus operators for the 2008 year. These 3 inspection stations would be responsible for inspecting 76 licensed school buses. This is significant given that these Official Inspection Stations are owned by the operators of the school buses i.e. they inspect their own school buses.

Not all Official Inspection Stations have their annual license renewed as required by the *Official Inspection Station Regulations*. Inspection Stations are not permitted to inspect school buses without a valid license. There were 7 instances during the 2007 and 2008 calendar years where a license renewal had not been made by the annual November 30 deadline of the preceding year. These 7 unlicensed Official Inspection Stations performed 54 licensed school bus inspections prior to renewing their license certificate. As a result, these inspections were made without proper authority.

Although the average age of the 1,007 licensed school buses in the Province at 31 October 2008 is 8 years, there are still a significant number of older licensed school buses operating in the Province. For example:

- 360 (36%) were model year 1998 or older (10 years or older). The 360 licensed school buses are comprised of 323 (90%) operated by private contractors and 37 (10%) operated by school boards.
- 236 (23%) were 5 years old or newer while in 2004, 181 (17%) of the 1,044 licensed school buses were 5 years old or newer. The 236 is comprised of 63 (27%) licensed school buses operated by private contractors and 173 (73%) licensed school buses operated by school boards.

- Only private contractors had licensed school buses 12 years and older. There were 135 of these licensed school buses of which 98 were 12 years old, 28 were 13 years old, and 9 were 14 years old.

There were deficiencies identified with the school bus inspection program as follows:

- Of the 388 inspections performed by the eastern region in 2007-08, we could only identify 15 (4%) that were surprise school bus inspections. These surprise inspections represent a very small percentage of total annual inspections. Furthermore, the MRD system does not specifically track surprise inspections. Therefore, the information had to be prepared manually.
- All Highway Enforcement Officers were not consistently completing the individual inspection items on the school bus inspection form as required by policy. Furthermore, there was no evidence of review and approval of school bus inspection forms by the supervisor of the Highway Enforcement Officers.
- There was no coordinated effort to ensure the optimum deployment of Highway Enforcement Officers and it was noted that there were a number of instances where a team of Highway Enforcement Officers either contacted or went to a school bus operator only to find that another MRD team was already present at the operator's premises performing school bus inspections.
- MRD officials indicated that there is no overall policy and procedures manual to provide guidance on all areas of the school bus inspection program. A particular area of weakness noted was with planning and assignment of school bus inspections.

The specially designed brake meters used to test the braking efficiency of a school bus are not always being recalibrated at least every 2 years as required by the manufacturer. This was also identified as an issue in 2004. In particular:

- One brake meter identified as missing during our 2004 review, has still not been located.
- 2 of the 8 brake meters were overdue for recalibration by more than 1 year.

## School Bus Safety

- Contrary to the Department's response included in our 2004 Report that *"All of the brake meters used by MRD have now been recalibrated"*, we found that 2 of the 8 brake meters in use had not been recalibrated until 2007.

In accordance with National Safety Code ratings for commercial carriers, there were 4 school bus operators operating 84 (8%) of the 1,007 licensed school buses in the Province who were assigned a "conditional" safety rating (i.e. one level above the "unsatisfactory" safety rating and loss of license). We identified a number of issues relating to the National Safety Code carrier safety rating system for commercial motor carriers within the Province, which includes school bus operators. In particular,

- An incorrect "conditional" safety rating remained assigned in the system to a school bus operator when, after a successful facility audit, it should have been adjusted to "satisfactory-audited".
- Contrary to MRD policy, for 3 school bus operators assigned a "conditional" safety rating, significant delays of 9, 8 and 5 years have occurred without a follow-up facility audit.

---

## Detailed Observations

Highway safety enforcement for school buses occurs primarily through two means: scheduled inspections of school buses by Highway Enforcement Officers; and required semi-annual inspections of school buses at MRD licensed Official Inspection Stations.

Authorized Official Inspection Stations are also required to be inspected by MRD staff on an annual basis.

---

This report provides detailed audit findings and recommendations in the following sections:

1. Age of Licensed School Buses
2. School Bus Inspections
3. Official Inspection Stations
4. Carrier Safety Ratings

---

### 1. Age of Licensed School Buses

---

#### Overview

During our review of school bus inspections, officials indicated that older school buses pose a higher risk of deficiencies and are often prioritized during the school bus inspection process.

Information on licensed school buses was obtained from the MRD registration system and used to analyze the age of school buses licensed to operate within the Province at 31 October 2008. For the purpose of our analysis, we grouped the information by the type of school bus operator (i.e. private contractor and school board).

Figure 3 summarizes licensed school buses owned by school bus operators by model year and ownership category.

## School Bus Safety

**Figure 3**

### Licensed School Buses by Model Year As at 31 October 2008

Model Year	Estimated Age (Years)	Private		School Boards		Combined			
		Total	Cumulative Total	Total	Cumulative Total	Total	Cumulative Total	Total %	Cumulative %
1994	14	9	9	0	0	9	9	0.89%	0.89%
1995	13	28	37	0	0	28	37	2.78%	3.67%
1996	12	98	135	0	0	98	135	9.72%	13.39%
1997	11	82	217	32	32	114	249	11.33%	24.72%
1998	10	106	323	5	37	111	360	11.02%	35.74%
1999	9	122	445	40	77	162	522	16.09%	51.83%
2000	8	105	550	42	119	147	669	14.60%	66.43%
2001	7	28	578	39	158	67	736	6.65%	73.08%
2002	6	19	597	16	174	35	771	3.48%	76.56%
2003	5	8	605	20	194	28	799	2.78%	79.34%
2004	4	7	612	5	199	12	811	1.19%	80.53%
2005	3	15	627	20	219	35	846	3.48%	84.01%
2006	2	7	634	52	271	59	905	5.86%	89.87%
2007	1	18	652	68	339	86	991	8.54%	98.41%
2008	-	7	659	0	339	7	998	0.70%	99.11%
2009	-	1	660	8	347	9	1,007	0.89%	100.00%
<b>Total</b>		<b>660</b>		<b>347</b>		<b>1,007</b>		<b>100.00%</b>	

Source: School Bus Inspection Reports – 31 October 2008

#### Detailed findings

As Figure 3 shows, there were 1,007 licensed school buses in the Province at 31 October 2008 comprised of 660 operated by private contractors and 347 operated by school boards.

When we completed our review in 2004, the maximum age of a school bus allowed in service was 14 years. The age has since been reduced for new school bus contracts to a maximum age of 12 years, with a goal by 2010 of a maximum age of 10 years.

Based upon our analysis we determined that:

- Of the 1,007 licensed school buses, 360 (36%) were model year 1998 or older (10 years or older). The 360 licensed school buses are comprised of 323 (90%) operated by private contractors and 37 (10%) operated by school boards. As this shows, there are still many older licensed school buses operating in the Province.
- In 2004, 181 (17%) of the 1,044 licensed school buses were 5 years old or newer while in 2008, 236 (23%) were 5 years old or newer. The 236 is comprised of 63 (27%) licensed school buses operated by private contractors and 173 (73%) licensed school buses operated by school boards.
- Only private contractors had licensed school buses 12 years and older. There were 135 of these licensed school buses of which 98 were 12 years old, 28 were 13 years old, and 9 were 14 years old.
- The average age of licensed school buses in the Province at 31 October 2008 was 8 years. Breaking this average down by operator type we determined that:
  - the average age of licensed school buses operated by private contractors was 9 years old; and
  - the average age of licensed school buses operated by school boards was 5 years old.

Although the average age of licensed school buses has improved from the 11 years in our 2004 annual report to 8 years, there still are a significant number of licensed school buses operating in the Province that are 10 years and older. Furthermore, school boards are operating newer buses than the private contractors.

---

## 2. School Bus Inspections

---

Based upon our review of the school bus inspection process, we made observations on the following:

- A. Selection Process
  - B. Documentation of School Bus Inspections
  - C. Results of School Bus Inspections
  - D. Brake Inspection Procedures
- 

### 2A. Selection Process

---

#### Introduction

During our 2004 review, we observed that MRD used a sampling model based upon fleet size to select licensed school buses for inspection in the eastern region. The effort was coordinated by one staff member who arranged for scheduled inspections and assigned the inspections to the Highway Enforcement Officers. The staff member maintained a log of inspections using a computerized listing of licensed school buses for the region.

---

#### Detailed findings

During the current review we determined that the procedure had changed. We made the following observations:

##### School Bus Selection

A previous sampling process was replaced in September 2007 with a goal of inspecting all the licensed school buses operating in the region. However,

- Not all licensed school buses were inspected during 2007-08. Staff indicated that, although all licensed school buses were not inspected, they estimated that a high percentage were i.e. in excess of 90%.
- For 2008-09, MRD again intends to inspect all licensed school buses operating in the region.

Instead of having one staff member controlling the assignment of school buses for inspection, we were informed that the Highway Enforcement Officers now are left to decide amongst themselves which school buses are selected and when they are to be inspected. This has caused scheduling issues as follows:

- There is no coordinated effort to ensure the optimum deployment of Highway Enforcement Officers; and

- MRD officials indicated that there were a number of instances where a team of Highway Enforcement Officers either contacted or went to a school bus operator only to find that another MRD team was already present at the operator's premises performing school bus inspections.

### Surprise inspections

In response to our 2004 report, MRD implemented a requirement that all Highway Enforcement Officers perform surprise inspections to supplement the standard process of arranging appointments for school bus inspections. We found:

- The MRD system does not specifically track surprise inspections. Therefore, we had to review manually prepared statistic forms in order to determine the number of surprise inspections performed by the eastern region.
- Of the 388 inspections performed by the eastern region in 2007-08, we could only identify 15 (4%) that were surprise school bus inspections.

These surprise inspections represent a very small percentage of total annual inspections.

---

**Figure 4**

### **School Bus on Daily Route**



### Recommendations

The Department of Government Services should:

- implement procedures to coordinate the assignment and scheduling of school bus inspections; and
- increase its efforts in the area of surprise school bus inspections.

---

## 2B. Documentation of School Bus Inspections

---

### Introduction

School bus inspections are documented using a prescribed school bus inspection form which lists a series of 60 inspection items grouped into 11 categories. Once completed by the Highway Enforcement Officers, the forms are forwarded to MRD's National Safety Code Office where they are input into the MRD Management Information System.

### Detailed findings

Based upon our review of school bus inspection procedures, we made the following observations:

- In our 2004 report, we noted that the individual inspection items on the school bus inspection form were not being checked as completed. In September 2007, Highway Enforcement Officers were instructed to complete the forms such that all items inspected would be indicated. We found that not all Highway Enforcement Officers are completing the inspection forms as required, as illustrated by the following:

The MRD system captures, among other things, statistics from inspection forms which result in a licensed school bus being placed out of service. During our review of 113 school bus inspection forms supporting out of service statistics for 31 March 2008, we noted that not all Highway Enforcement Officers were consistently completing the school bus inspection forms by checking each inspection item completed, as required.

- Although the supervisor of the Highway Enforcement Officers received information on daily enforcement activity by way of daily patrol forms prepared and submitted by the Officers, there is no evidence of the review and approval of the actual inspections documented on the school bus inspection form. The forms are forwarded directly to the National Safety Code Office for keying by clerical staff. Statistical information on inspections is available from the MRD Management Information System.
- There is no reconciliation process in place at the National Safety Code Office to ensure that all inspections completed by Highway Enforcement Officers for a given period are actually input into the system. Delays in receiving or inputting the forms could affect the completeness of resulting inspection statistics generated for a period.
- Officials felt that the most significant improvement since our 2004 report was the development of a Provincial out of service criteria to ensure that school bus inspection procedures are uniform throughout the Province. A working group of senior enforcement people was established to review criteria from various sources and produced a resulting manual for use effective September 2007.

However, staff indicated that there still is no overall policy and procedures manual to provide guidance on all areas of the school bus inspection program. A particular area of weakness noted was with planning and assignment of school bus inspections.

The Department of Government Services Annual Report for 2006-07 indicates that preliminary research into school bus safety was undertaken with an in-depth assessment planned for 2007-08. Furthermore, the Department's Annual Report for 2007-08 indicated that the development of a comprehensive school bus safety strategy plan in conjunction with the Department of Education is continuing. During our review, a senior official at MRD indicated that a plan was in draft form but was still being worked on and subject to adjustment, and as a result could not be provided for our review.

### Recommendations

The Department of Government Services should:

- ensure that all Highway Enforcement Officers complete the school bus inspection forms by checking each inspection item completed, as instructed;
- introduce a review and approval process for school bus inspection forms by the supervisor of the Highway Enforcement Officers; and
- develop a policy and procedures manual to provide further guidance on the school bus safety program to Highway Enforcement Officers.

### 2C. Results of School Bus Inspections

#### Introduction

*Official Inspection Station Regulations* under the *Highway Traffic Act* require that school buses be inspected by an Official Inspection Station twice a year. In addition, MRD visits all school bus operators and inspects most of the school buses again annually. Given these stringent requirements, we would expect a low level of deficiencies identified in the school bus inspections performed by Highway Enforcement Officers. Figure 5 contains statistics on the results of school bus inspections for 31 March 2008.

**Figure 5**

#### School Bus Inspection Statistics As at 31 March 2008

# of Buses <sup>1</sup>	Region	Inspections	Bus Placed Out-of-Service	Total Defects	Type of Defect			
					Brakes	Steering	Mechanical	Safety
574	Eastern	388	50	384	32	13	177	162
207	Central	157	16	220	30	17	99	74
178	Western	240	41	213	21	2	83	107
48	Labrador	79	6	50	5	2	24	19
<b>1,007</b>	<b>Total</b>	<b>864</b>	<b>113</b>	<b>867</b>	<b>88</b>	<b>34</b>	<b>383</b>	<b>362</b>

Source: MRD Inspection Statistics report – March 2008

Note 1: Number of buses as at October 2008

## School Bus Safety

### Detailed findings

Based upon our review of School Bus Inspection Statistics reports provided by staff for 2007-08 we made the following observations:

- of the 864 school bus inspections completed by Highway Enforcement Officers during the period, there were 867 defects found or an average of about 1 defect per inspection; and
- in 113 (13%) of the 864 school bus inspections, the deficiencies identified were significant enough to have the school bus placed out of service until necessary repairs could be made.

---

Based upon a review of the 113 School Bus Inspection Statistics reports during 2007-08 which resulted in school buses being placed out of service, we noted the following:

- Although private contractors operated 660 (66%) of the 1,007 licensed school buses, they accounted for 92 (81%) of the 113 licensed school buses placed out of service.
- Although school boards operated 347 (34%) of the 1,007 licensed school buses, they accounted for only 21 (19%) of the 113 licensed school buses placed out of service.
- The MRD system does not include statistical information on the reasons for licensed school buses being placed out of service. We note that staff in the eastern region were instructed by the Department to manually track the reasons why licensed school buses were placed out of service.

Of the 113 licensed buses placed out of service in 2007-08, information was available on 38 in the eastern region from manually prepared School Bus Inspection Statistics forms. These school buses were placed out of service for 46 issues (i.e. some school buses were placed out of service for more than one reason) identified in Figure 6 which follows.

**Figure 6**

**Reasons for School Buses  
Placed Out of Service  
Year ended 31 March 2008**

<b>Reason for School Bus Placed Out of Service</b>	<b>Number of School Buses With Issue</b>	<b>% of Total Issues</b>	<b>Cumulative Total of Issues</b>	<b>Cumulative %</b>
Exhaust	15	33%	15	33%
Brakes	12	26%	27	59%
Lamps	7	15%	34	74%
Suspension	4	9%	38	83%
Frame/Body	3	7%	41	90%
Tires and wheels	2	4%	43	94%
Fuel System	1	2%	44	96%
Safety	1	2%	45	98%
Steering	1	2%	46	100%
<b>Total</b>	<b>46</b>	<b>100%</b>		

Source: MRD- School Bus Inspection Statistics manual forms

Our review of the manually prepared School Bus Inspection Statistics forms in the eastern region for licensed school buses placed out of service from 1 April 2008 to 18 November 2008 indicated that 36 licensed school buses were placed out of service for 43 issues (i.e. some school buses were placed out of service for more than one reason) outlined in Figure 7, which follows.

**Figure 7**

**Reasons for School Buses  
Placed Out of Service  
1 April 2008 to 18 November 2008**

<b>Reason for School Bus Placed Out of Service</b>	<b>Number of School Buses With Issue</b>	<b>% of Total Issues</b>	<b>Cumulative Total of Issues</b>	<b>Cumulative %</b>
Brakes	19	45%	19	45%
Exhaust	11	26%	30	71%
Safety	4	9%	34	80%
Lamps	3	7%	37	87%
Frame/Body	2	5%	39	92%
Electrical	1	2%	40	94%
Steering	1	2%	41	96%
Suspension	1	2%	42	98%
Tires and wheels	1	2%	43	100%
<b>Total</b>	<b>43</b>	<b>100%</b>		

Source: MRD- School Bus Inspection Statistics manual forms

### 2D. Brake Inspection Procedures

#### Introduction

During inspections, Highway Enforcement Officers perform tests of school bus braking efficiency using a specially designed brake meter. As a result of the precision required in using this meter, it is necessary that the equipment be accurate. In our 2004 report, we indicated that the manufacturer's recommendation of recalibrating the brake meters at least every two years was not being complied with by MRD.

In response to our 2004 report, the Department indicated that it agreed that brake meters should be recalibrated every two years and that a program had already been put in place. As well, the Department indicated that all brake meters had since been recalibrated.

## School Bus Safety

### Detailed findings

A maintenance schedule was provided by a staff member at the National Safety Code Office containing information on 9 brake meters owned by MRD. Based upon our review of the schedule, we identified issues with 6 as follows:

- One brake meter # 977036, that had been identified as missing during our 2004 review, has still not been located.
- 2 of the 8 brake meters in use are well beyond the recommended 2 year period for recalibration. Specifically:
  1. meter #782242 was more than 1 year overdue (last recalibrated 18 August 2004, received by MRD 23 March 2005).
  2. meter #782245 was more than 1 year overdue (last recalibrated 8 August 2005).
- Contrary to the Department's response included in our 2004 Report that "*All of the brake meters used by MRD have now been recalibrated*", we found that 3 of the 8 brake meters in use had not been recalibrated. Specifically:
  1. meter #782227 was not recalibrated until 29 March 2007.
  2. meter #877036 was not recalibrated until 15 October 2007.
  3. meter #782245 was not recalibrated until 8 August 2005.

---

### Recommendation

The Department of Government Services should monitor the brake meter maintenance program in place to ensure that all brake meters are recalibrated at least every two years as recommended by the manufacturer.

---

## 3. Official Inspection Stations

---

### Overview

*Official Inspection Station Regulations* under the *Highway Traffic Act* require that school buses be inspected each July and December. In practice, the July requirement is not enforced, as long as the school buses are inspected prior to being used for school transportation before the start of the school year each September. The required inspection must be completed by an Official Inspection Station that is licensed under the *Regulations* to inspect school buses.

---

Based upon our review, we made observations on the following:

- A. Renewal of Licenses
  - B. Annual Reviews of Official Inspection Stations
- 

### 3A. Renewal of Licenses

---

#### Introduction

A report provided by MRD staff on Official Inspection Stations servicing buses (public and school buses) at November 2008 indicated that there were 201 Official Inspection Stations in the Province that were permitted to inspect school buses.

MRD staff assisted in identifying 42 Official Inspection Stations that were operated by either the school bus operators themselves or a related company. These 42 inspection stations were owned by school bus operators as follows:

- 32 were owned by private contractors who had a combined total of 397 (39%) of the total 1,007 licensed school buses in the Province.
  - 10 were owned by school boards who had a combined total of 347 (34%) of the total 1,007 licensed school buses in the Province.
- 

Based upon our review we found that not all of these 42 Official Inspection Stations were licensed as required by the *Official Inspection Station Regulations* as follows:

- Under the *Regulations*, these inspection stations are not permitted to inspect school buses until a license renewal for the year is made. Our review of reports on Official Inspection Station license renewals indicated that there were 7 instances during 2007 and 2008 calendar years where a license renewal had not been made by the annual November 30 deadline of the preceding year.
  - These 7 unlicensed Official Inspection Stations performed 54 school bus inspections prior to renewing their license certificate. As a result, these inspections were made without proper authority.
-

### Recommendation

The Department of Government Services should take action to address the issue of school bus inspections being performed by unlicensed Official Inspection Stations.

---

### 3B. Annual Reviews of Official Inspection Stations

---

#### Introduction

During our 2004 review, we determined that there was no process in place to ensure that all inspections of Official Inspection Stations were performed as required.

744 or 74% of the required semi-annual inspections performed by Official Inspection Stations are done through inspection stations owned by the operator. This means that most of these inspections are performed by contractors on their own school buses.

Our review indicated that:

- In response to our 2004 report, the system used to maintain information on Official Inspection Stations was modified such that exception reports identifying unaudited inspection stations could be provided.
- We performed a review of reports for 2007 and 2008 years for the 42 Official Inspection Stations owned by school bus operators which can service school buses. We found issues with reports for 2008 in that 3 Official Inspection Stations, at the time of our review in November 2008, had not had an MRD audit. These 3 inspection stations (2 private, 1 school board) would be responsible for inspecting 76 licensed school buses (14 private, 62 school boards).

This is significant given that these Official Inspection Stations are owned by the operators of the school buses i.e. they inspect their own school buses.

---

### Recommendation

The Department of Government Services should review procedures in place to ensure that all inspections of Official Inspection Stations are performed as required.

### 4. Carrier Safety Ratings

#### Overview

MRD has adopted and maintained a computerized motor carrier safety rating system under the National Safety Code for commercial motor carriers within the Province (including school bus operators). The system is operated under the authority of *Carrier Safety Regulations* under the *Highway Traffic Act*. For each carrier, the system records information on items such as: reportable accidents; vehicle inspections; facility audits; and convictions under various legislation governing the operation of motor vehicles.

The motor carrier profile identifies one of a possible four safety ratings which includes:

- Satisfactory-audited;
- Satisfactory-unaudited;
- Conditional; and
- Unsatisfactory.

All new carriers start in the system with a “satisfactory - unaudited” safety rating. Based upon the monthly average carrier fleet size, threshold limits are determined for 4 areas which are tracked in the system and points (compliance indicators described in the *Regulations*) are assigned for deficiencies. The areas are:

- accidents;
- inspections;
- convictions; and
- maximum accumulated total compliance indicators (MATCI) - a combination of compliance indicators for accidents, inspections and convictions.

Points are retained for a two year period. The *Regulations* specify levels of MRD intervention for a carrier exceeding specified threshold limits:

- 15% over limit - warning letter and may perform a compliance review or a facility audit;

- 50 % over limit - warning letter and must do a facility audit;
- 70 % over limit - warning letter, must do a facility audit, and carrier must attend a hearing; and
- 100% over limit - warning letter and may assign unsatisfactory rating, as well as attend a required hearing with the Registrar.

A “conditional” safety rating may be assigned to motor carriers that have demonstrated significant deficiencies in: safe vehicle operation; compliance with highway safety legislation; National Safety Code standards; and/or the results of a facility audit. This occurs where the accumulated points reach the level of 70% to 100% over the determined threshold limit for accumulated compliance indicators for the carrier or as the result of a failed facility audit score (less than 78%).

MRD policy indicates that operators with a “conditional” rating are subject to a follow-up facility audit in a future period; however, although the future period is not defined, a senior MRD official indicated about 12 months is desirable.

Continued issues with the carrier’s operations could ultimately lead to the assignment of an “unsatisfactory” safety rating by the Registrar. A school bus operator assigned an “unsatisfactory” rating would be prohibited from operating their fleet of school buses.

---

We requested information from officials at MRD on school bus operators having a “conditional” or “unsatisfactory” safety rating. A computerized listing was provided that indicated there were 5 school bus operators assigned a “conditional” safety rating. There were no school bus operators assigned an “unsatisfactory” safety rating.

Based upon our review, we noted the following:

- 1 of the operators, a school board, had a subsequent facility audit with passing results yet remained incorrectly assigned a “conditional” safety rating in the system. An MRD official indicated that steps would now be taken to adjust the safety rating to “satisfactory-audited”.

## School Bus Safety

- 3 of the operators were private contractors assigned “conditional” safety ratings as result of a failing score on MRD facility audits. We were informed that these audits occurred during 1999 (9 years ago), 2000 (8 years ago), and 2003 (5 years ago). An MRD official indicated that, although the facility audits were performed quite some time ago, the required follow-up audits were not performed. These operators had a total of 59 (6%) of the 1,007 licensed school buses in the Province.
- 1 of the operators was a private contractor assigned a “conditional” safety rating as a result of a failing score on an MRD facility audit. We were informed that this audit occurred during 2007. An MRD official indicated that this operator would be due for a follow-up facility audit in the near future. This operator had a total of 25 (2%) of the 1,007 licensed school buses in the Province.

### Recommendations

The Department of Government Services should:

- maintain an accurate account of safety rating for commercial carriers; and
- conduct the follow-up facility audits on a timely basis.

## Department’s Response

*As previously stated in our response in 2004, we differ on the substantive matter of whether school buses are meeting safety standards. In this province, school buses are subjected to a minimum of three inspections per year, and are taken out-of-service if there are any serious deficiencies until they are corrected. This is compelling evidence of the high level of safety standards to which these vehicles are held. In addition, our school bus inspection program equals, and in some cases exceeds, similar inspection programs in the other three Atlantic Provinces where their school bus inspection programs range from: two inspections per year by a licenced official inspection station; two inspections per year by a licenced official inspection station plus a limited number of targeted government inspections (not all buses); or two inspections per year performed by government inspectors.*

*It is inaccurate to assume that because a defect has been identified during an inspection the bus is unsafe for operation. Defects may not necessarily be serious enough in nature to place a bus out-of-service, but must in any event be corrected to ensure safety over the longer term. Of the 864 school bus inspections conducted by our enforcement staff in 2007/08, it is important to note that 40% of the buses inspected had no defects at all, a further 31% had one defect; 19% had two defects, and the remaining 10% had three or more defects. Only 13% were taken out of service for any reason, an approximately 20% decrease since 2004 when the average out-of-service rate was 16.4%. This represents a significant improvement in performance of the school bus fleets over that period.*

*Of the 864 inspections, 90% had no brake defects, 96% had no steering defects. The vast majority of the deficiencies were for non-critical items and almost half were for items such as lack of a fire extinguisher, hand axe, first aid kit, hazard warning kit, or issues associated with stop arms, mirrors, visors, tire chains, lamps and electrical systems, dash and instruments, windshield washer and wipers. While these are important to address in a timely manner, they do not necessarily represent an immediate or serious risk to bus safety.*

*Your statement that it is “likely that there are licensed school buses operating on the province's highways that do not meet the required safety standards” may lead to the erroneous conclusion that there are unsafe buses carrying children. Contrary to the picture presented in your report, the data demonstrate the extreme level of scrutiny these vehicles are subject to which ensures the integrity of the vehicles. These vehicles are required to have a minimum of three inspections per year and, when any issues which have potential safety impacts are identified, they are immediately removed from service until such time as they are restored to the highest safety standards.*

*While the Department recognizes there are "housekeeping" issues and areas where even more improvements can be made, I believe this Department's school bus inspection program is working effectively and is providing constant assurance as to the safety and integrity of the school bus fleets in this province.*

*In your report you note “113 licenced school buses were placed out of service as a result of significant deficiencies noted during the inspections. The deficiencies included such items as issues with brakes and exhaust. This is particularly significant considering that almost all school bus inspections are arranged by advanced appointment. Although private contractors operated 660 (66%) of the 1,007 licenced school buses, they accounted for 92 (81%) of the 113 licenced school buses placed out of service”.*

*As acknowledged in your recent review, the Department has developed and implemented a consolidated out-of-service criteria that ensures uniform application of inspection standards throughout the province and leaves no “grey areas” when it comes to removing a school bus from service due to out-of-service defects. Officers are required to immediately notify the owner/operator that they may not continue with the operation of the vehicle, until the item(s) which caused the out-of-service condition has been corrected. Within the out-of-service regime there are two levels of defects: one that places the bus immediately out of service; and the other which places the school bus in “restricted service” (e.g. improperly mounted or not fully charged fire extinguisher; missing first aid kit; mirrors not conforming to D250 standards; emergency exit guard not functioning properly). This enables the driver to drive the bus (which is still mechanically safe) from the point of inspection to a location where the repairs can be made but does not allow them to carry passengers.*

*Even having out-of-service defects may not necessarily imply that the defects represent an operating risk on the highway. There is simply zero tolerance on many defect conditions which employ an extremely high level of risk management to ensure passenger safety.*

*The Department also takes complaints involving a school bus very seriously, even if the complaint is anonymous in nature. There is a thorough investigation into every complaint and appropriate action taken.*

*Your report contains 10 recommendations:*

*“The Department of Government Services should:*

- implement procedures to co-ordinate the assignment and scheduling of school bus inspections.”*

*The draft report states that “there is no coordinated effort to ensure the optimum deployment of Highway Enforcement Officers and it was noted that there were a number of instances where a team of Highway Enforcement Officers either contacted or went to a school bus operator only to find that another MRD team was already present at the operator’s premises performing school bus inspections”.*

*Senior management of the Motor Registration Division are aware of only one incident where a Highway Enforcement Officer contacted a school bus operator to arrange an appointment to conduct inspections, only to find that an appointment had already been made for the following day. In light of this incident, a process was put in place in the fall of 2008 that assigns a designated number of school bus contractors to each inspection team. The inspection teams are responsible for the scheduling and performance of inspections of those operators under their assignment. Additionally, management conduct frequent checks on the number of school bus inspections that have been completed or have yet to be performed. We are unable to substantiate the auditor's inference that there were "a number of instances" without further information.*

- "increase its efforts in the area of surprise school bus inspections."

*It would be extremely difficult to conduct a large number of unannounced inspections, due to the short window of opportunity when a bus is available, particularly with the driver present, without causing a major disruption to school transportation systems. An inspector requires that the bus be running to conduct much of the inspection and, with the exception of the short periods of time throughout the school day when the vehicles are transporting children, it is not possible to always locate the owner or driver of the bus. This is especially true where vehicles are not parked in a central location at an owner's property between the schools run periods. Despite these challenges, MRD has implemented a plan to ensure that a minimum of 10% of school bus inspections for the 2009/2010 fiscal year will be conducted without prior notification. Additionally, changes will be implemented in 2009 to enable recording and electronic tracking of announced and unannounced inspections.*

- "ensure all Highway Enforcement Officers complete the school bus inspection forms by checking each inspection item completed, as instructed."

*Our own internal review of individual inspection forms reveals that significant progress has been made in this area and the incidents where forms are not properly completed are very minimal. Furthermore, in addition to the existing comprehensive manual on out-of-service criteria, a guide will be developed for enforcement personnel on the proper method of completing the inspection form.*

- “introduce a review and approval process for school bus inspection forms by the supervisor of the Highway Enforcement Officers.”

*Measures have already been implemented to ensure that school bus inspections will be reviewed and signed off by appropriate management personnel in each region.*

- “develop a policy and procedures manual to provide further guidance on the school bus safety program to Highway Enforcement Officers.”

*Inspection and reporting procedures are well understood by Enforcement Officers. However, in order to ensure there can be no room for misinterpretation, a formal guide will be developed for enforcement personnel incorporating procedures on the proper method of completing the inspection form, the verification process that is used by supervisory staff to ensure all school bus inspection reports are reviewed, and procedures for assigning school bus inspections to enforcement officers.*

“The Department of Government Services should monitor the brake meter maintenance program in place to ensure that all brake meters are recalibrated at least every two years as recommended by the manufacturer.”

*There has been a substantial improvement in this area since the 2004 audit and this can be demonstrated by the fact that only 2 of the 8 brake meters were overdue for calibration by more than one year. However, to better address any potential lapse in the process, MRD has implemented a process whereby the brake calibration schedule will be reviewed by a senior manager on a quarterly basis, to ensure the timely calibration of all brake meters occurs. Given the time lags between the request for calibration, the actual calibration of the equipment (which must be sent to the U.K. based manufacturer) and the date the brake meter is placed back in service, the Division has expanded its tracking mechanism, to include the request date for calibration and the “placed back in service” date, to ensure that brake meters are calibrated after two years of service.*

*Furthermore, the Division will investigate the possibility of purchasing more modern technology to be utilized for brake testing procedures.*

*With respect to the missing brake meter, we are of the view that this was adequately addressed in the 2004 submission in relation to your report, in that it was delivered to another Department and could not be later located. This meter will be removed from the current inventory.*

- "The Department of Government Services should take action to address the issue of school bus inspections being performed by unlicensed Official Inspection Stations."

*The expiry of the Official Inspection Station (OIS) licence by November 30th is an administrative process designed to ensure payment of a fee and does not diminish the integrity of inspections performed by certified mechanics. While it is desirable that all Official Inspection Station licence renewals should be completed on a timely basis, the fact that the annual renewal fee was not submitted prior to November 30th, and therefore an updated licence is not issued in a given year, does not indicate that an inspection is done to a lesser standard or not in accordance with prescribed inspection standards. In fact we noted that of the 7 OIS stations identified as not having paid the annual fee on time, 5 of those stations had submitted the required fee by the end of January 2008.*

- "The Department of Government Services should review procedures in place to ensure that all inspections of Official Inspection Stations are performed as required."

*There are in excess of 800 Official Inspection Stations located in Newfoundland & Labrador and every effort is made to ensure each facility is inspected on an annual basis. The 3 OIS stations of the 42 owned by school bus operators that did not receive an inspection for 2008 represents 7% of the total number of stations operated by school bus operators.*

*As part of a workload analysis, MRD officials are in the process of implementing an enforcement management plan that is designed to ensure that any gaps in required inspections are recognized and corrected early in the process.*

- "The Department of Government Services should:
  - maintain an accurate account of safety rating for commercial carriers; and
  - conduct the follow-up facility audits on a timely basis."

*The draft report states "there are 5 school bus operators assigned a conditional safety rating", and then further states "there are 4 school bus operators operating 84 (8%) of the 1,007 licensed school buses in the Province who are assigned a "conditional" safety rating (i.e. one level above "unsatisfactory" safety rating and loss of license)".*

*As noted in the draft report, one of those operators had received a subsequent audit and had received an exceptional score, yet the MRD database had not been updated to reflect the current carrier record status. This has since been done and the carrier record now accurately reflects a “satisfactory audited” safety rating.*

*In December 2005, the Department implemented revised Carrier Safety Regulations and a National Safety Code (NSC) rating system which involves an in-depth tracking and recording process of all National Safety Code carriers. A carrier's rating is based on its average fleet size over a two-year period. The process involves an assignment of precise points thresholds to carriers based on fleet size and prescribes varying degrees of intervention at pre-set levels of 15%, 50%, 70% and 100% of the thresholds. Accidents, inspections and convictions cause points to be assigned and thus lead to triggers that, in turn, result in intervention. This intervention may consist of warning letters and/or compliance reviews or facility audits of the carrier.*

*The fact a carrier may have a "conditional" rating and has not been audited in a significant period of time, does not in any way indicate that the carrier is unsafe or may be operating vehicles that jeopardize public safety. Once a carrier has been issued a conditional rating, the process of monitoring that carrier's performance continues, as does inspection of its fleet of buses. Any defects identified are required to be addressed. With respect to the four remaining school bus operators that currently have a conditional rating, they will be reviewed to determine if this rating is still justified. However, it should be noted that three of these are currently at 1%, 3% and 5% respectively which is well below threshold limits which would trigger action and therefore have not been a priority for follow-up audits. The fourth carrier, which is at a 16% threshold level, was audited in 2007 and has already been identified as requiring a facility audit again in 2009.*

*While MRD officials have indicated that "12 months is desirable" for a follow-up audit where a passing score is not achieved, it would be an inefficient use of this Department's limited facility audit resources to conduct an audit of a carrier whose threshold is barely above 0% when there may be other carriers that require immediate attention.*



# Office of the Auditor General

Newfoundland and Labrador

## Highlights

Highlights of a review of the Provincial Nominee Program from its inception in 1999 up to November 2008.

### Why our Office Did this Review

The objectives of the review were to determine whether the Department was monitoring the Provincial Nominee Program (PNP) to determine whether the PNP goals are being met; complying with internal policies and procedures, and with the provisions of the Canada-Newfoundland and Labrador Agreement on Provincial Nominees; and maintaining adequate records of all nominee files and certificates.

### What our Office Recommends

We recommend that the Department should:

- meet its goals for retention of immigrants by increasing its efforts to track nominees once they land in the Province;
- follow policies and procedures developed for the PNP, and ensure that all files contain documentation to support the approval for nomination of an individual; and
- improve the documentation on file in its database and certificate log to assist it in tracking nominations of individuals in the PNP.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/agg](http://www.gov.nl.ca/agg). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail.gov.nl.ca](mailto:adg@mail.gov.nl.ca)

Chapter 2, Part 2.12

### DEPARTMENT OF HUMAN RESOURCES, LABOUR AND EMPLOYMENT

Provincial Nominee Program

In 1999, the Province entered into the Canada-Newfoundland and Labrador Agreement on Provincial Nominees and created the Provincial Nominee Program (PNP). Effective 1 April 2007, the PNP is administered by the Department of Human Resources, Labour and Employment (Department). From 1999 to 31 March 2007, the PNP was administered by the Department of Innovation, Trade and Rural Development. The purpose of the PNP is to nominate immigrants who can contribute to the economic and social goals of the Province. In 2007, the Province announced in its immigration strategy that it intended to significantly increase the attraction and retention of immigrants to the Province.

### What We Found

The responsibility of the Province with regards to the PNP is to process applications from potential nominees, ensure that the applicants meet the criteria established by the Federal and Provincial PNP requirements and monitor the status of the nominated applicants and immigrants. We would expect the Department to monitor the investment money from nominees to determine whether the planned business venture outlined in the business plans and accompanying agreements between the nominee and the local business are realized.

Our review indicated that Government is unable to determine whether the PNP has achieved its goals of attracting and retaining immigrants to the Province and there were significant issues with regards to how the PNP was administered and monitored. Details are as follows:

- The Province does not know how many of the 530 individuals it nominated moved to Newfoundland and Labrador. Even though 214 nominees indicated that they intended to settle in the Province, the Department does not follow-up on their status and location after they enter Canada to determine whether the nominees actually settled here.
- The Department does not know what, if anything, local businesses did with the investment provided by the nominee. From 1999 to November 2008, a total of 312 nominees either invested or indicated that they intended to invest a total of \$72.2 million in the local business community. There were very few, if any, requirements on local businesses with regards to how monies they received were to be used. For example:
  - one business venture received approximately \$39.8 million from 150 nominees who contributed \$265,000 each. Although each nominee was to receive one share in the business venture which could be redeemed for an upscale chalet, the Department has no information as to how many nominees redeemed their share or how many ultimately received the chalet as outlined in the contract with the business venture.
  - one business venture received approximately \$9.8 million from 49 nominees who contributed \$200,000 each. Although the money was intended to establish an Internet business website "to educate the investing public", the Department has no information about the status of the intended website.
- As of April 2008, the Province had \$1.385 million held in trust related to 24 nominees. Of these 24, Citizenship and Immigration Canada's (CIC) monthly report indicated that 19 landed in Canada and, of these 19, only 4 indicated that they intended to settle in Newfoundland and Labrador. Other than the information provided by CIC, the Province does not know the status of the 24 nominees and whether or not a refund is required.
- Contrary to the requirements of the PNP, not all required documentation was on file to support the potential nominee assessment decisions. We also identified instances where not all documentation was date stamped or had the file number noted and not all assessment forms were appropriately signed.
- The electronic database was incomplete in that not all potential nominee files were recorded and not all required applicant information was always entered into the database. As a result, the database does not readily provide useful PNP information for management purposes.

### Background

---

#### Provincial Nominee Program overview

In September 1999, the Province entered into the Canada-Newfoundland and Labrador Agreement on Provincial Nominees (Agreement). The Agreement allowed the Province to nominate 300 immigrants over five calendar years from 1999 to 2004 for admission to Canada, provided the Province and the immigrant comply with the requirements of the Agreement. Pursuant to the Agreement, the Province created the Provincial Nominee Program (PNP). The purpose of the PNP is to nominate immigrants who can contribute to the economic and social goals of the Province. Therefore, the Province seeks to recruit immigrants who have specialized occupational or entrepreneurial skills. The PNP is part of the economic category of the Federal immigration program.

The Agreement requires that the Province establish policies and procedures for the nomination process. These policies and procedures require that nominees settle in Newfoundland and Labrador and have sufficient ability to communicate in either English or French. In addition, there are financial and other criteria which have to be met such as the requirement to have a minimum bank balance of \$10,000 and/or to make a minimum \$200,000 investment in a Provincial business.

---

#### Amendments to the Agreement

In March 2004, the Agreement was amended to increase the number of nominations to 700 over the five calendar years from 1999 to 2004. In December 2004, the Agreement was extended to 31 December 2005.

In January 2006, the Agreement was amended to extend the expiration to June 2006 and to increase the number of nominations to 200 per year for the seven calendar years from 1999 to 2006 i.e. 1,400 immigrants. In June 2006, the Agreement was amended to extend the expiration to December 2006.

In November 2006, a new Canada-Newfoundland and Labrador Agreement on Provincial Nominees was signed. This Agreement had no expiry date and there was no limit on the number of nominations the Province could make.

Effective 1 April 2007, the Agreement is administered by the Department of Human Resources, Labour and Employment (Department) through its Office of Immigration and Multiculturalism (OIM). From 1999 to 31 March 2007, the Agreement was administered by the Department of Innovation, Trade and Rural Development (INTRD).

---

## Provincial Nominee Program

### Two-step process

The PNP is a two-step process: The potential nominee forwards an application for nomination to the Province. Once approved, the nominee then forwards the application for permanent residence to the Federal government who then decides to issue or deny a permanent resident visa. Once the nominee receives a permanent resident visa they will then be officially admitted to Canada or "landed" in Canada.

As at 21 November 2008, the Province has nominated a total of 530 individuals under the PNP. The details on the number of nominations by year and by Department are included in Figure 1.

**Figure 1**

### PNP Nominations Calendar Years

Year	INTRD	HRLE	Total Nominations <sup>1</sup>
1999	0	0	0
2000	63	0	63
2001	100	0	100
2002	87	0	87
2003	31	0	31
2004	29	0	29
2005	26	0	26
2006	39	0	39
2007	5	42	47
2008 <sup>2</sup>	0	108	108
<b>Totals</b>	<b>380</b>	<b>150</b>	<b>530</b>

Source: Department of Human Resources, Labour and Employment

Note 1: The nominations statistics do not include spouses or dependents

Note 2: The nominations for 2008 are as of 21 November.

## Provincial Nominee Program

**Provincial strategy** The Province announced an immigration strategy in March 2007 – “Diversity ~ Opportunity and Growth”. The intent of the strategy was to “*significantly increase the attraction and retention of immigrants to the Province*”.

The Province made a commitment of \$6.0 million over three years to fund initiatives associated with implementation of the strategy. For example, a significant initiative was the establishment of the Office of Immigration and Multiculturalism (OIM) within the Department of Human Resources, Labour and Employment.

**Financials** Figure 2 provides details on the revenues and expenditures of the OIM for the year ended 31 March 2008, along with the budget for the year ending 31 March 2009.

**Figure 2**

### Net Expenditures Years Ended 31 March

Category	Actual 2008	Budget 2009
Salaries	\$ 396,174	\$ 997,000
Employee benefits	7,147	4,000
Transportation and communication	78,986	152,000
Supplies	10,045	24,000
Professional services	254,470	350,000
Purchased services	50,873	135,000
Property, furnishings and equipment	14,664	25,000
Grants and subsidies	190,824	310,000
<b>Total expenditures</b>	<b>\$ 1,003,183</b>	<b>\$ 1,997,000</b>
Federal revenue	(203,900)	(205,000)
Provincial revenue	(25,220)	(50,000)
<b>Total revenue</b>	<b>(229,120)</b>	<b>(255,000)</b>
<b>Net expenditures</b>	<b>\$ 774,063</b>	<b>\$ 1,742,000</b>

Source: Department of Human Resources, Labour and Employment

---

### Audit Objectives and Scope

---

#### Audit objectives

The objectives of the review were to determine whether the Department was:

- monitoring the Provincial Nominee Program (PNP) to determine whether the PNP goals are being met;
  - complying with internal policies and procedures, and with the provisions of the Canada-Newfoundland and Labrador Agreement on Provincial Nominees; and
  - maintaining adequate records of all nominee files and certificates.
- 

#### Audit scope

The scope of the audit covered the period from the inception of the PNP in 1999 up to November 2008. We completed our review in December 2008.

We interviewed the PNP staff and reviewed provisions of the Agreement, policies and procedures, and a sample of nomination files.

---

### Overall Conclusions

In 1999, the Province entered into the Canada-Newfoundland and Labrador Agreement on Provincial Nominees (Agreement) and created the Provincial Nominee Program (PNP). The purpose of the PNP is to nominate immigrants who can contribute to the economic and social goals of the Province. In 2007, the Province announced in its immigration strategy that it intended to significantly increase the attraction and retention of immigrants to the Province. The PNP is administered by the Department of Human Resources, Labour and Employment.

The responsibility of the Province with regards to the PNP is to process applications from potential nominees, ensure that the applicants meet the criteria established by the Federal and Provincial PNP requirements and monitor the status of the nominated applicants and immigrants. We would expect the Department to monitor the investment money from nominees to determine whether the planned business venture outlined in the business plans and accompanying agreements between the nominee and the local business are realized.

## Provincial Nominee Program

Our review indicated that Government is unable to determine whether the PNP has achieved its intended results and there were significant issues with regards to how the PNP was administered and monitored. Details are as follows:

- The Province does not know how many of the 530 individuals it nominated moved to Newfoundland and Labrador. As a result, it is not possible for the Province to make any conclusion about whether the PNP achieved its goals of attracting and retaining immigrants to the Province.

Landing reports provided by Citizenship and Immigration Canada (CIC) identified that 314 of the Province's 530 nominees landed in Canada. Of these 314, only 214 indicated that they intended to settle in Newfoundland and Labrador. Even though 214 nominees indicated that they intended to settle in the Province, the Department does not follow-up on their status and location after they enter Canada to determine whether the nominees actually settled here.

- The Department does not know what, if anything, local businesses did with the investment provided by the nominee. From 1999 to November 2008, a total of 312 nominees either invested or indicated that they intended to invest a total of \$72.2 million in the local business community.

There were very few, if any, requirements on local businesses with regards to how monies they received were to be used. For example:

- one business venture received approximately \$39.8 million from 150 nominees who contributed \$265,000 each. Although each nominee was to receive one share in the business venture which could be redeemed for an upscale chalet, the Department has no information as to how many nominees redeemed their share or how many ultimately received the chalet as outlined in the contract with the business venture.
- one business venture received approximately \$9.8 million from 49 nominees who contributed \$200,000 each. Although the money was intended to establish an Internet business website "*to educate the investing public*", the Department has no information about the status of the intended website.

## Provincial Nominee Program

---

- As of April 2008, the Province had \$1.385 million held in trust related to 24 nominees. Of these 24, CIC 's monthly report indicated that 19 landed in Canada and, of these 19, only 4 indicated that they intended to settle in Newfoundland and Labrador. Other than the information provided by CIC, the Province does not know the status of the 24 nominees and whether or not a refund is required. The Department has only recently started to investigate the status of nominees in relation to the required final disposition of these trust funds.
- Contrary to the requirements of the PNP, not all required documentation was on file to support the potential nominee assessment decisions. For example, we identified instances where there were no copies of passports, no net worth statements, no assessment forms and/or no letters from a bank indicating sufficient funds. We also identified instances where not all documentation was date stamped or had the file number noted and not all assessment forms were appropriately signed.
- The electronic database was incomplete in that not all potential nominee files were recorded and not all required applicant information was always entered into the database. As a result, the database does not readily provide useful PNP information for management purposes.

---

## Detailed Observations

---

### Overview

The responsibility of the Province with regards to the PNP is to process applications from potential nominees, ensure that the applicants meet the criteria established by the Federal and Provincial PNP requirements and monitor the status of the nominated applicants and immigrants. We would expect the Department to monitor the investment money from nominees to determine whether the planned business venture outlined in the business plans and accompanying agreements between the nominee and the local business are realized.

---

## Provincial Nominee Program

### Application process

Applications for potential nominees are available on the Province's dedicated PNP website and are also available in various countries at Canadian Embassy offices or through immigration representatives.

The potential nominee submits an application, along with a processing fee, to the Province. All documentation is required to be date stamped when received and entered into the Department's electronic database. The database automatically assigns a file number for the application. The documentation is forwarded to a Program Officer who creates a file, records the file number on all documents and determines whether all required documentation has been completed.

The documentation required includes:

- a self assessment sheet;
- PNP application forms (specific to each nominee category);
- Supporting documentation such as proof of education, birth/marriage/divorce/death certificates, child custody agreements, and other documents deemed necessary;
- a Federal immigrant application form;
- copies of passports;
- proof of a minimum bank balance of \$10,000 which could be transferred to a Canadian bank;
- a statement of net worth including copies of bank account balances over the past five years; and
- an assessment form completed by the Program Officer.

In addition, a potential nominee applying under the skilled worker category must provide a letter from a Newfoundland and Labrador company guaranteeing employment in the Province. Potential nominees applying under the entrepreneur and partnership categories must provide a detailed business plan and indicate their intention to invest a minimum of \$200,000 in a Newfoundland and Labrador company. Potential nominees applying under the partnership category must also provide a copy of a signed agreement between the potential nominee and the Newfoundland and Labrador company in which they intend to invest their \$200,000.

## Provincial Nominee Program

Commencing in 2005, if the entrepreneur intends to start a new business in the Province, a performance agreement between the potential nominee and the Minister must be signed. In this case, the potential nominee must provide \$100,000 of the \$200,000 minimum investment to the Department to be held in trust for a minimum of 12 months after the nominee arrives in the Province and the nominee meets conditions set out in the performance agreement. The Department, at its discretion, can reduce the required deposit.

In the case of a partnership, the potential nominee must provide a good faith deposit of \$25,000 to the Department to be held in trust, in addition to the \$200,000 minimum investment.

---

### Assessment of application

The Program Officer assesses the file and provides a recommendation to the Manager. If the Program Officer has an issue with the file, it would be discussed with the Manager to determine appropriate direction. Once a Program Officer provides a recommendation, the Manager would approve or reject the recommendation and send approvals to the Executive Director for the final approval of the nomination. As part of the assessment process the Department may conduct interviews with potential nominees, hire a consultant to perform background checks and/or interview potential employers.

If the application is unsuccessful, a letter of refusal is sent by the Executive Director to the potential nominee and a copy is kept on file. If the application is successful, a nomination certificate is sent by the Executive Director to the nominee, copied to CIC and a copy is kept on file. Each nomination certificate is assigned a number for tracking purposes. At this point, in the case of nominees under the entrepreneur or partnership categories, the required investment must be made. The proof of the required investment can be in the form of such things as a cancelled cheque or a confirmation letter from the company.

Once the nomination certificate is issued, the nominee has six months to apply to CIC for entry to Canada. As of 2008, this has been reduced to three months. If a nominee applies for permanent resident status, the request will be included on a CIC status report which is sent to the Department at least quarterly. This information is then entered into the Department's electronic database for tracking purposes.

Subsequent to the application, one of two things can occur. First, CIC could notify the Department by way of a letter that a nominee's application for permanent resident status was denied. Secondly, the CIC could notify the Department by way of a monthly landing report that a nominee had arrived in Canada and where they intended to settle. This information is then entered into the Department's electronic database for tracking purposes.

---

This report provides detailed audit findings and recommendations in the following sections:

1. Monitoring
  2. Compliance with Policy and Procedure
  3. Information Management
- 

### 1. Monitoring

---

#### Introduction

The purpose of the PNP is to recruit immigrants in order to meet the Province's socio-economic and labour market needs.

There are currently five categories of nominees:

- **skilled worker** - person with specialized skills which are not readily attainable in Canada. In order to be nominated, the nominee must have a job offer or be working in Newfoundland and Labrador on a temporary work visa. The local employer must provide sufficient proof that the position could not have been filled by a Canadian;
- **immigrant entrepreneur** - person who proposes to establish a new business or purchase all or part of an existing business in Newfoundland and Labrador and who intends to be self-employed in that business;
- **family connections** - family members of eligible permanent residents or Canadian Citizens who resided in Newfoundland and Labrador for at least 12 months. These family members must have post secondary training and be deemed employable (this category was added in April 2008);
- **international graduate** - international student who graduated from a post-secondary institution in Newfoundland and Labrador (this category was added in July 2008); and

## Provincial Nominee Program

- **immigrant partner** - person who wishes to invest and actively participate as a director or manager in a new or existing business located in Newfoundland and Labrador. A maximum of four immigrant partners can participate in such a business (this category was discontinued in August 2008 due to changes in Federal Immigration legislation related to passive investments).

### Nomination statistics

The details of the 530 nominations for the PNP since its inception in 1999 are outlined in Figure 3.

**Figure 3**

### PNP Categories and Nominations Calendar Years 1999 to 2008

Category	INTRD	HRLE	Total Nominees
Entrepreneur	297	7	304
Skilled Worker	76	116	192
Family Connections	0	12	12
Partnership	7	1	8
International Graduate	0	14	14
<b>Total</b>	<b>380</b>	<b>150</b>	<b>530</b>

Source: Department of Human Resources, Labour and Employment

As indicated in Figure 3, most of the nominations have been in either the entrepreneur or skilled worker category. When the PNP began, there was a focus on the entrepreneur category. This focus shifted to the skilled worker category after the establishment of the OIM and the immigration strategy in 2007.

### Retention goals

As part of the immigration strategy, the Province developed two specific goals that address the retention of immigrants as follows:

- Goal number 4 of the strategy is to improve the retention rate of immigrants to the Province. The Department plans to conduct and build on local research to determine the retention rate over the past 10 years; and

## Provincial Nominee Program

- Goal number 17 of the strategy is to, within 5 years (by 2012), attract between 1,200 and 1,500 immigrants annually and improve the retention rate to 80% for Provincial Nominees, and to track the number of immigrant arrivals to the Province on a monthly basis and maintain a record of the number of immigrants who remain in the Province.

---

### Landings

As part of the nomination under the PNP, a nominee agrees to come to the Province and settle here. Once an individual is nominated, they are eligible to apply for a permanent resident visa at a Canadian visa office abroad. Once they obtain a permanent resident card, a process that could take up to 24 months, they are free to settle anywhere in Canada. The nominee is encouraged to contact the Department with their local contact information once they have landed in Canada.

As each nominee lands in Canada, they are required to provide details at the customs office as to where they intend to settle. The CIC office provides the Province with a monthly landing report for those individuals who have received permanent resident status which lists the name of the immigrant, where they landed, and their final intended destination. The landing statistics are based on these reports, so if an individual's name does not appear on the landing report, it is an indication that they did not land in Canada either because their application is still in progress, or they have been refused permanent resident status. The CIC landing reports indicated the following:

---

### Entrepreneur category

Of the 304 nominees in the entrepreneur category: 103 did not appear on any landing report, 118 nominees landed in Canada and indicated their final destination was Newfoundland and Labrador, and 83 landed in Canada and indicated their final destination was a province other than Newfoundland and Labrador.

---

### Skilled worker category

Of the 192 nominees in the skilled worker category: 87 did not appear on any landing report, 93 nominees landed in Canada and indicated their final destination was Newfoundland and Labrador, and 12 landed in Canada and indicated their final destination was a province other than Newfoundland and Labrador.

---

## Provincial Nominee Program

**Immigrant partner category** Of the 8 nominees in the partner category: 3 landed in Canada, and indicated their final destination was Newfoundland and Labrador, and 5 landed in Canada and indicated their final destination was a province other than Newfoundland and Labrador.

**Family connections category** Of the 12 nominees in the family connections category, none have appeared on any landing reports.

**International graduate category** Of the 14 nominees in the international graduate category, none have appeared on any landing reports.

**Landing statistics** The landing statistics for the Province for the past 10 years are provided in Figure 4.

**Figure 4**

### Provincial Nominee Landing Statistics Calendar Years

Year Nominated	Landed in NL	Landed in another province	Total landed
1999	0	0	0
2000	18	21	39
2001	31	36	67
2002	42	17	59
2003	24	5	29
2004	20	0	20
2005	18	0	18
2006	18	16	34
2007	25	5	30
2008 <sup>1</sup>	18	0	18
<b>Totals</b>	<b>214</b>	<b>100</b>	<b>314</b>

Source: Department of Human Resources, Labour and Employment

Note 1: The landing statistics for 2008 include those available up to 21 November 2008

## Provincial Nominee Program

As indicated in Figure 4, of the 530 nominations, only 314 nominees have appeared on CIC landing reports, and of those who appeared, only 214 indicated their final destination would be Newfoundland and Labrador. In order to appear on a landing report, permanent resident status must have been granted. This process can take up to 24 months.

---

### Poor monitoring of retention rate

The Province does not know how many of the 530 individuals it nominated actually settled in Newfoundland and Labrador.

Even though 214 (68%) of the 314 nominees which appeared on CIC landing reports indicated that they intended to settle in the Province, the Department was not able to indicate with certainty how many of those nominees eventually settled in this Province. Furthermore, of the remaining 100 (32%) nominated by the Province and who appeared on CIC landing reports indicating that they were going to settle in a province other than Newfoundland and Labrador, the Department did not follow-up on where these nominees settled.

In particular, the Department did not always contact the nominee once they landed in Canada, or obtain local contact information from the nominee in the event the nominee required further settlement assistance, or simply document where the nominee settled.

Although the PNP has been ongoing since 1999 and the Province has nominated 530 individuals, it does not know whether the program is meeting the intended results. The Department has not conducted a retention study which would provide this information. As a result, it is not possible for the Province to make any conclusion about whether the PNP achieved its goals of attracting and retaining immigrants to the Province.

---

### Investment requirements

As part of the requirements for the entrepreneur and partnership category, nominees are required to invest a specified amount of funds in an existing or proposed local business. Since 2005, a performance agreement has been required for those nominees who intend to set up a new business. In this case, a portion of their investment is placed in a trust account at the time of nomination.

---

### Lack of information on investment funds

The Department does not know what, if anything, local businesses did with the investment provided by the nominee. From 1999 to November 2008, a total of 312 nominees either invested or indicated that they intended to invest a total of \$72.2 million in the local business community.

## Provincial Nominee Program

There were very few, if any, requirements on local businesses with regards to how monies they received were used. The \$72.2 million related to the following ventures:

- **\$39.8 million** – comprised of \$265,000 each from 150 nominees. Each nominee’s money was invested to purchase one share in the business venture which could be redeemed for an upscale chalet. The Department has no information as to how many nominees redeemed their share or how many ultimately received the chalet as outlined in the contract with the business venture.
- **\$9.8 million** – comprised of \$200,000 each from 49 nominees. The nominees’ money was invested in establishing an Internet business website “*to educate the investing public*”. The Department has no information about the status of the intended website.
- **\$6.6 million** – comprised of \$200,000 each from 33 nominees. The nominees’ money was invested in a company incorporated for the purpose of purchasing S.C.B Fisheries Limited. The company did purchase S.C.B. Fisheries which was renamed North Atlantic Sea Farms. North Atlantic Sea Farms has since gone into receivership.
- **\$3.6 million** – comprised of \$200,000 each from 18 nominees. The nominees’ money was invested in the proposed relocation of a home building supplies plant from Ontario to the Province. The relocation of this business did not occur.
- **\$1.6 million** – comprised of \$200,000 each from 8 nominees. The nominees’ money was invested in a division of a local restaurant intended on selling specialty products for export markets via the Internet. Although this venture no longer exists, we learned that monies remaining after the business failed were invested in a real estate venture and a local dermatology business.
- **\$1.6 million** – comprised of \$200,000 each from 8 nominees. The nominees’ money was invested in a proposed Industrial Park development in Southlands. The Department has no information on the status of the development.
- **\$1.6 million** – comprised of \$200,000 each from 8 nominees. The nominees’ money was invested 3 proposed partnerships. Two of these proposed partnerships are not yet in operation.

## Provincial Nominee Program

- **\$7.6 million** – comprised of \$200,000 each from 38 nominees. The nominees' money was invested in 31 various local business ventures proposed by each of the nominees, most of which are in the information technology or manufacturing field, and includes 3 fur ranches. The Department has little information about the status of each of these proposed business ventures.

### Trust account deposits

After 12 months, nominees who have money held in trust and who have entered Canada and received permanent resident status are eligible to have the money refunded. The money, plus accrued interest, is refunded only when the nominee can provide proof to the Department that the business venture has been established and maintained, that the funds will be used for the operation of the business, and proof of residency in the Province. Nominees will also qualify for a refund if they fail to obtain permanent resident status from the Federal government.

Figure 5 shows the details of the amounts collected and deposited in trust on behalf of nominees as of May 2008.

**Figure 5**

### Provincial Nominee Trust Fund 2005 to 2008

Year	Number of Nominees	Total Deposit
2005	4	\$ 100,000
2006	14	985,000
2007	2	200,000
2008	4	100,000
<b>Total</b>	<b>24</b>	<b>\$ 1,385,000</b>

Source: Department of Human Resources, Labour and Employment

## Provincial Nominee Program

---

The 24 deposits are comprised of four partnership nominees at \$25,000 each, ten entrepreneur nominees at \$100,000 each, one entrepreneur nominee at \$60,000 and nine entrepreneur nominees at \$25,000 each.

### **Lack of monitoring of Trust Account Investments**

As of May 2008, the Province had \$1.385 million held in trust related to 24 nominees. Of these 24, monthly landing reports from CIC indicated that 19 landed in Canada and, of these 19, only 4 indicated that they intended to settle in Newfoundland and Labrador. Other than the information provided by CIC, the Province does not know the status of the 24 nominees and whether or not a refund is required. The Department has only recently started to investigate the status of nominees in relation to the required final disposition of these trust funds.

---

### **Recommendation**

The Department should meet its goals for retention of immigrants by increasing its efforts to track nominees once they land in the Province.

---

## **2. Compliance with Policy and Procedure**

---

### **Introduction**

The Agreement stated that the Province was responsible for establishing criteria on which to base its nominations for the PNP. These criteria were documented in a policy and procedure manual. This manual was updated in July 2008, almost two years after the revised agreement of November 2006 was signed.

The manual documents the steps to be followed during the processing of PNP applications and was developed in accordance with the requirements of the Agreement. There are specific documents which are required to be completed, criteria against which the applicants are assessed, and procedures to follow to ensure the applicant meets Federal and Provincial PNP requirements.

---

## Provincial Nominee Program

### Policy and procedures not followed

We reviewed a sample of 34 nominee files (28 for INTRD and 6 for OIM) to determine whether the Department is following the PNP policies and procedures when nominating individuals. We found the following:

- 9 files did not have a date stamp on the application documents;
- 4 files did not have the file number noted on the application documents;
- 1 file contained an application which was not signed by the applicant;
- 9 files where application documents were missing. For example, 9 files did not have a personal net worth declaration; 3 files did not have a Newfoundland and Labrador supplementary information form; and 5 files did not have a copy of a passport;
- 3 files did not contain proof of a minimum bank balance of \$10,000 which could be transferred to a Canadian bank;
- 5 files had assessment forms which did not have the required signature of the Manager;
- 9 files did not have a copy of the assessment form; and
- 5 files did not contain a copy of the letter to the nominee indicating their approval for nomination.

### Increased risk of misfiled documents

If there is no indication of when a document was received, anyone reviewing the file cannot conclude whether proper policy and procedure was followed e.g. a nomination was not approved before the application fee was paid.

If there is no file number on a document, it is easier to misplace or misfile a document which will result in an incomplete file to support a nomination.

If there is no letter in the file indicating the appropriate funds are in a bank account, it is possible that these funds were not in place before nomination and it is likely that a nominee will not be able to move to or stay in the Province as intended.

### Recommendation

The Department should follow policies and procedures developed for the PNP, and ensure that all files contain documentation to support the approval for nomination of an individual.

## 3. Information Management

In reviewing information management and records to document and support nominations, we identified issues in the following areas:

- A. Database
- B. Certificate Log

### 3A. Database

#### Introduction

The information collected during the application process is input into a database at the Department. The application process results in numerous documents and data which should be on file to support the nomination decision. The database should serve as the central location of all nominee information in electronic format for future reference. It should contain contact information, and a record of the receipt of documents from the applicant, and notes to the file to support any decision made throughout the nomination process.

We interviewed staff at the Department to determine what data is stored in the database and how this information is used.

#### Multiple databases

We expected to find a single, operational database; however, the data for the PNP is currently stored in three separate databases.

In 2004, the Department of Innovation, Trade and Rural Development (INTRD) purchased an off-the-shelf program entitled FileMaker, and populated the database with PNP applicant information. Staff indicated that while the program enabled users to store details on applicants in a consistent manner, maintain notes to the file in electronic format, and prepare reports about the progress of the PNP process, there were technical difficulties with the program which staff were unable to fix. The information technology

## Provincial Nominee Program

support staff at INTRD did not provide technical support to maintain the database and INTRD was unable to obtain approval for funding to upgrade FileMaker, even though officials indicated that the costs were considerably less than creating a new database.

In addition, INTRD was aware of errors and missing information in the database (such as duplicate certificate numbers and business ventures for some entrepreneurs which were unrecorded). As a result, INTRD abandoned the FileMaker database. Currently, only one staff member can access the information stored in the database.

Another database was developed by the Office of the Chief Information Officer (OCIO) for the PNP in 2005. The purpose of this database was to record all PNP applicants and enquiry information. Staff were able to search the database to determine if someone had made a prior enquiry or entry, and staff could make notes to document any activity on the file. Once again, however, there were technical difficulties with this database. The Department contracted the OCIO to develop an updated database for the PNP in 2007. However to date, this updated database is not complete.

---

### **Data transfer unsuccessful**

When INTRD upgraded from FileMaker in 2005 none of the information related to nominees up to that point was transferred to the database set up by OCIO. In addition, during the transition from the first database developed by OCIO to the second database developed by OICO, not all nominee file details were transferred. Only the file names and numbers were transferred, and therefore the Department of Human Resources, Labour and Employment which is now responsible for the PNP started the task of transferring all of the file notes to the new database in 2008.

---

### **Database incomplete**

The Department currently has information stored on three different databases. Although information currently resides on the database created by OCIO in April 2008, there is still information contained on the two previous databases that may be required in order to compile complete and accurate reports for management purposes.

For example, none of the nominee information from the original FileMaker database has been transferred to the current database. In fact, the only information being transferred from the two prior databases is information from the first OCIO-developed database in 2005. This information is currently being manually gathered and input into the current database. Furthermore, we found instances where not all applicant documentation was entered into the database.

The FileMaker database contained inaccurate information in that there were instances where the certificate number of a nominee entered into a database was not the same as the certificate number recorded on the certificate issued to the nominee and recorded in the certificate log.

As a result, the Department is unable to compile complete information from its current database. Applicant file information in the database is not up to date and information from the FileMaker database has not been transferred; therefore, the database does not readily provide information on all 530 nominees including statistics of the PNP or overall results of the PNP.

---

### 3B. Certificate Log

---

#### Introduction

Each nominee is issued a certificate which they use to apply for permanent residence status with the CIC. As required in the policy and procedure manual, the Department maintains an “informal” certificate log to track the issuance of nomination certificates. The certificate log, therefore, is a source of information from which the Department is able to gather data about the PNP such as statistics on the number of nominees in a particular year.

#### Certificate log inaccurate and incomplete

We reviewed the certificate log and found that it was neither complete nor accurate. In particular, we found:

- 39 instances where a certificate number was skipped over or not recorded; however, the certificate number was issued. Of these 39, the same certificate number was issued to two different nominees;
- 2 instances where the certificate number recorded in the log did not match the number on the certificate;
- 14 instances where two individuals were noted in the certificate log with the same certificate number. Of these 14, ten nominees were later issued certificates with a different number;
- 15 instances where certificates were recorded in the certificate log; however, no copy of the certificate was available so that we could verify the details; and
- 4 instances where certificate numbers were recorded in the log as being issued; however, details such as the name, date and file number were not recorded.

## Provincial Nominee Program

---

The Department has used the data in this informal certificate log to compile information such as nomination statistics. As the data is neither complete nor accurate, any statistics compiled using this data are not reliable. Several employees have access to the certificate log including the ability to update information in the log which increases the likelihood of errors.

---

### Recommendation

The Department should improve the documentation on file in its database and certificate log to assist it in tracking nominations of individuals in the PNP.

---

## Department's Response

---

*The Department of Human Resources, Labour and Employment (HRLE) has reviewed the findings of the 2008 Auditor General's report on the Provincial Nominee Program (PNP). While the Department generally agrees with the recommendations outlined, there are a number of issues with the report as follows.*

*For most of the period covered by the report, the PNP was administered by the Department of Innovation, Trade and Rural Development (INTRD). The report covers an eight-year period of which HRLE has administered the program for 19 months (April 2007-November 2008). Therefore, much of the information is dated and does not reflect current practices. The mandate of INTRD included economic development through business and investment attraction. As a result, the PNP was utilized to fulfill that mandate. Since the program has been in HRLE, the focus has shifted to the attraction and retention of skilled workers, international graduates and their families.*

*The area of immigration in general and specifically the Provincial Nominee Program are quite complex. There are instances throughout the report which reference the process whereby an individual may immigrate to the province through the Provincial Nominee Program, but in order to clearly and adequately understand this process, further clarification is required.*

## Provincial Nominee Program

*For example, all nominations do not necessarily result in a permanent resident visa being issued by the federal government which has the sole jurisdiction for deciding who enters Canada. In some cases nominees are refused a visa. Also, of the 530 nominations, approximately one third are still in the federal processing system at embassies abroad and would not be expected to officially settle in the province until some time in the future. Therefore, until they are issued a permanent resident visa, they will not show up on a 'landing' report. Furthermore, sometimes individuals are recorded as 'landed' in another province, usually Ontario or British Columbia, because they entered Canada through either the Toronto or Vancouver airport.*

*With respect to the recommendation on policies and procedures, during the life of the PNP program, there have been three (3) iterations of program criteria. In addition, policy and processing procedures have evolved and improved. The report does not reflect this and assumes that the procedures for processing applications have remained the same during the life of the program. The Department has evaluated past procedures and has implemented changes that have improved processing and accountability.*

*During the early years of the PNP, the investment transaction was deemed to be a private matter between the local business and the prospective immigrant. As the program evolved, tighter regulations were put in place including a Performance Contract and a Good Faith Deposit. Furthermore, the Partner category, through which most of applications were previously processed, was discontinued in August 2008. The Department is now actively monitoring all applications in the Entrepreneur category, including tracking investment and residency.*

*With respect to the recommendation to improve documentation, it should be noted that of the 34 files reviewed, only 6 were from the period when the PNP program was administered by HRLE. Therefore the discrepancies resulted from the time when the program was under resourced (1999 - March 2007). During this period, this program was expected to be self-sufficient and support its administration through application fees. The Department of Innovation, Trade and Rural Development administered the PNP with just one full-time Program Officer and one part-time Manager. An individual who was also responsible for supporting between 15-19 other staff members provided clerical support. When the program moved to the Department of Human Resources, Labour and Employment and the Office of Immigration and Multiculturalism, additional staff was hired to administer the program.*

*The report does not provide a clear description of the Performance Contract and the Good Faith Deposit, including the reason that the Department implemented these tools and how applicants would qualify for refunds. These tools were implemented to confirm the applicant's commitment to establish a business in the province, to work or be self-employed in that business and become a resident of the province. Once applicants demonstrate the fulfillment of the conditions of the contracts, a refund is issued.*

*To date, the Department has issued two refunds: One Good Faith Deposit of \$25,000 (all conditions met) and one Performance Agreement refund of \$100,000 plus interest (applicant failed to obtain a visa). The Department is also in the process of auditing eight other applicants who have met the one-year anniversary date from their 'landing' in Canada to determine if they qualify for a refund. No action is permitted on the remaining applicants as the one-year anniversary date has not yet been met.*

*With respect to the recommendation on retention, it should be noted that goals on retention were first introduced as part of the provincial immigration strategy in March 2007. The Office of Immigration and Multiculturalism plans a retention study sometime in 2010. This would be three years after the PNP was transferred over to HRLE from INTRD. A three year period after a nomination has been issued is appropriate timing for a retention report as it takes 9-24 months after nomination to receive a permanent resident visa and then the applicant must settle into a community in NL for a period of time to determine "true" retention.*

*A new database for the PNP is currently operational with data since 2006, and while it does not contain all information from the applicants from the earlier years, hard copies of all files are available and can be entered into the new database. The Department intends to work with the Office of the Chief Information Officer to enhance the database to include more monitoring and reporting functions in support of our retention and monitoring policy.*

*In conclusion, since the launch of the provincial immigration strategy in March 2007 and since the Provincial Nominee Program has been administered by the Department of Human Resources, Labour and Employment (April 1, 2007), significant steps have been taken to ensure that the program is adequately resourced and is administered effectively.*

## Provincial Nominee Program

*Ultimately, the success of the Provincial Nominee Program will be measured by the number of nominees who settle in the province and bring their skills and expertise to the local economy and their contributions to our society and culture. Since the launch of the strategy, 157 nominations have been made of highly skilled individuals and their families who are making a significant contribution to our province. The Department has increased and enhanced the settlement and integration services available in the province, including evening classes in English as a Second Language, a 1-800 help line for newcomers, cultural awareness seminars, programs for families of international students, translation of labour standards into Mandarin and Spanish and labour market integration services for newcomers.*

*The Department agrees with the recommendations made by the Auditor General. Since HRLE has assumed responsibility for the administration of the program, many of the actions recommended have already been implemented.*

---



## Highlights

Highlights of a review of the complaint process with the Newfoundland and Labrador Human Rights Commission.

### Why our Office Did this Review

The objectives of this review were to determine whether human rights complaints were handled in a timely manner, appropriately investigated and resolved, and in full compliance with the *Human Rights Code*.

### What our Office Recommends

We recommend that the Commission should:

- develop an information system that will record and track complaints until they are resolved so that accurate statistical reports can be compiled;
- develop a plan to address the increasing number of outstanding investigations;
- request adequate levels of staffing and funding so more thorough investigations can be conducted;
- improve its procedures for assessing complaints with a view to screening out those that have not established a “prima facie case”;
- ensure proper minutes are maintained that document the resolution of every complaint received by the Commission;
- seek to improve the perception of independence by submitting its annual report directly to the House of Assembly; and
- set goals, objectives and measures for all of its lines of business and provide historical information and target references in its annual report.

### What the Commission Said

To provide balance to this report and to ensure full disclosure, the Commission was asked to formulate a response to our findings and conclusions. The Commission’s response, verbatim, is included at the end of this report. Readers are encouraged to consider the Commission’s comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.13

### DEPARTMENT OF JUSTICE

Newfoundland and Labrador Human Rights Commission

The Newfoundland and Labrador Human Rights Commission (the Commission) is responsible for promoting an understanding of, acceptance of and compliance with the provisions of the *Human Rights Code* (the *Code*). The Commission’s staff investigates complaints of discrimination and harassment. Complaints may be brought forward with respect to accommodation, services, facilities or goods to which members of the public customarily have access, the right to occupy commercial and dwelling units, discrimination in employment, and discriminatory publications. The *Human Rights Code* also guarantees equal pay for same or similar work and protects complainants and others from retaliation after filing a complaint or giving evidence in a complaint.

### What We Found

The Commission has an established process for accepting and investigating human right complaints which includes standard forms for documenting complaints and procedures for investigating and approving disposition of all complaints. Our review identified a number of weaknesses related to how the Commission accepts, investigates and monitors complaints. Specifically:

- The Commission does not maintain either a manual or electronic database to record the receipt and track the final disposition of each complaint. As a result, information on the status of complaints is not readily available.
- Outstanding complaints have been steadily increasing over the past three years. As at 31 March 2008, there were 184 outstanding complaints. This is an increase of 48 cases (35%) over the 136 cases outstanding at 31 March 2006, even though the number of new cases for 2007 and 2008 had not substantially increased from 2006.
- The Commission is not addressing complaints on a timely basis. Although for the period 1 April 2008 to 31 March 2011, the Commission has established a goal of 150 days from the time a complaint is received to the time the Commission approves a decision on the case, our review indicated that investigations completed during 2008, on average, took 585 days (19 months) to complete this process. At 31 March 2008, 85 of the 184 outstanding complaints were from 2007 or before.
- Other than occasionally obtaining a statement from a witness, investigations at the respondents’ premises were rarely done. It was acknowledged that visits to the respondents’ premises would provide additional evidence and better information in order to make final complaint determinations.
- As a result of the Commission not gathering all relevant information during the intake, review and assessment of the complaints, in 2008 it undertook work on 5 complaints that were outside of its jurisdiction.
- There were issues with regards to the documentation of decisions of the Commission. None of the minutes of Commission meetings were signed by either the Chairperson or the Executive Director as Secretary of the Commission, making it difficult to verify the authenticity of the Commission’s decisions and not all decisions of the Commission were recorded in the minutes.

There could be a perceived conflict of interest when the Commission has to hear cases in which Government is named as a respondent given the current budget and reporting process. The Commission’s budget is approved by the Department of Justice and, unlike the Canadian Human Rights Commission which reports directly to Parliament, the Commission has to provide its annual report to the Minister of Justice who is then responsible for tabling it in the House of Assembly.

There were deficiencies in the Commission’s activity plan and annual report for 2008. The activity plan had no goals, objectives and measures for two of its four lines of business, and the annual report did not provide historical or targeted information necessary for a reader to assess the Commission’s performance.

## Background

The Newfoundland and Labrador Human Rights Commission (the Commission) was established on 1 September 1971. The Commission is responsible for promoting an understanding of, acceptance of and compliance with the provisions of the *Human Rights Code* (the *Code*).

The Commission consists of a Chairperson, and four part-time Commissioners appointed by the Lieutenant-Governor in Council. The Commission, as of March 2008, had 10 full-time staff including, an Executive Director, three full-time Human Rights Specialists, three lawyers and three administrative personnel. The Commission reports to the Minister of Justice and is allocated funding under the Department of Justice.

Figure 1 provides a summary of funding and expenditures for the last five fiscal years.

**Figure 1**

**Department of Justice  
Newfoundland and Labrador Human Rights Commission  
Expenditures  
Years Ended 31 March**

	2004	2005	2006	2007	2008
<b>Expenditures</b>					
Salaries	\$ 257,501	\$ 247,222	\$ 236,199	\$ 236,656	\$ 301,663
Employee benefits	3,775	2,883	2,533	1,479	7,924
Transportation and Communications	17,617	10,280	14,709	18,786	17,613
Supplies	5,278	3,728	3,764	3,744	5,728
Professional services	41,541	37,713	18,063	9,410	32,474
Purchased services	39,366	39,188	40,180	55,423	50,597
Property, furnishings and equipment	1,739	6,486	598	2,000	7,139
<b>Total:</b>	<b>\$ 366,817</b>	<b>\$ 347,500</b>	<b>\$ 316,046</b>	<b>\$ 327,498</b>	<b>\$ 423,138</b>

Source: Government of Newfoundland and Labrador Financial Statements

### Human Rights Code

The *Code* sets out the Commission's responsibilities. The purposes of the *Code* are to protect individuals from discrimination and promote equality of opportunity. It applies to every person in the Province except, Federal government departments and agencies, Federal Crown corporations, First

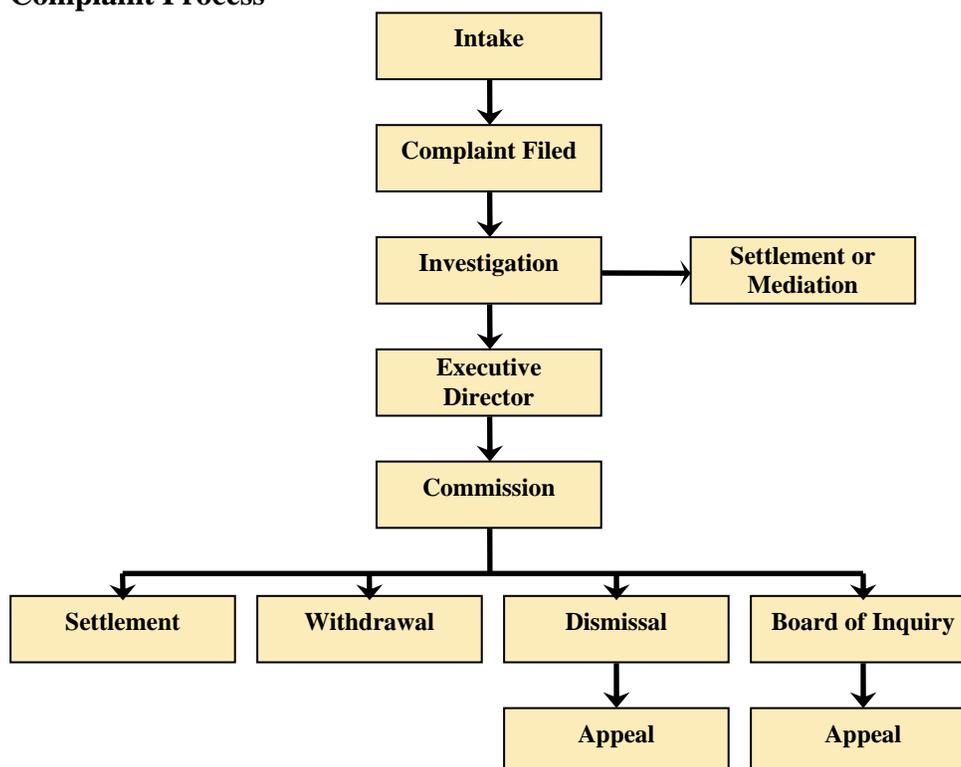
Nation's band councils, chartered banks, airlines, telecommunications and broadcasting organizations, and shipping and inter-provincial trucking companies. These entities fall under the *Canadian Human Rights Act* which is administered by the Canadian Human Rights Commission.

The Commission's staff investigates complaints of discrimination and harassment. Complaints may be brought with respect to accommodation, services, facilities or goods to which members of the public customarily have access, the right to occupy commercial and dwelling units, discrimination in employment, and discriminatory publications. The *Human Rights Code* also guarantees equal pay for same or similar work and protects complainants and others from retaliation after filing a complaint or giving evidence in a complaint. The Commission may also approve special programs.

Complaints of discrimination may be made based on race, religion, religious creed, political opinion, colour or ethnic, national or social origin, sex, sexual orientation, marital status, family status, age, source of income, physical disability, or mental disability or that person or class of persons. Figure 2 shows the complaint process.

**Figure 2**

### Newfoundland and Labrador Human Rights Commission Complaint Process



### Complaint process

The Commission processes complaints as follows:

- **Intake** - Human Rights Specialists receive daily inquiries from the public on possible violations of the *Human Rights Code*.
- **Complaint Filed** - The Executive Director assesses the possible complaint against the *Human Rights Code* criteria and determines if a complaint can be accepted. If accepted, the Specialist on duty when the complaint was originally received will complete a Complaint Form which is then sent to the Complainant for review and signing. At the same time, an Intake Data Form is sent to the Complainant for further information. When the signed Complaint Form is returned, a case file number is assigned and an official file is opened. The Complaint Form and Intake Data Sheet are then sent to the Respondent along with a Respondent's Response Form.
- **Investigation** - A Human Rights Specialist is assigned carriage of the complaint. They conduct an independent and unbiased review of the facts involving the alleged human rights violation. An investigative report is drafted. At all times, during the investigation, the Commission has the mandate to try to settle/mediate the matter.
- **Executive Director** - The Executive Director acts as Secretary to the Commission and reviews all investigation reports and legal opinions as drafted by Commission lawyers prior to them being forwarded to the Commission for consideration.
- **Commission** - The Commission determines whether to refer the matter to a Board of Inquiry. The Commission can also approve a settlement, withdrawal or dismissal.
- **Settlement** - The Commission's goal throughout the entire process is to effect a settlement; therefore, a settlement can occur at any stage in the investigation process.
- **Withdrawal** - The Complainant may withdraw their complaint if they no longer wish to pursue it; however, the Commission must approve the withdrawal.
- **Dismissal** - The Commission may dismiss a complaint if there is no reasonable basis in evidence to proceed.

- **Appeal** - When the Commission dismisses a complaint, the complainant may apply to the Supreme Court of Newfoundland and Labrador within 30 days of the Commission's decision for an order to require the Commission to refer the complaint to a Board of Inquiry.
- **Board of Inquiry** - A Board of Inquiry is an adjudicator appointed by the Lieutenant-Governor in Council to conduct a formal public hearing where the complainant and the respondent present their arguments. The adjudicator's decision is legally binding on the parties; however, it is subject to appeal to the Trial Division of the Supreme Court of Newfoundland and Labrador.

---

### Audit Objectives and Scope

---

#### Audit objectives

The objectives of this review were to determine whether human rights complaints were handled in a timely manner, appropriately investigated and resolved, and in full compliance with the *Human Rights Code*.

#### Audit scope

Our review included an examination of various reports, documents and discussions with officials at the Newfoundland and Labrador Human Rights Commission. We completed our review in November 2008.

---

### Overall Conclusions

The Commission has an established process for accepting and investigating human rights complaints which includes standard forms for documenting complaints and procedures for investigating and approving disposition of all complaints. Our review identified a number of weaknesses related to how the Commission accepts, investigates and monitors complaints. Specifically:

- The Commission does not maintain either a manual or electronic database to record the receipt and track the final disposition of each complaint. As a result, information on the status of complaints is not readily available. Furthermore, this situation likely contributed to statistical inaccuracies in the Commission's annual report to the House of Assembly for 2008.

- Outstanding complaints have been steadily increasing over the past three years. As at 31 March 2008, there were 184 outstanding complaints. This is an increase of 48 cases (35%) over the 136 cases outstanding at 31 March 2006, even though the number of new cases for 2007 and 2008 had not substantially increased from 2006.
- The Commission is not addressing complaints on a timely basis. Although for the period 1 April 2008 to 31 March 2011 the Commission has established a goal of 150 days from the time a complaint is received to the time the Commission approves a decision on the case, our review indicated that investigations completed during 2008, on average, took 585 days (19 months) to complete this process. At 31 March 2008, 85 of the 184 outstanding complaints were from 2007 or before.
- Other than occasionally obtaining a statement from a witness, investigations at the respondents' premises were rarely done. Officials cited staff shortage, work load and funding issues as the reasons for not doing this. Investigations are, in the vast majority of cases, carried out through requests for information. It was acknowledged that visits to the respondents' premises would provide additional evidence and better information in order to make final complaint determinations.
- As a result of the Commission not gathering all relevant information during the intake, review and assessment of the complaints, in 2008 it undertook work on 5 complaints that were outside of its jurisdiction i.e. one complaint relating to each of: shipping, banking, broadcasting, airline and First Nation's band council.
- There were issues with regards to the documentation of decisions of the Commission. None of the minutes of Commission meetings were signed by either the Chairperson or the Executive Director as Secretary of the Commission, making it difficult to verify the authenticity of the Commission's decisions and not all decisions of the Commission were recorded in the minutes.

There could be a perceived conflict of interest when the Commission has to hear cases in which Government is named as a respondent given the current budget and reporting process. The Commission's budget is approved by the Department of Justice and, unlike the Canadian Human Rights Commission which reports directly to Parliament, the Commission has to provide its annual report to the Minister of Justice who is then responsible for tabling it in the House of Assembly.

There were deficiencies in the Commission’s activity plan and annual report for 2008. The activity plan had no goals, objectives and measures for two of its four lines of business, and the annual report did not provide historical or targeted information necessary for a reader to assess the Commission’s performance.

---

### Detailed Observations

---

**Findings** This report provides detailed audit findings and recommendations in the following sections:

1. Handling of Human Rights Complaints
  2. Accountability of the Commission
- 

### 1. Handling of Human Rights Complaints

---

**Section overview** The main activity of the Commission is to receive, record and investigate written complaints by individuals alleging a violation of the *Human Rights Code*. The Commission is required by legislation to investigate all complaints it receives in which a “prima facie case” has been established. A “prima facie case” is one which covers the allegations made in which, if they are believed, is complete and sufficient to justify a verdict in the complainant’s favour, in the absence of an answer from the respondent.

In order to protect the rights of individuals, the Commission’s goal is to investigate complaints quickly, impartially and expertly.

---

**Information documentation** Once it is determined that a complaint will be accepted by the Commission, a Human Rights Specialist prepares a formal complaint form. The formal complaint form with an intake data form is sent to the complainant to review and sign. When the complaint form is returned to the Commission, it is assigned a case number and referred to a Human Rights Specialist for investigation. The complaint form and intake data form is then forwarded to the respondent, along with a blank respondent’s response form. The intake forms and formal complaint forms are included in each case file.

Investigations consist mainly of exchanges of documents and correspondences between the parties. The Human Rights Specialist (Specialist) acts on behalf of the Commission and is mandated to encourage the parties to come to a settlement. When a settlement is not possible, the Specialist prepares a report which is then sent to the complainant and respondent, and to an in-house lawyer who prepares a legal opinion on the complaint before it goes to the Executive Director. The Executive Director then provides the report to the Commission which approves withdrawals, settlements, dismissal, or referral to a Board of Inquiry. The Commission's resolution of the case is then recorded in the minutes of the Commission meetings.

---

Our review of the Commission's handling of human rights complaints identified issues with the following:

- A. Information systems
  - B. Processing of complaints
  - C. Documentation
- 

### A. Information Systems

---

#### No database

We would expect the Commission to have a computerized database system to keep track of complaints received and their status. Such an information system would also allow for the management of information and ensure that complaints are being addressed on a timely basis. Our review indicated the following:

- The Commission does not maintain either a manual or electronic database to record the receipt and track the final disposition of each complaint. As a result, information on the status of complaints is not readily available.
- In October 2006, the Commission completed a listing of outstanding complaints. Our review of this listing indicated that not all outstanding complaints were included on the listing. As a result, information provided to the Commission on the number of outstanding complaints was incorrect. For example, the October 2006 report indicated that there were 101 complaints outstanding, while our review indicated that the number should have included at least another 22.

- The Commission's annual report to the House of Assembly for the year ended 31 March 2008 was not accurate as follows:
  - The annual report indicated that there were 98 complaints that met the *Code* criteria and were investigated; however, our review of the complaint investigation files indicated that there were 105 complaints deemed to have met the criteria for investigation.
  - The annual report indicated that there were 5 mediated settlements achieved during the year; however, our review of the Commission's minutes indicated that there were 6 mediated settlements approved.
  - The annual report indicated that there were 9 complaints that the Commission referred to a Board of Inquiry; however, our review of the minutes indicated that there were 10 complaints referred by the Commission to a Board of Inquiry.
- The Commission's annual report for 31 March 2008 identified the number of complaints as one of its performance indicators; however, the annual report only provided information for a six month period. Officials indicated this was due to the lack of a computerized filing system as well as issues with staff turnover.

---

### B. Processing of Complaints

---

#### Overview

We would expect the Commission to have processes in place to ensure that complaints are dealt with in a thorough and expeditious manner. Figure 3 shows information on the number and disposition of complaints for the last five years.

**Figure 3**

**Newfoundland and Labrador Human Rights Commission  
Outstanding Complaints  
Years Ended 31 March**

Description	2004	2005*	2006	2007	2008
Brought forward from previous year	103	120	145	136	154
New Complaints	100	25	117	103	105
Settled by:					
• Dismissal	62		81	59	41
• Referral to Board of Inquiry	4		12	9	10
• Settled	15		19	7	6
• Withdrawn	2		14	10	18
<b>Outstanding at end of year</b>	<b>120</b>	<b>145</b>	<b>136</b>	<b>154</b>	<b>184</b>

Source: Commission documents

\*Note: 2005 represents the 3 month period to 31 March 2005 as 2004 represents the calendar year and 2006 to 2008 represent the fiscal years.

**Complaints steadily increasing over the past three years**

As Figure 3 shows, outstanding complaints have been steadily increasing over the past three years. As at 31 March 2008, there were 184 outstanding complaints. This is an increase of 48 cases (35%) over the 136 cases outstanding at 31 March 2006 even though the number of new cases for 2007 and 2008 had decreased from 2006. Furthermore, in 2004, there were 120 complaints outstanding while in 2008 there were 184 complaints outstanding which represents an increase of 64 complaints or 53%.

**Complaints not addressed on timely basis**

The Commission is not addressing complaints on a timely basis. Our review of investigations completed during 2008 indicated that it took, on average, 585 days (19 months) from the time a complaint was received to the time the Commission decided whether or not a complaint was referred to a Board of Inquiry. For example, for the 184 complaints outstanding at 31 March 2008 we identified the following:

- 2 were from 2004;
- 2 were from 2005;
- 22 were from 2006;
- 59 were from 2007; and
- 99 were from 2008.

For the period 1 April 2008 to 31 March 2011, the Commission has established a goal of 150 days from the time a complaint is received to the time the Commission approves a decision on the case.

### **Powers and authority of Commission not used in investigations**

Our review of a sample of 12 investigation files completed from 1 April 2007 to 20 October 2008 indicated that only in 1 instance did the Specialist visit the respondent in the process of gathering evidence. This evidence consisted of taking statements of 3 witnesses. Evidence for the other 11 investigations was obtained through correspondence and telephone calls (i.e. no site visit).

Other than occasionally obtaining a statement from a witness, investigations at the respondents' premises were rarely done. Officials cited staff shortage, work load and funding issues as the reasons for not doing this. Investigations are, in the vast majority of cases, carried out through requests for information. It was acknowledged that visits to the respondents' premises would provide additional evidence and better information in order to make final complaint determinations.

Officials indicated that recent increases in staffing and funding have enabled the Commission to expand the investigation procedures to include visits to the premises of respondents. They believe that this will result in a more thorough investigation.

### **Cases processed which were outside Commission mandate**

During the intake, review and assessment of a complaint, we would expect the Commission to gather all relevant information in order to determine whether they have the mandate to address the complaint. The Commission's jurisdiction does not include, for example, complaints related to shipping, banking, broadcasting, airlines and First Nation's band councils. Complaints relating to these matters are addressed by the Canadian Human Rights Commission. Our review indicated that not all relevant information is being gathered at the time of initial intake, review and assessment. For example:

- In 5 instances in 2008, the Commission processed cases that were outside of its jurisdiction (1-shipping, 1-banking, 1-broadcasting, 1-airline and 1-First Nation's band council). The processing of these cases resulted in use of Commission resources and delayed the complaint from being filed at the Canadian Human Rights Commission. These delays ranged from 49 days to 321 days. Such a delay could lead to a complaint being rejected because it had not been filed within the required timeframe.

- In 1 instance in 2008, the Commission processed a case related to the mandatory retirement age of 65 although the legislation removing the mandatory retirement age limit was not in force at that time. This case took 10 months to resolve; however, it should have been dismissed during the original assessment.

---

### C. Documentation

---

#### Commission minutes not accurately recorded

The final disposition of all complaints must be approved by the Commission. The decisions of the Commission may be appealed to the Trial Division of the Supreme Court of Newfoundland and Labrador. It is therefore important that an accurate record of all decisions be maintained. Our review identified a number of issues relating to documentation as follows:

- None of the minutes of Commission's meetings were signed by the Chairperson or the Executive Director as Secretary of the Commission, making it difficult to verify the authenticity of the Commission's decisions.
- Decisions of the Commission are not always recorded in the minutes. For example, as part of our review we traced a sample of 12 completed investigations of complaints to the Commission minutes. We found issues with the Commission minutes related to 4 complaints as follows:
  - For 2 complaints, although Commission meetings were held on the disposition of the completed investigations, no official minutes were on file documenting the decisions regarding these complaints;
  - For 1 complaint, there were minutes of the meeting; however, the decision regarding the complaint was not recorded; and
  - For 1 complaint, the decision recorded in the minutes was incorrect i.e. the decision was recorded as a withdrawal when it should have been recorded as a settlement.

If the decisions are recorded incorrectly in the minutes, any reports that rely on the minutes for information will also be incorrect.

---

### Recommendations

The Commission should:

- develop an information system that will record and track complaints until they are resolved so that accurate statistical reports can be compiled;
- develop a plan to address the increasing number of outstanding investigations;
- request adequate levels of staffing and funding so more thorough investigations can be conducted;
- improve its procedures for assessing complaints with a view to screening out those that have not established a “prima facie case;” and
- ensure proper minutes are maintained that document the resolution of every complaint received by the Commission.

## 2. Accountability of the Commission

### Overview

The Commission’s funding is provided through the budget of the Department of Justice and the Commission is accountable to the Minister of Justice. As part of the accountability process, the Commission prepares an annual report which is submitted to the House of Assembly through the Department of Justice.

As the administrative body that oversees human rights in the Province, it is necessary that the Commission be independent, both real and perceived.

### Independence may be questioned

While the Commission is set up to be independent of Government (i.e. it has its own independent board, its own activity plan and its own annual report), its accountability to the Department of Justice may bring its independence into question. Factors that may influence the perception of independence are as follows:

- Government departments and Crown agencies are often named as respondents to complaints. When this occurs, it is not uncommon for the Department of Justice to represent the departments and Crown agencies in the negotiation of settlements of cases with the Commission. To illustrate, 43 of the 105 complaint investigations started in 2008 had at least one of the respondents listed as being from either a Government department or one of its Crown agencies. This could be seen as a potential conflict of interest given the current budgeting and reporting process.
- The Newfoundland and Labrador Human Rights Commission has its budget approved by the Department of Justice.
- The Canadian Human Rights Commission reports directly to Parliament through the Speaker on its activities. The Newfoundland and Labrador Human Rights Commission, however, has to provide its annual report to the Minister of Justice who is then responsible for tabling it in the House of Assembly.

**Not all activities addressed in activity plan**

The Commission's activity plan for 2008 did not address all of its mandated activities. The Commission identified four lines of business; however, it set goals, objectives and measures for only two of these. Goals, objectives and measures were not set for the "*promotion of the Human Rights Code*" or the "*advising and helping of individuals, groups, organizations and governments on matters related to human rights*". As a result, the activity plan did not adequately address all activities of the Commission.

The Commission has a statutory obligation to promote an understanding of, acceptance of and compliance with the *Code* through the distribution of information, public education programs and advice to Government with suggestions and recommendations related to human rights. Our review identified issues relating to the promotion of the *Code* as follows:

- The Commission is not distributing current information about human rights. In particular, we note that the Commission:
  - has not updated its website since 2005;
  - has not updated and issued any recent pamphlets on human rights; and
  - has not published decisions of any Board of Inquiry since 2006. Prior to 2006, the Commission included the Board of Inquiry decisions in its annual reports.

- During 2008 the Commission conducted 10 educational seminars. We note that:
  - none of the 10 seminars were conducted outside the St. John's area; and
  - none of the seminars addressed physical and mental disabilities which are the two most frequent complaints. All seminars related to the fifth most frequent complaint, sexual harassment. Figure 4 shows information on the type of complaint.

**Figure 4**

**Human Rights Commission  
Cases by Type of Complaint  
Years Ended 31 March**

Description	2004	2005*	2006	2007	2008
Physical disability	49	8	57	44	44
Mental disability	18	5	15	13	15
Age	7	4	8	12	8
Sex	9	2	14	11	11
Sexual harassment	4	2	8	6	2
Sex/pregnancy	3	1	2	4	5
Race	2	3	2	2	7
Sexual orientation	-	-	1	1	4
Other	8	-	10	10	9
<b>Total</b>	<b>100</b>	<b>25</b>	<b>117</b>	<b>103</b>	<b>105</b>

Source: Commission documents

\*Note: 2005 represents the 3 month period to 31 March 2005 because 2004 represents the calendar year and 2006 to 2008 represent the fiscal years

As Figure 4 shows, discrimination based on physical and mental disabilities have been the most frequent reasons for complaints.

### Annual report not adequate

An important step in the accountability process is the annual reporting on results in relation to goals and activities. Our review of the Commission's annual report identified the following:

- The report did not provide historical or targeted information. As a result, it was not possible to determine if the Commission met its targets.
- The report did not integrate financial and non-financial information. As a result, the report did not show how resources were being used for each line of business. Without this information readers are unable to assess the resources that might be needed for such things as clearing the backlogs of cases.

### Recommendations

The Commission should:

- Seek to improve the perception of independence by submitting its annual report directly to the House of Assembly.
- Set goals, objectives and measures for all of its lines of business and provide historical information and target references in its annual report.

## Department/Commission's Response

*The Newfoundland and Labrador Human Rights Commission (HRC) has reviewed the draft report and wishes to offer the following comments:*

*Over the past number of years and up until this current budget year, the Human Rights Commission (HRC) has been seriously under-staffed and under-funded. At times, the full-time complement has consisted of (1) Executive Director/Lawyer, (1) Human Rights Specialist and (1) Administrative staff, who were responsible to service the entire province. This led to a situation in which there were significant delays in complaint processing times and an ever-increasing backlog of cases. As a result, the Government of Newfoundland and Labrador committed its resources and increased funding to the HRC. The HRC now has a plan to address the increasing number of outstanding investigations.*

*For example, during the fiscal year 2007-08 the HRC's budget was \$444,800 and in January 2008 the staff consisted of (1) Executive Director/lawyer, (1) contract lawyer (starting date 9 January 2008), (1) Human Rights Specialist and (2) Administrative staff. For the fiscal year 2008-09 the budget was increased to \$796,500. With the new funding, the HRC was able to increase its staff complement. By 31 March 2008 the HRC had hired an additional contract lawyer and (2) contract Human Rights Specialists. Another contract lawyer was hired in April 2008. As of January 2009, there are 10 positions at the HRC – (1) Executive Director/lawyer, (1) permanent lawyer, (2) contract lawyers, (3) permanent Human Rights Specialists and (3) Administrative staff.*

*The HRC is encouraged by the recent commitments from government to support the work of the HRC through increased staffing levels and the approval of a case management system. It is now necessary to build on that momentum and the enthusiasm of our staff in order to create a HRC of which the entire province is proud. In that regard, the HRC has requested additional staff and an increased operating budget for the fiscal year 2009-10 so that complaints can be dealt with in a more thorough and expeditious manner and a comprehensive public education program can be developed.*

### **1. Handling of Human Rights Complaints**

#### **A. Information Systems**

*The HRC acknowledges that the lack of a manual or electronic database has led to a situation where information is not managed properly and complaints are not dealt with on a timely basis. In addition, statistical deficiencies in the annual report and other documents are certainly problematic. The Department of Justice recently approved the implementation of a computerized database system to log all calls from the public, track complaints filed and their status and record the final disposition of each complaint among other things. The computerized database system will also be able to provide statistical information for annual reports and other reporting documents. The use of such statistics will allow the HRC to better focus its work and develop and deliver educational programs in areas where it is most needed.*

*The computerized database system is expected to be fully operational by the spring of 2009. Currently, the HRC is preparing its records retention and disposal schedule. We anticipate that the database system will address all of the concerns noted by the Auditor General in this particular area.*

### B. Processing of Complaints

*The Auditor General raises a number of issues with respect to the processing of complaints. The Human Rights Commission states the following in reply:*

- 1) The HRC has historically been under-staffed and under-funded. Currently, the HRC has three permanent Human Rights Specialists (investigators). Due to the frequent turnover of staff there were extended periods of time where there was only one or two Specialists at the HRC. In 2007 there was a 5 month period when there was only one Specialist who was required to answer all general inquiry calls and do all investigations. In February 2008 there were no Human Rights Specialists on staff for a number of weeks. However, now that the HRC has 10 staff we anticipate that complaints will be dealt with on a timelier basis.*
- 2) Investigation requirements are being completely overhauled. For example, all witnesses are being interviewed, Workplace sites are being visited and medical information is being gathered. The new investigative requirements, however, place an increased demand on Specialists' time. The HRC agrees that Specialists should travel to workplace sites in order to obtain better and additional evidence. This was not done in the past, as noted by the Auditor General, because of a lack of staff and operational funding. We have requested in this year's budget process for additional funds to address these issues.*
- 3) Specialists take daily calls from members of the public. They are required to spend a significant amount of time on the phone gathering enough information to determine if a human rights violation has occurred. In July 2008 the HRC started manually tracking the number of calls they received. In only three months, the HRC received 451 calls. Now that the HRC has more staff, further research and follow up calls from the Specialist and a legal analysis performed by the Executive Director and/or staff lawyers can be performed. Sometimes, after considerable work, it is determined that the Human Rights Code criteria are not met and the Specialist is required to inform the individual and identify other avenues of redress.*

### C. Documentation Issues

*The HRC is committed to maintaining an accurate record of all Commission decisions. We will implement the recommendations of the Auditor General immediately, specifically, minutes were signed as of 16 January (the first Commission meeting of 2009) so as to ensure that they are accurate and properly reflect the decisions of the Commission.*

## 2. Accountability

*As noted by the Auditor General, the HRC will set goals, objectives and measures for all of its lines of business and provide historical information and target references in its annual report.*

*The HRC is also committed to promoting an understanding of, acceptance of and compliance with the Human Rights Code. Since the fall of 2008, HRC staff have increased the number of public education seminars they present to members of the public. In December 2008, the Executive Director made two presentations in Corner Brook. The HRC has also requested increased staff through this year's budget process to develop and implement a comprehensive public education program that could be delivered throughout the entire province.*

*The Auditor General states that all seminars done in 2008 related only to sexual harassment and did not address physical and mental disabilities. This is not correct. The Human Rights Commission's Annual Activity Report 2007-8 states that Human Rights Specialists provided an overview of the role and responsibilities of the Commission, focusing on sexual harassment, the Code, and the complaint process to interested groups.*

*Because of a lack of resources, the HRC only made presentations to groups that expressed an interest. Most groups were high school or college age students and they expressed a particular interest in that area. However, that is not to say that the HRC did not address the issues of physical and mental disabilities. Our presentations encompass a wide variety of general topics and then are tailored to each individual group.*

*It is also our understanding that the HRC's website will be completely revamped in 2009/10. In the interim we undertake to update as much information as possible on-line, including the addition of Board of Inquiry decisions, in early 2009.*

*Lastly, as part of our comprehensive review of the public education component of our mandate we intend to develop and distribute pamphlets and other information to the public. However, the Department of Justice has recently announced a Human Rights Code public consultation process and so we have put a hold on the development of any new promotional materials until the Code is updated.*

---





## Highlights

Highlights of a review of fines receivable by the Department of Justice, Fines Administration Division, during the period 1 April 2004 to 31 March 2008.

### Why our Office Did this Review

The objectives of our review were to determine whether: the Fines Administration Division has made all possible efforts to collect or dispose of fines receivable within the power of the Department of Justice; and efforts to date have improved the overall collection rate of fines and has decreased the amount of fines outstanding over the past 5 years.

### What our Office Recommends

The Department of Justice should improve its collection efforts by maximizing the use of available collection options.

The Department should:

- consider registering accounts below \$500 with the Judgment Enforcement Registry;
- consider registering accounts below \$500 with Canada Revenue Agency;
- consider increasing the late payment penalty; and
- investigate attaching fine balances to all possible Government instruments (licences) to improve collection efforts.

Government should consider enacting a Fine Option Program as outlined in the *Provincial Offences Act* to allow debtors of the Province to discharge their fines by a means other than monetary compensation.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/agg](http://www.gov.nl.ca/agg). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.14

### DEPARTMENT OF JUSTICE

Fines Receivable

Under the *Provincial Offences Act*, the Province may issue a fine for and summarily convict an individual of an offence under any act or regulation imposed by the Government. The amount of these fines are provided for in the Acts for which a violation relates and are payable directly to the Province. The Fines Administration Division of the Department of Justice is responsible for the administration of all fines, surcharges and penalties issued.

All tickets or fines issued in the Province are forwarded to the Division within days of the offence and are entered into the Ticket Management System (TMS). Total fines receivable is composed of: Ticket Fines - tickets issued for violations of the *Highway Traffic Act* and other provincial statutes; Court Fines - fines imposed by a Provincial Court or the Supreme Court; and Third Party Fines - fines imposed by Municipalities or other authorities.

### What We Found

Collection efforts at the Department of Justice relating to fines receivable require improvement. The fines receivable balance has increased in each of the last five years and at 31 March 2008 totalled \$31.7 million, an increase of \$8.3 million (35.3%) since 2004. Furthermore, the Department estimates that it will only collect approximately \$6.6 million (20.7%) of what it is owed. We found the following:

*Many of the accounts are old and considered uncollectible:*

Of the \$31.7 million in fines receivable, \$29.3 million is recorded in the Department's TMS with the majority of the remaining \$2.4 million still in the Provincial Court. The Department has determined that only \$6.6 million (20.7%) of the \$31.7 million in fines receivable at 31 March 2008 is expected to be collected while the remaining \$25.1 million (79.3%) is considered uncollectible.

There were 55,460 fines and penalties totalling \$158,145 in the database without a name identifying the debtor. Officials indicated that these fines and penalties relate primarily to vehicles registered outside the Province and the names are not available. Of these 55,460 fines and penalties, 14,767 totalling \$90,010 (56.9%) were outstanding more than 5 years.

*The Department could improve its collection efforts:*

**Judgment Enforcement Registry:** Not all accounts are being registered and collection efforts have not been initiated on all accounts that have been registered. We identified that accounts less than \$500 are not registered.

**Canada Revenue Agency (CRA):** Not all accounts are being registered with the CRA. We identified that accounts less than \$500 are not registered.

**Provincial Offences Act:** Legislative authority exists under the *Provincial Offences Act* for the creation of a program that would allow an individual to eliminate their debt by providing service to the Province. As of our review, no such program has been enacted.

**License Renewals:** Although the Crown can refuse to renew any instrument to an individual until all fines are paid, the only instruments currently considered are driver license renewals and vehicle registrations. However, there are many other Government instruments such as: hunting licenses, requests for birth certificates, MCP re-registration, and the registry of companies and deeds which could be used to encourage collections.

**Late Payment Penalties:** The late payment penalty currently imposed (minimum of \$6 and maximum of \$120) on fines that are not paid within the required time frame does not appear to encourage collection. To illustrate, 46.7% of all amounts owed are over five years old, most of which have a late payment penalty included with them. The late payment penalty is a one time charge with no interest charged for accounts that remain outstanding for extended periods.

### Background

Under the *Provincial Offences Act*, the Province may issue a fine for and summarily convict an individual of an offence under any act or regulation imposed by the Government. The amount of these fines are provided for in the Acts for which a violation relates and are payable directly to the Province. The Fines Administration Division of the Department of Justice is responsible for the administration of all fines, surcharges and penalties issued.

Fines receivable are maintained by the Fines Administration Division using a Ticket Management System (TMS) database. All tickets or fines issued in the Province are forwarded to the Division within days of the offence and are entered immediately into the TMS. The TMS allows officials at the Division to track fines by individual and offence, to notify offenders of convictions and fines, and to process payments received on behalf of the Province.

Total fines receivable is composed of:

- Ticket Fines - tickets issued for violations of the *Highway Traffic Act* and other provincial statutes;
- Court Fines - fines imposed by a Provincial Court or the Supreme Court; and
- Third Party Fines - fines imposed by Municipalities or other authorities.

Fines can be composed of the following charges:

- the statutory fine as prescribed in an act or regulation being violated;
- victim fine surcharges resulting from fines levied against offenders convicted or discharged under the *Criminal Code* or under various Provincial statutes; and
- late payment penalties resulting from charges to offenders who have not paid their fine by the date required.

The victim fine surcharge and the late fee are automatically generated by the TMS on the appropriate fines.

## Fines Receivable

For third party fines, the fine amount is the property of the issuing authority and is not included in the amount owed to the Province. The victim fine surcharge and the late fee are the property of the Province and are included in fines receivable.

Our last report on fines owed to the Province was included in our 2004 Annual Report. At that time, the amount owed to the Province was \$23.4 million. As at 31 March 2008, the Government of Newfoundland and Labrador was owed \$31.7 million in fines issued for offences under a variety of statutes. At the same time, \$25.1 million (79.3%) of these fines were considered uncollectible by Government. Figure 1 shows details of the fines receivable to the Province over the past 5 years.

**Figure 1**

**Fines Receivable  
Years Ended 31 March  
(\$000's)**

	2004	2005	2006	2007	2008
Fines receivable per TMS	\$ 21,896	\$ 23,840	\$ 24,684	\$ 26,934	\$ 29,270
Other fines and amounts	1,519	1,260	1,363	1,473	2,416
<b>Total fines receivable</b>	<b>\$ 23,415</b>	<b>\$ 25,100</b>	<b>\$ 26,047</b>	<b>\$ 28,407</b>	<b>\$ 31,686</b>
Less: Amounts considered to be uncollectible	18,833	20,840	20,826	22,561	25,130
<b>Percentage of fines considered uncollectible</b>	<b>80.4%</b>	<b>83.0%</b>	<b>80.0%</b>	<b>79.4%</b>	<b>79.3%</b>
Fines receivable considered collectible	4,582	4,260	5,221	5,846	6,556
<b>Percentage of fines receivable considered collectible</b>	<b>19.6%</b>	<b>17.0%</b>	<b>20.0%</b>	<b>20.6%</b>	<b>20.7%</b>

Source: Department of Justice records

As Figure 1 shows, the fines owed to the Province has grown by \$8.3 million in the four years since 2004, an increase of 35.3%.

---

### Audit Objectives and Scope

---

<b>Audit objectives</b>	<p>The objectives of our review were to determine whether the Fines Administration Division:</p> <ul style="list-style-type: none"><li>• has made all possible efforts to collect or dispose of fines receivable within the power of the Department of Justice;</li><li>• efforts to date have improved the overall collection rate of fines; and</li><li>• has decreased the amount of fines outstanding over the past 5 years.</li></ul>
<b>Audit scope</b>	<p>Our review included an examination of the Ticket Management System database maintained by the Department of Justice Fines Administration Division, as well as discussions with Fines Administration Division officials. Our review covered the period 1 April 2004 to 31 March 2008. We completed our review in December 2008.</p>

---

### Overall Conclusions

Collection efforts at the Department of Justice relating to fines receivable require improvement. The fines receivable balance has increased in each of the last five years and at 31 March 2008 totalled \$31.7 million, an increase of \$8.3 million (35.3%) since 2004. Furthermore, the Department estimates that it will only collect approximately \$6.6 million (20.7%) of what it is owed. We found the following:

*Many of the accounts are old and considered uncollectible:*

Of the \$31.7 million in fines receivable, \$29.3 million is recorded in the Department's Ticket Management System (TMS) with the majority of the remaining \$2.4 million still in the Provincial Court.

Many of the accounts in the TMS are quite old:

- \$24.6 million (84.1%) have been outstanding for more than one year;
- \$13.7 million (46.7%) have been outstanding for more than five years; and
- only \$4.7 million could be considered current i.e. a year old or less.

## Fines Receivable

The Department has determined that only \$6.6 million (20.7%) of the \$31.7 million in fines receivable at 31 March 2008 is expected to be collected while the remaining \$25.1 million (79.3%) is considered uncollectible.

Some of the accounts in the TMS have significant balances.

- 961 accounts were \$5,000 and greater and totalled \$9.8 million;
- 69 accounts had balances greater than \$20,000 and totalled \$2.17 million. Of this \$2.17 million, \$665,307 (30.7%) was outstanding for more than five years; and
- 2 of the 69 accounts related solely to court imposed fines over \$100,000 and totalled \$337,961.

There were 55,460 fines and penalties totalling \$158,145 in the database without a name identifying the debtor. Officials indicated that these fines and penalties relate primarily to vehicles registered outside the Province and the names are not available. Of these 55,460 fines and penalties, 14,767 totalling \$90,010 (56.9%) were outstanding more than 5 years.

*The Department could improve its collection efforts:*

### **Judgment Enforcement Registry**

Not all accounts are being registered and collection efforts have not been initiated on all accounts that have been registered. We identified 74,081 accounts and 55,460 unnamed tickets totalling \$6.4 million not registered.

Although the Office of the High Sheriff has a Judgment Enforcement Registry, the Department is only registering accounts with balances greater than or equal to \$500; therefore, 74,081 accounts and 55,460 unnamed tickets with balances less than \$500 and totalling \$6.4 million are not registered.

Furthermore, at 31 March 2008, although there were 8,700 accounts greater than or equal to \$500 registered, action to collect the amount due had been initiated against only 5,700 accounts.

### **Canada Revenue Agency (CRA)**

Not all accounts are being registered with the CRA. We identified 74,081 accounts and 55,460 unnamed tickets totalling \$6.4 million not registered.

---

## Fines Receivable

---

Under an agreement reached with the CRA, fines can now be registered within the taxation system and will be settled from funds collected from refunds and rebates that CRA administers. As of our review, only those accounts greater than or equal to \$500 are being registered with CRA for collection; therefore, 74,081 accounts and 55,460 unnamed tickets with balances less than \$500 and totalling \$6.4 million are not registered.

### ***Provincial Offences Act***

Legislative authority exists under the *Provincial Offences Act* for the creation of a program that would allow an individual to eliminate their debt by providing service to the Province. As of our review, no such program has been enacted.

### **License Renewals**

Although the Crown can refuse to renew any instrument to an individual until all fines are paid, the only instruments currently considered are driver license renewals and vehicle registrations. However, there are many other Government instruments such as: hunting licenses, requests for birth certificates, MCP re-registration, and the registry of companies and deeds which could be used to encourage collections.

### **Late Payment Penalties**

The late payment penalty currently imposed (minimum of \$6 and maximum of \$120) on fines that are not paid within the required time frame does not appear to encourage collection. To illustrate, 46.7% of all amounts owed are over five years old, most of which have a late payment penalty included with them. The late payment penalty is a one time charge with no interest charged for accounts that remain outstanding for extended periods.

---

## Detailed Observations

---

### **Overview**

To perform our review of the fines receivable owed to the Province, we obtained a copy of the Fines Administration Division Ticket Management System (TMS) database.

---

### Analysis of TMS Database Receivable Balance

---

**Introduction** To determine whether the Department of Justice was collecting amounts owed on a timely basis, we examined the age of receivables owed to the Province. This analysis was divided into each major fine category - ticket fines, court imposed fines and third party fines. From this, we examined the types of receivables and the aging of amounts owed to the Province.

---

Figure 2 provides details of our analysis of these receivables including the amount owed and the age for each major category of fine.

**Figure 2**

**Aged Analysis of Receivables  
As at 31 March 2008  
(\$000's)**

Type of Receivable	Total	1 year or less	1 – 2 Years	2 - 3 Years	3 - 4 Years	4 - 5 Years	More than 5 years
Ticket fines	\$23,082	\$4,442	\$3,420	\$3,029	\$1,912	\$1,067	\$9,212
Court imposed fines	5,482	49	449	256	333	269	4,126
Third party fines	706	159	84	55	49	41	318
TMS fines receivable	\$29,270	\$4,650	\$3,953	\$3,340	\$2,294	\$1,377	\$13,656
Percentage of total receivable	100.0%	15.9%	13.5%	11.4%	7.8%	4.7%	46.7%

Source: Ticket Management System

As Figure 2 shows, the Department is not collecting amounts owed on a timely basis. For example:

- \$24.6 million (84.1%) of the receivables have been outstanding for more than one year;
- \$13.7 million (46.7%) of the receivables have been outstanding for more than five years;

## Fines Receivable

The \$13.7 million was comprised of 156,873 fines and penalties, owed by 32,197 identified debtors, with 14,767 fines totalling \$90,010 having no identifying information. Of those 32,197 debtors, 307 (less than 1.0%) owed amounts in excess of \$5,000 and totalled \$2.7 million (19.7%); and

- Only \$4.7 million would be considered current and one year old or less.

To determine the distribution of amounts owed to the Province, the TMS database was summarized by account and stratified. Each account in the TMS represents an individual or company for which a ticket had been issued. Figure 3 provides details of this analysis.

**Figure 3**

**Stratification of Receivable Balances  
As at 31 March 2008  
(\$000's)**

Balances	Total		
	# of accounts	% of total amount	Amount
Over \$100,000	2	1.2%	\$ 338
\$50,000 - \$100,000	1	0.2%	74
\$20,000 - \$49,999	66	6.0%	1,755
\$10,000 - \$19,999	237	11.1%	3,239
\$5,000 - \$9,999	655	15.1%	4,430
<b>Sub-Total</b>	<b>961</b>	<b>33.6%</b>	<b>\$ 9,836</b>
\$1,000 - \$4,999	5,005	35.5%	10,380
\$500 - \$999	3,859	9.1%	2,651
\$100 - \$499	22,571	15.8%	4,621
Less than \$100	51,510	5.5%	1,624
55,460 unidentified transactions	N/A	0.5%	158
<b>TOTAL</b>	<b>83,906</b>	<b>100.0%</b>	<b>\$ 29,270</b>

Source: Ticket Management System

## Fines Receivable

As Figure 3 shows, there were many accounts with significant balances as follows:

- 961 of the accounts have balances greater than \$5,000 and totalled \$9.8 million, \$3.5 million (36.0%) of which was outstanding for more than five years;
- 69 accounts had balances greater than \$20,000 and totalled \$2.17 million. Of this \$2.17 million, \$665,307 (30.7%) was outstanding for more than five years;
- 2 of the 69 accounts related primarily to court imposed fines over \$100,000 and totalled \$337,961. Of this amount, \$237,419 was outstanding for one to two years, while the balance of \$100,542 was outstanding for more than five years; and
- there were 55,460 fines and penalties totalling \$158,145 in the database without a name identifying the debtor. Fines Administration Division officials indicated that these fines and penalties relate primarily to vehicles registered outside the Province and the names are not available.

---

## Collections

---

In our 2004 Annual Report, Fines Administration Division officials had indicated that they had six collection options available to assist in the collection of unpaid fines:

- Late payment penalty;
- Judgment on failure to pay;
- Application of the *Judgment Enforcement Act*;
- Crown may refuse to renew instruments;
- Payment arrangements; and
- Fines option program.

## Fines Receivable

In our current review, officials indicated that a new option (Canada Revenue Agency agreement) had been recently added to further assist collections. Our review of the options, usage and status indicated the following:

---

### **Late payment penalty**

These are financial penalties imposed on offenders that have not paid the required fine within the time allowed for payment. In the case of a fine which is \$50 or less, the penalty is \$6; where the fine is more than \$50 but not more than \$100, the penalty is \$12; and where the fine is more than \$100, the penalty is \$12 plus an additional \$12 for each increment of \$100 to a maximum penalty of \$120.

Our review indicated that these penalties are automatically generated by the TMS. However, it should be noted that the late payment penalty is a one-time charge applied to fines. No interest or escalation of this amount is permitted. Given the small dollar value of the late payment penalty and the fact that no interest is charged, the effectiveness of this collections measure is questionable. This is further evidenced by the fact that fines receivable continue to increase and, in particular, amounts owing which are five years or older also continues to increase.

---

### **Judgment on failure to pay fine**

Under the provisions established in the *Judgment Enforcement Act*, an unpaid fine can be entered as a judgment in the Supreme Court Trial Division by the Attorney General or a person authorized by the Attorney General. This registers the judgment in the Judgment Enforcement Registry, allowing it to be enforceable against the defendant in the same manner as if it were a judgment rendered in a civil court proceeding.

We found that, as of the date of our review, accounts less than \$500 have not been submitted to the Trial Division for judgment. At 31 March 2008, there were 74,081 accounts totalling \$6.2 million and 55,460 unidentified tickets totalling \$158,145 which had balances less than \$500 and therefore had not been registered under the *Judgment Enforcement Act*.

---

### **Application of the *Judgment Enforcement Act***

Once an outstanding fine is filed with the Supreme Court Trial Division it is registered with the Judgment Enforcement Registry maintained by the Office of the High Sheriff. Once a debtor has been registered under the *Judgment Enforcement Act*, upon instructions from the Fines Administration Division, the Office of the High Sheriff can collect monies from the debtor, seize and sell assets of the debtor or garnish wages of the debtor.

## Fines Receivable

Although there were 9,825 accounts with balances greater than or equal to \$500, only 8,700 were registered. According to Fines Administration Division officials, the remaining 1,125 accounts are unregistered due to a judicial extension order by a Judge or if there is already a payment arrangement in place.

Our review indicated that, as of 31 March 2008, only approximately 5,700 of the 8,700 active accounts registered have had actions initiated to collect amounts due to the Province. Officials at the Fines Administration Division indicated that action had not been initiated on all accounts because the Division did not have an adequate number of collectors to work the large volume of files (Provincial and third party fines). As well, an individual has the right to apply to the court for an Extension of Time to Pay their delinquent fines. There is no limit on the number of times a debtor can apply for and receive this Extension of Time to Pay. Finally, an individual must be served with a notice informing them of their registration in the Judgment Enforcement Registry before collection activities can commence. If they cannot be located, collection activities are not initiated.

---

### **Crown may refuse to renew instruments**

A person who has not paid a fine or late payment on a fine may be refused renewal of a permit, license or other instrument until the applicable fines have been paid.

As found in our prior review, although there are many licenses and permits that Government issues and which could be refused to debtors, the only action taken in this regard relates to either driver license renewals once every five years or the annual vehicle registration. Therefore, amounts owing could go uncollected for up to five years in the case of driver license renewals for individuals.

Renewals of hunting licenses, requests for birth certificates, MCP re-registration, and registry of companies and deeds are not utilized in collection efforts.

---

### **Payment arrangements**

A debtor can either make an application to the court for an extension to the deadline for payment or contact the Fines Administration Division to arrange payment options. Payment arrangements can include a payment schedule or incarceration at the request of the individual. Furthermore, the Fines Administration Division has collectors who make contact with debtors to make payment arrangements.

## Fines Receivable

---

In our prior report, it was indicated that the Fines Administration Division had not been proactive in collection activity as the Division had only one collection agent. In 2003, the Division hired three collection officers as part of a pilot project directed towards increased collection. In our current review, we found that the Division had hired a total of eight collection officers.

---

### **Fines option program**

In our prior report, Fines Administration Division officials indicated that the Lieutenant-Governor in Council, under provisions in the *Provincial Offences Act*, may make regulations, establishing a program to permit payment of fines by means of credit for work performed. At that time, it was noted that such a program had not been established.

In our current review, officials again indicated that there has been no fines option program established by Government. Though such a program would not increase collections, it would reduce the fines and penalties owed to the Province because the debtor provides a service in exchange for release from the debt.

---

### **Canada Revenue Agency Agreement**

Under an arrangement with the Canada Revenue Agency (CRA) in November 2008, the Fines Administration Division can register accounts for collection with the CRA taxation collections system. Per the agreement, the Goods and Services Tax rebate and Income Tax refunds will be intercepted from the individual and remitted to the Province in payment of fines outstanding.

Our review of this agreement indicated that the Fines Administration Division will be registering all accounts greater than or equal to \$500 with the CRA for collection. This excludes the 74,081 accounts and 55,460 unidentified tickets totalling \$6.4 million which had balances less than \$500. Under the terms of the agreement, only those accounts for which the Province has a judgment registered in the Judgment Enforcement Registry can be sent to CRA for collection.

---

### Recommendations

The Department of Justice should improve its collection efforts by maximizing the use of available collection options and by considering improvements to its collection options.

The Department should:

- Consider registering accounts below \$500 with the Judgment Enforcement Registry to improve collections;
- Consider registering accounts below \$500 with Canada Revenue Agency to improve collections;
- Consider increasing the late payment penalty; and
- Investigate attaching fine balances to all possible Government instruments to improve collection efforts.

Government should consider enacting a Fine Option Program as outlined in the *Provincial Offences Act* to allow debtors of the Province to discharge their fines by a means other than monetary compensation.

### Department's Response

*There are 74,081 named accounts with balances less than \$500. The average value of these accounts is less than \$100. The Department does not register these accounts because it considers it uneconomical to do so. The Department feels that it is more efficient to collect these fines through voluntary payment or at the time of license renewal or vehicle registration.*

*There are 55,460 unnamed accounts with balances less than \$500. These fines attach to out of province residents and fines administration does not have the authority to determine vehicle ownership. Therefore, without name identification, it is not possible to register these accounts with the Judgment Enforcement Registry.*

## Fines Receivable

*The Department is of the opinion that it is not efficient or cost effective to register account below \$500 with CRA given that the average value of the 74,081 named accounts is less than \$100. CRA offers the Federal set-off Program which is a collection tool of last resort. Collection action must be taken, documented and exhausted before accounts can be sent to CRA.*

*The Department will consider the recommendation to increase the late payment penalty.*

*The Department will consider denying renewals of additional licenses as noted in the Auditor General's Report as a means of improving collection efforts.*

*The legal and policy issues associated with the implementation of such a program are complex and the difficulties associated with its administration including cost may outweigh any benefit derived from the program.*

---

## Fines Receivable



## Highlights

Highlights of a review of oil royalties received by Government from the Hibernia, Terra Nova and White Rose projects.

### Why our Office Did this Review

The objective of our review was to determine whether the Department has systems and practices for monitoring the completeness and accuracy of oil royalties received from the project owners.

### What our Office Recommends

We recommend that the Department should:

- ensure audits are conducted within a relevant time period;
- ensure the project operator provides access to all information requested during audits;
- resolve outstanding Hibernia transportation issues;
- ensure estimated, eligible and actual transportation costs for Terra Nova and White Rose are determined and reported in accordance with the *Royalty Regulations, 2003*;
- comply with the *Royalty Regulations, 2003*;
- ensure consultant payments are in accordance with Cabinet directives and established contracts;
- update its audit manual; and
- document its procedures for conducting desk reviews.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/og](http://www.gov.nl.ca/og). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.15

### DEPARTMENT OF NATURAL RESOURCES

#### Oil Royalties

As at 31 March 2008, there were three producing offshore projects – Hibernia, Terra Nova and White Rose. Oil royalties of \$1.75 billion represented 25% of the Province's revenue for the year ended 31 March 2008 (2007 - \$423 million or 8%).

The Department of Natural Resources (the Department) has established a framework for determining whether oil royalties received by the Province are complete, accurate and established in accordance with the Hibernia Agreement and the *Royalty Regulations, 2003*. This framework includes the review and assessment of monthly and annual royalty reports submitted by the project owners, externally audited cost reports submitted by the project operators and the performance of audits of royalties and costs.

### What We Found

Our review identified issues with the framework that could result in incorrectly reported oil royalties not being detected. For example:

**Hibernia Project:** Contrary to section 26.6 of the Hibernia Agreement, the Hibernia project operator has refused to provide the Department's audit team with access to any Internal Audit Reports and Plans, and the minutes of Hibernia Executive Committee meetings as requested. In addition, the Department concluded that transportation costs reported by the project owners for 1997 to 2000 were not in accordance with the Hibernia Agreement and requested the project owners to re-file their royalty calculations. Although the issue was first raised in December 2004 and the project owners objected to the Department's position, the matter remains unresolved. Until the matter is resolved, the final impact on past and future royalties cannot be determined.

**Terra Nova Project:** Contrary to the requirements of the *Royalty Regulations 2003* the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*. The 7 project owners have never provided actual transportation cost information with their annual reconciliations.

**White Rose Project:** Contrary to the requirements of the *Royalty Regulations, 2003*, the transportation cost estimates (\$2.26, \$2.15, and \$2.22 per barrel) were not approved by the Minister and the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. In addition, the Minister did not assess the annual reconciliations within the required 60 days of receiving the annual reconciliation (i.e. 30 June).

**Audit and Monitoring Issues:** Contrary to the direction of Cabinet, the Department paid hourly rates in excess of the hourly rates stipulated in a consultant contract. At October 2008, there were 87 annual royalty and eligible project cost submissions made by project owners for which the Department has not started any audit work. No royalty or eligible project cost audits have been conducted on the Terra Nova or White Rose projects since production started in 2002 and 2005 respectively. Only the Hibernia project has had audits completed which resulted in the identification of issues and an additional \$8.66 million due to the Province. The Department's goal was to have years up to 2007 audited by 2010; however, the plan is off schedule in relation to what was planned for 2008 and, as a result, the Department will have to take measures to ensure that its plan will be met.

The Department's Audit Manual relating to the auditing of oil royalties has not been updated since 2000 and requires updating. In addition, the Department's procedures for completing desk reviews of monthly and annual reports are not documented.

## Background

### Overview

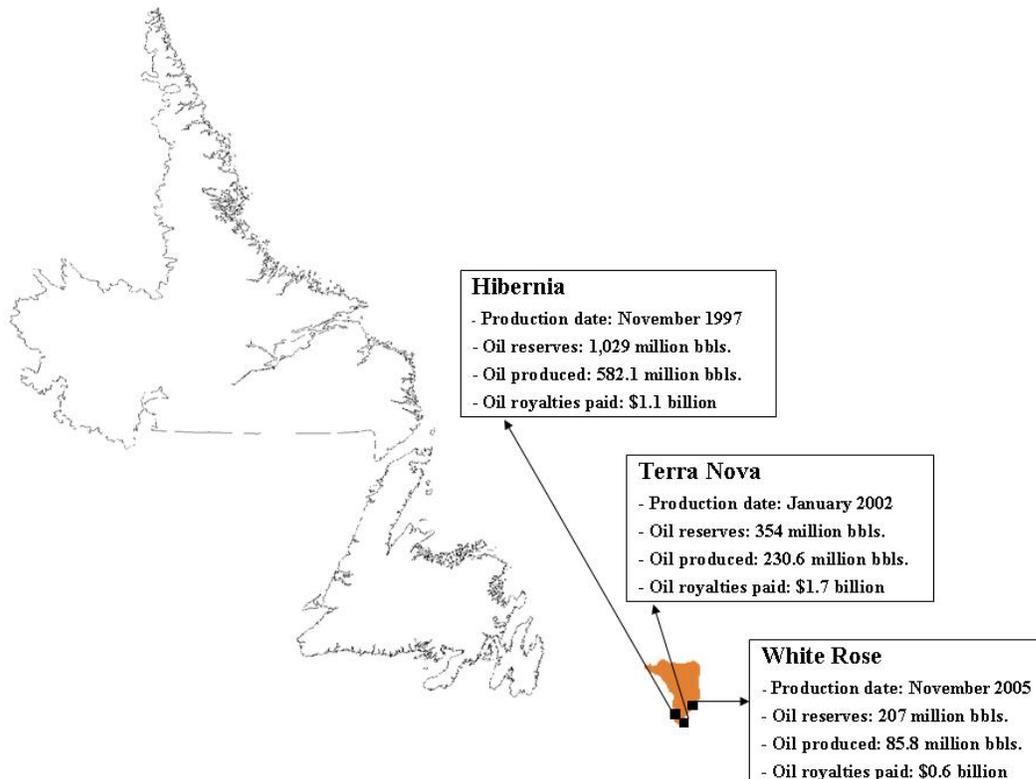
Oil royalties of \$1.75 billion represented 25% of the Province's revenue for the year ended 31 March 2008 (2007 - \$423 million or 8%). As a result, oil revenues are a significant portion of the Province's total revenues.

As at 31 March 2008, there were three producing offshore projects – Hibernia, Terra Nova and White Rose. The three projects have 15 project owners as follows: Hibernia (6), Terra Nova (7) and White Rose (2). Each of the projects has a designated project operator.

The three projects are located in the Jeanne d'Arc Basin, approximately 350 kilometres east-southeast of St. John's. Figure 1 shows information on the three producing projects.

Figure 1

### Department of Natural Resources Producing Oil Projects As at 31 March 2008



## Oil Royalties

**Royalties** The Hibernia Development Project Royalty Agreement (Hibernia Agreement) and the *Royalty Regulations, 2003* (for Terra Nova and White Rose) establishes monthly and annual reporting requirements for each of the projects. Standard monthly and annual reporting forms have been developed and are required to be completed by each of the 15 project owners. In addition, each of the three project operators (on behalf of the 15 project owners) is also required to provide an annual audited statement of eligible project costs.

Oil royalties are paid to the Province monthly through a self assessment process by each of the project owners. The oil royalties are determined and submitted based on established agreements, formulas and remittance forms. Figure 2 shows the oil royalties received from each project up to 31 March 2008.

**Figure 2**

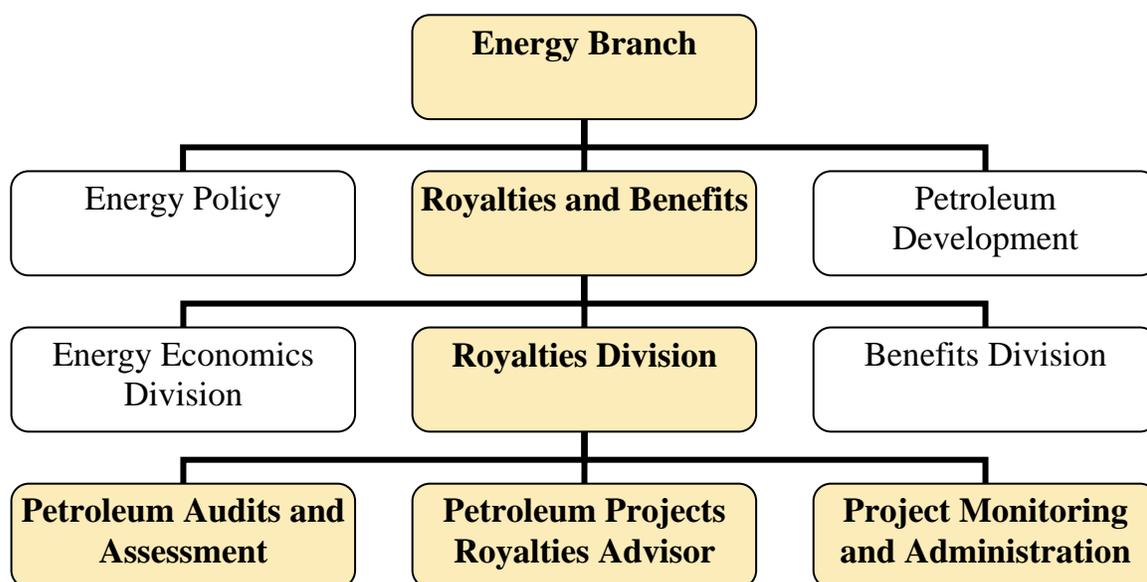
**Department of Natural Resources  
Oil Royalties  
Years Ended 31 March  
(\$ 000's)**

Year	Hibernia	Terra Nova	White Rose	Total
1998	\$ 692			\$ 692
1999	3,942			3,942
2000	23,399			23,399
2001	39,763			39,763
2002	28,839	\$ 1,901		30,740
2003	65,620	16,706		82,326
2004	80,635	46,305		126,940
2005	164,600	99,482		264,082
2006	231,474	299,350	\$ 5,085	535,909
2007	208,587	187,997	26,451	423,035
2008	209,068	1,008,396	536,467	1,753,931
<b>Total</b>	<b>\$1,056,619</b>	<b>\$1,660,137</b>	<b>\$568,003</b>	<b>\$3,284,759</b>

Source: Department of Natural Resources and the Public Accounts

**Overview of Division** The Department of Natural Resources (the Department) is responsible for monitoring petroleum projects and the royalties paid to the Province through its Energy Branch. The Royalties Division (the Division) is responsible for the administration and audit of oil royalties paid to the Province. Figure 3 provides an overview of the Division’s organizational structure within the Energy Branch.

**Figure 3**  
**Department of Natural Resources**  
**Energy Branch**  
**Organizational Structure**



**Overview of Project Monitoring and Administration section** The Division’s Project Monitoring and Administration section is responsible for the verification and assessment of the monthly reports and annual reconciliations submitted by the 15 project owners. The verification and assessment work is referred to as a “desk review” and consists of recalculation, reconciliation and analysis of data.

The section also reviews and analyzes the annual external auditor reports on project costs submitted by each of the 3 project operators.

In addition, the section performs an annual reconciliation of royalty receipts reported by the Department of Finance-Central Cash to information submitted to the Division by the project owners.

## Oil Royalties

### Overview of Petroleum Audits and Assessments section

The Division's Petroleum Audits and Assessments section is responsible for auditing all oil projects within the Province and offshore. There are two main types of audits:

- royalty audits; and
- cost audits.

Royalty audits are designed to determine whether the royalties paid by each project owner are accurate and such audits are required to be conducted on each of the 15 project owners.

Cost audits are designed to determine whether pre-development costs, development costs and project eligible costs are in accordance with established guidelines. Costs are categorized as follows:

- Pre-development costs relate to project capital costs prior to the project commencement date;
- Development costs relate to project capital costs from the project commencement date to the production date; and
- Project eligible costs relate to the operating and capital costs of a project from the commencement of production.

Royalty and cost audits are required to be completed within an approved audit period commencing in the calendar year after the annual reconciliation is filed. The period for Hibernia is within 6 calendar years (e.g. royalties and costs for 2007, annual reconciliation in 2008 and audited by 2014) while the period for Terra Nova and White Rose is within 5 calendar years (e.g. royalties and costs for 2007, annual reconciliation in 2008 and audited by 2013).

### Petroleum Projects Royalties Advisor

The Division also employs a Petroleum Projects Royalties Advisor. The advisor is responsible for conducting research and analysis of existing royalty regimes in order to identify issues and recommend strategies to protect the Province's interest. The position also conducts research and analytical work to support the Province in negotiating royalty agreements and interpreting existing agreements, regulations and legislation.

## Oil Royalties

### Division management information system

The Division maintains a Petroleum Revenue Monitoring and Administration System which records:

- monthly reports and annual reconciliations submitted by the 15 project owners which include items such as oil sales, exchange rates, pricing, sales, inventories, costs, and royalties;
- annual audited cost reports submitted by the 3 project operators; and
- oil production information received from the Canada-Newfoundland and Labrador Offshore Petroleum Board;

The Division uses the system to recalculate royalties each month, for internal information purposes and to assist staff in conducting audits.

## Audit Objectives and Scope

**Audit objective** The objective of our review was to determine whether the Department has systems and practices for monitoring the completeness and accuracy of oil royalties received from the project owners.

**Audit scope** Our review was completed in April 2008 and included a review of oil royalties from the Hibernia, Terra Nova and White Rose projects. Our review included an examination of the Department's financial and statistical information, reports submitted by each project operator and owner, the Division's audit processes, and project cost and royalty audit reports. In addition, interviews were conducted with officials at the Department.

## Overall Conclusions

The Department has established a framework for determining whether oil royalties received by the Province are complete, accurate and established in accordance with the Hibernia Agreement and the *Royalty Regulations, 2003*. This framework includes the review and assessment of monthly and annual royalty reports submitted by the project owners and externally audited cost reports submitted by the project operators; and the performance of audits of royalties and costs.

Our review identified issues with the framework that could result in incorrectly reported oil royalties not being detected. Specifically:

### Hibernia Project

- Contrary to section 26.6 of the Hibernia Agreement, the Hibernia project operator has refused to provide the Department's audit team with access to any Internal Audit Reports and Plans, and the minutes of Hibernia Executive Committee meetings as requested.

We were further informed that access to these documents is no longer requested because the Department concluded the limitation did not preclude the Department from providing sufficient audit assurance that the project owners were complying with the Agreement. Issues include:

- the Department has not exercised any legal recourse through the courts relating to access to information that it had requested; and
  - the Department does not have access to information that may assist in identifying potential issues relating to project royalties and costs.
- The Department concluded that transportation costs reported by the project owners for 1997 to 2000 were not in accordance with the Hibernia Agreement and requested the project owners to re-file their royalty calculations. The Department excluded all transportation costs in the calculation of royalties which resulted in \$8.66 million which included additional royalties (\$3.94 million) and interest (\$4.72 million) owing by the project owners for those 4 years, pending resolution of the transportation cost issue. Although the issue was first raised in December 2004 and the project owners objected to the Department's position, the matter remains unresolved. Until the matter is resolved, the final impact on past and future royalties cannot be determined.

### Terra Nova Project

- Contrary to the requirements of the *Royalty Regulations 2003*:
  - the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*; and
  - the 7 project owners have never provided actual transportation cost information with their annual reconciliations.

Without the determination of eligible transportation costs to be used in the calculation of royalties and with the continued use of estimates, the extent of variances remains unknown.

- Contrary to the *Regulations*, the Minister did not assess the annual reconciliations within the required 60 days of receiving the annual reconciliation (i.e. 30 June). For example, 2 of the 7 project owners reviewed, indicated that the Department did not issue Notices of Assessment for the 2004 and 2005 calendar years until 19 February 2007 i.e. 20 months and 8 months beyond the 30 June deadline. Furthermore, no notices of assessment had been issued for either the 2006 or 2007 calendar years as of October 2008 i.e. 16 months and 4 months beyond the 30 June deadline.

### White Rose Project

- Contrary to the requirements of the *Royalty Regulations 2003*:
  - the transportation cost estimates (\$2.26, \$2.15, and \$2.22 per barrel) were not approved by the Minister; and
  - the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*.

Without the determination of eligible transportation costs to be used in the calculation of royalties the Department cannot determine whether the actual costs included in the annual reconciliations are eligible.

- Contrary to the *Regulations*, the Minister did not assess the annual reconciliations within the required 60 days of receiving the annual reconciliation (i.e. 30 June). For example, no notices of assessment had been issued for either the 2006 or 2007 calendar years as of October 2008 i.e. 16 months and 4 months beyond the 30 June deadline.

### Audit and Monitoring Issues

- Contrary to the direction of Cabinet, the Department, commencing in October 2007, paid hourly rates in excess of the hourly rates stipulated in a consultant contract. As of October 2007, billings for 5 consultant staff increased as follows: 1 person - \$30 per hour, 2 persons - \$15 per hour and 2 persons - \$10 per hour.

The payment of the increased hourly rates resulted in the consultant being paid a total of \$6,891 to 31 March 2008 above the amounts approved by Cabinet and the rates established in the original contract. Departmental officials indicated that credit will now be requested for these overpayments.

- At October 2008, there were 87 annual royalty and eligible project cost submissions made by project owners for which the Department has not started any audit work, 19 for which audit work was in progress and 28 for which the audit was completed. No royalty or eligible project cost audits have been conducted on the Terra Nova or White Rose projects since production started in 2002 and 2005 respectively. Only the Hibernia project has had audits completed which resulted in the identification of issues and an additional \$8.66 million due to the Province.
- The magnitude of the oil royalties and adjustments that have occurred as a result of the audit process highlights the importance of completing audits on a timely basis. Although audits are being completed within the audit period established in the Hibernia Agreement and the *Royalty Regulations, 2003*, we do have some concerns with the amount of time elapsed before audit work is performed.
- In an attempt to ensure that all audits would be completed when required, and to reduce the audit period on a go-forward basis, the Department in 2007 established a 3 year audit work plan for 2008 to 2010. The Department recognized that more timely audits would provide more useful information and allow the Department to better manage any identified issues relating to oil royalties. The Department's goal was to have years up to 2007 audited by 2010; however, the plan is off schedule in relation to what was planned for 2008 and, as a result, the Department will have to take measures to ensure that its plan will be met.
- The Department's Audit Manual relating to the auditing of oil royalties has not been updated since 2000 and requires updating. In addition, the Department's procedures for completing desk reviews of monthly and annual reports are not documented.

---

### Detailed Observations

---

**Findings** This report provides detailed audit findings and recommendations in the following sections:

1. Status of audits
2. Transportation costs
3. Other issues

---

#### 1. Status of Audits

---

**Overview** Audits are required to be completed by the Department within an approved audit period for each of the 3 projects.

In accordance with the Hibernia Agreement, audits for Hibernia are to be conducted within 6 calendar years following the calendar year in which the royalty was payable or an eligible cost was paid (i.e. 2007 royalties and costs are reported in 2008 and required to be audited by 31 December 2014).

In accordance with the *Royalty Regulations, 2003*, audits for Terra Nova and White Rose are to be conducted within 5 years following the period in which the royalty or an eligible cost was paid (i.e. 2007 royalties and costs are reported in 2008 and required to be audited by 31 December 2013).

---

**Audits not timely** Although audits are being completed within the audit period established in the Hibernia Agreement and the *Royalty Regulations, 2003*, we do have some concerns with the amount of time elapsed before audit work is performed. In particular:

- For Hibernia, the audits that were completed, were not completed until the final year of the required audit period (i.e. 6 years after the receipt of the annual reconciliation).
- For Terra Nova, although production started in 2002, the first audit will not be required until 2009. No audit work has been finalized to date even though the owners have been submitting monthly and annual reports for the past 6 years. Specifically, none of the project eligible cost audits for 2002 and onwards have been started to date and, although the 1995-2004 development cost audit has been completed, the audit report has yet to be finalized.

## Oil Royalties

- For White Rose, although production started in 2005, the first audit will not be required until 2011. No audit work has been performed to-date even though the owners have been submitting monthly and annual reports for the past 3 years.

Figure 4 provides a summary of the audits and the status of each audit for the three projects as of October 2008.

**Figure 4**

**Department of Natural Resources  
Status of Annual Audits  
1997 to 2007  
As at October 2008**

Year	Hibernia Project (6 project owners)		Terra Nova Project (7 project owners)		White Rose Project (2 project owners)	
	Royalty	Eligible Project Cost	Royalty	Eligible Project Cost	Royalty	Eligible Project Cost
1997	6 Issued 2004	1 Issued 2004				
1998	6 Issued 2005	1 Issued 2005				
1999	6 Issued 2006	1 Issued 2006				
2000	6 Issued 2007	1 Issued 2007				
2001	6 In progress	1 In progress				
2002	6 In progress	1 In progress	7 Not started	1 Not started		
2003	6 Not started	1 In progress	7 Not started	1 Not started		
2004	1 In progress 5 Not started	1 In progress	7 Not started	1 Not started		
2005	1 In progress 5 Not started	1 In progress	7 Not started	1 Not started	2 Not started	1 Not started
2006	6 Not started	1 Not started	7 Not started	1 Not started	2 Not started	1 Not started
2007	6 Not started	1 Not started	7 Not started	1 Not started	2 Not started	1 Not started
<b>Total</b>	<b>24 Issued</b> <b>14 In progress</b> <b>28 Not started</b>	<b>4 Issued</b> <b>5 In progress</b> <b>2 Not started</b>	<b>0 Issued</b> <b>0 In progress</b> <b>42 Not started</b>	<b>0 Issued</b> <b>0 In progress</b> <b>6 Not started</b>	<b>0 Issued</b> <b>0 In progress</b> <b>6 Not started</b>	<b>0 Issued</b> <b>0 In progress</b> <b>3 Not started</b>
<b>Status of 134 cost and royalty audits: - 28 issued</b>						
<b>- 19 in progress</b>						
<b>- 87 not started</b>						

Source: Department of Natural Resources

## Oil Royalties

As Figure 4 shows, there were 87 annual royalty and cost submissions made by project owners for which the Department has not started any audit work, 19 for which audit work was in progress and 28 for which the audit was completed.

### Audit findings to date

The importance of the audit process can be seen as a result of findings related to the Hibernia project - the only project where audits have been completed as of October 2008.

During the royalty audits, the Department determined that adjustments (referred to as re-determinations) were required to the amounts of royalties paid by the project owners. The adjustments, for the most part, relate to transportation costs which were disallowed by the Department, pending resolution of the issues and re-filing of the royalty calculations by the project owners in accordance with the Hibernia Agreement. Any amounts due to or due from the Province as a result of the re-determination must be paid within the month following the month of final notification. A project owner may object to a final re-determination and, if not resolved, can go to arbitration for a ruling.

Figure 5 provides a summary of the Hibernia audit results that were completed up to October 2008.

**Figure 5**

### Department of Natural Resources Hibernia Re-determinations 1997-2000 As at October 2008

Year	Audit Report Date	Royalties Paid During Year	Audit Re-determinations	Interest	Total
1997	21 Dec 2004	\$ 112,304	\$ 68,655	\$ 89,188	\$ 157,843
1998	23 Dec 2005	3,645,373	586,088	765,134	1,351,222
1999	29 Dec 2006	13,929,494	1,345,556	1,655,209	3,000,765
2000	17 Dec 2007	43,879,089	1,934,854	2,214,187	4,149,041
	<b>Total</b>	<b>\$ 61,566,260</b>	<b>\$ 3,935,153</b>	<b>\$ 4,723,718</b>	<b>\$ 8,658,871</b>

Source: Department of Natural Resources reports

As Figure 5 shows, the audit re-determinations resulted in additional royalties and interest being assessed totalling \$8.7 million for the 4 years audited, pending resolution and re-filing of the royalty calculations by the project owners. Interest for Hibernia re-determinations is calculated at prime compounded monthly and would include an additional 6% if the adjustment is greater than 10% of the original royalty paid. We note that the project owners have exercised an option in the Hibernia Agreement to object to the re-determinations. The Province has entered into negotiations with the project owners in an attempt to resolve the redetermination issues prior to arbitration.

### Timely audits are important

The magnitude of the oil royalties and adjustments that have occurred as a result of the audit process highlights the importance of completing audits on a timely basis. Benefits of more timely audits may include:

- audit work can be more efficiently and effectively performed if conducted closer to the reporting period. e.g. improved quality/quantity of audit evidence available (i.e. less likely to have missing documentation) and less chance of staffing changes during the audit period;
- audit issues and royalty adjustments can be dealt with in a timely manner;
- additional royalties can be collected promptly; and
- future royalty calculations can take effect of audit recommendations and rulings.

### Audit work plan not on schedule

In an attempt to ensure that all audits would be completed when required, and to reduce the audit period on a go-forward basis, the Department in 2007 established a 3 year audit work plan for 2008 to 2010. The Department recognized that more timely audits would provide more useful information and allow the Department to better manage any identified issues relating to oil royalties.

The audit work plan established by the Department was more aggressive than the requirements of the Hibernia Agreement and the *Regulations* in that audits would be required to be completed earlier in the audit period. For example, although the Hibernia Agreement has a 6 year audit period and the *Regulations* have a 5 year audit period, the Department planned to complete all audits up to 2007 by December 2010.

Our review of the audit work plan identified that the Department will likely not meet the 2008 plan as a result of the following:

- Division staff indicated that during 2008, the work plan was amended to defer 2,400 hours of scheduled audit work on White Rose cost audits to 2009 as a result of audit work performed on the new Hebron project.
- The 2008 schedule took into consideration 1,400 hours for 4 audit staff vacancies that were expected to be filled by April 2008. However, only 2 positions were filled by April 2008, 1 was filled in July 2008 and, as of October 2008, 1 audit position was still vacant.
- Although the plan had external consultants scheduled for audit work for 2008, as of October 2008, the audit work had yet to be contracted out.

As this shows, the work plan developed by the Department for 2008 to 2010 is off schedule in relation to what was planned for 2008. As a result, the Department will have to take measures to ensure that its plan will be met.

**Figure 6**

### **Hibernia Platform**



Source: Canada-Newfoundland and Labrador Offshore Petroleum Board website

### Access to Hibernia information limited

Section 26.6 of the Hibernia Agreement states the Province shall have the right from time to time to inspect or audit all books, records and accounts and any document of any project owner or operator as may be necessary or required to verify production, disposition, sales price and terms of sales of Hibernia crude, and costs and revenues of the resource project and tanker project.

From discussions with officials at the Department, it was determined that the Hibernia project operator had refused to provide the Department's audit team with access to either any Internal Audit Reports and Plans or the minutes of Hibernia Executive Committee meetings. The 1997, 1998 and 1999 reports relating to the cost audits performed by the Department indicated the restricted access as a scope limitation.

The Department issued a letter to the project operator requesting access to Internal Audit Reports and Plans, and the minutes of Hibernia Executive Committee meetings. However, officials at the Department indicated that access was not provided. We were further informed that access to these documents is no longer requested because the Department concluded that the limitation did not preclude the Department from providing sufficient audit assurance that the project owners were complying with the agreement. We found the following:

- the Department has not exercised any legal recourse through the courts relating to access to the information that it had requested;
- it appears as though the project operator is not complying with the spirit and intent of the Hibernia Agreement with regards to access to information requested by the Province to verify production, delivery, disposition, sales price and terms of sales of Hibernia crude, and costs and revenues of the project and "tanker project" service; and
- the scope limitation results in the Department not having access to information that may assist in identifying potential issues relating to project royalties and costs.

### Recommendations

The Department should ensure:

- audits are conducted within a relevant time period; and
- the project operator provides access to all information requested during audits.

## 2. Transportation Costs

Transportation is a cost claimed by each of the 15 project owners and included in their monthly royalty reports in determining the royalty payments due to the Province.

Figure 7 provides information on the transportation costs included in the monthly reports submitted by project owners for each of the three projects.

**Figure 7**

**Transportation Costs by Calendar Year and by Project  
Years Ended 31 December  
\$ Millions**

Calendar Year	Total
1997	\$ 6.9
1998	63.3
1999	98.7
2000	105.3
2001	131.3
2002	187.3
2003	199.6
2004	173.4
2005	162.6
2006	190.5
2007	261.3
<b>Total</b>	<b>\$1,580.2</b>
Project	
Hibernia	\$1,010.0
Terra Nova	438.8
White Rose	131.4
<b>Total</b>	<b>\$1,580.2</b>

As Figure 7 shows, transportation costs for the 3 projects to December 2007 totalled \$1.6 billion.

There are issues with regards to transportation costs for the Hibernia project under the Hibernia Agreement and for the Terra Nova and White Rose projects under the *Regulations*. Details are outlined in the following sections:

- A. Hibernia
- B. Terra Nova and White Rose

---

### A. Hibernia

---

#### Introduction

In order for transportation costs to be considered as an eligible deduction in calculating royalties, the Hibernia Agreement requires that the transportation of oil from the Hibernia field to various sales points be provided through a “tanker project” service established by the project owners (within the same proportion as the owners’ interest in the project), an arms length arrangement with independent service providers, or a non-arms length arrangement under specific rules for such transactions.

#### Outstanding transportation cost issues from Hibernia audits

Transportation costs claimed for the Hibernia project totalled \$1,010.0 million from 1997 to 2007.

As a result of its royalty audits, the Department concluded that none of the transportation costs included by the 6 project owners were eligible costs in accordance with the Hibernia Agreement. The Department determined that the costs were either not associated with a “tanker project” service or were not in accordance with rules for non-arms length transactions and therefore were not eligible. The Department issued re-determinations for each of the audits, and the project owners were requested to re-file their royalty calculations in accordance with the Hibernia Agreement; however, the project owners did not re-file their royalty calculations.

In accordance with the Hibernia Agreement, the project owners paid the re-determinations for 1997, 1998 and 1999 (totalling \$4.6 million), and exercised an option in the Hibernia Agreement to object to the re-determination. The Department entered into negotiations with the project owners in an attempt to resolve the issues prior to arbitration.

With regards to 2000, the re-determination of \$4.1 million was not yet required to be paid because of a new settlement process agreed to in July 2007 as follows:

- As a result of stalled arbitration proceedings in January 2003 on cost audits relating to 1994, 1995 and 1996, and the additional re-determinations relating to 1997, 1998 and 1999, the Department and the project owners agreed that a more efficient process should be established to resolve interpretation issues. In July 2007, the Department and the Hibernia project owners agreed on a terms of reference (“settlement agreement”) to clarify details relating to a final settlement process. As a result of this process, the Hibernia owners are no longer required to pay the re-determination amount until a final re-determination is issued.

Transportation costs have a significant impact on the royalties paid to the Province. Until the eligibility of transportation costs is ultimately decided, the Province will have either a significant amount receivable from the Hibernia owners or a significant amount payable to the Hibernia owners.

### Figure 8

#### **Terra Nova project Floating Production, Storage and Offloading (FPSO) Vessel**



Source: Canada-Newfoundland and Labrador Offshore Petroleum Board website

---

### B. Terra Nova and White Rose

---

#### Introduction

Although the Hibernia project owners are required to submit actual transportation costs each month, the Terra Nova and White Rose project owners are only required to submit estimates of transportation costs for each month. The use of estimates by the Terra Nova and White Rose projects is allowed for in section 70 of the *Royalty Regulations, 2003* which requires that:

- the Minister shall, in consultation with the project owners, notify the project owners of the Minister's determination of an estimate of eligible transportation costs prior to the beginning of the period (i.e. calendar year); and
- the Minister shall provide the project owners, based on information provided by the project owners, with the Minister's determination of eligible transportation costs, prior to the filing of the project owners' annual reconciliation.

In addition, section 32 of the *Regulations* requires project owners to submit, within 120 days of year end, an annual reconciliation which includes information that is sufficient for the Minister to determine the royalties. In our opinion, sufficiency of information would require that project owners submit actual transportation costs in their annual reconciliation.

Given the nature of the industry, transportation costs relating to offshore oil projects are significant. Our review identified a number of issues relating to transportation costs for each project.

---

#### Terra Nova Project

Figure 9 shows the transportation costs relating to the Terra Nova project from its initial production in 2002 to 2007.

**Figure 9**

**Terra Nova Project Transportation Costs  
Years Ended 31 December  
\$ Millions**

	2002	2003	2004	2005	2006	2007	Total
Estimated transportation costs	\$73.7	\$98.4	\$81.7	70.1	\$28.3	\$86.6	\$438.8
Actual transportation costs	Not provided	Not provided	Not provided	Not provided	Not provided	Not provided	Not provided
Difference	Not determinable						
Additional royalties paid	Not determinable						

Source: Department of Natural Resources reports

As Figure 9 shows, the estimated transportation costs related to the Terra Nova project from 2002 through to 2007 totalled \$438.8 million. The Minister, in consultation with the projects owners, established an estimated transportation cost of \$2.00 per barrel in 2004, retroactive to 2002, and continues to use this \$2.00 estimate. However, contrary to the requirements of the *Regulations*:

- the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*; and
- the 7 project owners have never provided actual transportation cost information with their annual reconciliations.

Without the determination of eligible transportation costs to be used in the calculation of royalties and with the continued use of estimates, the extent of variances remains unknown. Once eligibility rules have been established, the project owners will have to re-file their royalty calculations.

**White Rose Project**

Figure 10 shows the transportation costs relating to the White Rose project from its initial production in 2005 to 2007.

**Figure 10**

**White Rose Project Transportation Costs  
Years Ended 31 December 2005-2007  
\$ Millions**

	<b>Total</b>
Estimated transportation costs	\$168.2
Actual transportation costs	131.4
Difference	36.8
Additional royalties paid	\$2.4

Source: Department of Natural Resources

As Figure 10 shows, the estimated transportation costs related to the White Rose project from 2005 through to 2007 totalled \$168.2 million. For 2005, 2006, and 2007, the project owners established an estimated transportation cost per barrel of \$2.26, \$2.15, and \$2.22 respectively. The project owners did provide actual transportation cost information with their annual reconciliations. However, contrary to the requirements of the *Regulations*:

- the transportation cost estimates (\$2.26, \$2.15, and \$2.22 per barrel) were not approved by the Minister; and
- the Department has not, in consultation with the project owners, developed any eligibility rules that would provide criteria to be used in determining what constitutes an eligible transportation cost. As a result, the Minister cannot provide the project owners with the Minister's determination of eligible transportation costs in accordance with the *Regulations*.

Without the determination of eligible transportation costs to be used in the calculation of royalties the Department cannot determine whether the actual costs included in the annual reconciliations are eligible. Once eligibility rules have been established, the project owners will have to re-file their royalty calculations.

**Figure 11**

### **Oil Transshipment Facility, Whiffen Head**



Source: Newfoundland Transshipment Limited website

### **Recommendations**

The Department should:

- resolve outstanding Hibernia transportation issues; and
- ensure estimated, eligible and actual transportation costs for Terra Nova and White Rose are determined and reported in accordance with the *Royalty Regulations, 2003*.

## **3. Other Issues**

### **Overview**

During our review we identified issues relating to non-compliance with the *Royalty Regulations, 2003*, a non-compliance with a Cabinet directive and the adequacy of the Department's policies and procedures relating to the monitoring, review and audit of oil royalties and costs.

### Non-compliance with the *Royalty Regulations, 2003*

In accordance with the *Royalty Regulations, 2003*, upon receipt of an annual reconciliation the Minister shall assess the royalty share payable for each month in the period and deliver the assessment to the project owner within 60 days of receiving the annual reconciliation (i.e. 30 June).

Our review indicated that, contrary to the *Regulations*, the Minister did not assess the annual reconciliations within the required time frames for the two projects covered by the *Regulations* (Terra Nova and White Rose). For example:

**Terra Nova project:** 2 of the 7 project owners reviewed, indicated that the Department did not issue Notices of Assessment for the 2004 and 2005 calendar years until 19 February 2007 i.e. 20 months and 8 months beyond the 30 June deadline. Furthermore, no notices of assessment had been issued for either the 2006 or 2007 calendar years as of October 2008 i.e. 16 months and 4 months beyond the 30 June deadline.

**White Rose project:** no notices of assessment had been issued for either the 2006 or 2007 calendar years as of October 2008 i.e. 16 months and 4 months beyond the 30 June deadline.

### Consultant payments not in accordance with Cabinet directive and contract

In June 2006, the Department entered into a fee for service contract with a consultant for the provision of advisory and audit services at established hourly rates. The consultant was required to provide the Department with the estimated cost of the contract prior to the commencement of any work. Although the consultant estimated the cost to be between \$110,000 and \$120,000, they were paid a total of \$155,600 for 2006-07. Even though the consultant received substantially more than they originally estimated, not all of the required work was completed.

As a result, in April 2007, the Department requested and received approval from Cabinet to extend the existing contract for the period 1 April 2007 to 31 March 2008 subject to the same total costs and financial arrangements as the original contract. For 2007-08 the consultant was paid a total of \$108,600.

Our review identified that, contrary to the direction of Cabinet, commencing in October 2007, the Department paid hourly rates in excess of the hourly rates stipulated in the original contract. As of October 2007, billings for 5 consultant staff increased as follows: 1 person - \$30 per hour, 2 persons - \$15 per hour and 2 persons - \$10 per hour.

The payment of the increased hourly rates resulted in the consultant being paid a total of \$6,891 to 31 March 2008 above the amounts approved by Cabinet and the rates established in the original contract. Departmental officials indicated that credit will now be requested for these overpayments.

---

### **Policies and Procedures**

In 2000, the Department issued an Audit Manual to assist audit staff in conducting field audits. The Department also developed standard audit programs and checklists for the planning, auditing and reporting of royalty and cost audits. Our review indicated the following:

### **Audit Manual not updated**

- The Audit Manual has not been revised since 2000. Although a useful audit tool, the Audit Manual requires updating to include current industry information and current audit risk assessment practices.

Given that the majority of Departmental audit staff are new to the Division, it is important that audit policies and procedures be updated to ensure audits are planned and conducted in accordance with current audit guidelines.

### **Desk review procedures not documented**

- The Department has not documented its procedures for desk reviews which would include verification and assessment of the monthly reports, annual reconciliations and annual audited cost reports. The Division has developed various spreadsheets to assist with monthly re-calculation and analysis procedures and a monthly royalty remittance checklist is used to record the receipt of monthly information and completion of administrative and review tasks. However, without documented procedures on how to conduct desk reviews, there is an increased risk that all required work may not be performed, especially among newer staff.

### **Issues with desk reviews**

- A review of the Department's monthly desk review processes identified that the Department did not verify the accuracy or completeness of the information provided by the project owners. Since our review in April 2008, Department officials indicated that the scope of the desk reviews has been increased to include a verification of the exchange rate and oil prices used by the project owner in the royalty calculation which was previously done during the audit process. Officials also indicated that the expanded procedures would be applied to previous months as time permits.

Given the extent of the time allowed before royalty and cost audits are required to be completed (5 or 6 years), desk reviews are a very important control. Therefore, the Department should continue to place an increased emphasis on desk review procedures.

### Recommendations

The Department should:

- comply with the *Royalty Regulations, 2003*;
- ensure consultant payments are in accordance with Cabinet directives and established contracts;
- update its audit manual; and
- document its procedures for conducting desk reviews.

## Department's Response

### *Hibernia Project*

#### Access to Information

*In 1998, while conducting the audit of costs claimed to the end of 1995, the Department requested access to the Hibernia Management Development Corporation's (HMDC) internal audit reports and the Hibernia Executive Committee meetings minutes. The objective of this request was to gain a general knowledge of the business and to determine whether any internal audits completed had identified concerns relating to matters under the Hibernia Royalty Agreement.*

*The Hibernia Owners' position at that time was that all information necessary to verify the costs claimed, including access to all invoices, was made available to the Department in accordance with Section 26.6 of the Hibernia Royalty Agreement. Section 26.6 of the Agreement states that the Province shall have the right to whatever records "as may be necessary or required to verify the production, delivery, disposition, sales price and terms of sales of Hibernia crude and costs and revenues of the resource project ...". The Owners also expressed concerns that the minutes contained confidential information unrelated to the Hibernia Royalty Agreement.*

*The Department assessed its options at that time, including its legal rights, and continued to conduct the required audits without this information. It is important to note that:*

- *The Department has always obtained sufficient audit evidence to confirm royalties payable to the Province and to ensure the Owners were complying with the Agreement.*
- *In addition to the Departmental audit process, an independent accounting firm audited the Project Costs for compliance with the Agreement. The Department was provided this third party audit report for its review.*
- *If in the future the Department determines that this type of information is necessary for the verification of revenues and costs, the Department can pursue all available recourses to access this information.*

### **Transportation Costs**

*The Province and the Hibernia Owners have historically been in a dispute over the interpretation of the cost eligibility rules in relation to the transportation assets for the crude oil. With respect to this issue:*

- *All audits to date (the first of which was issued in December 2004) have disallowed all transportation costs. In each case, the Owners have been requested to re-file transportation costs in accordance with the Province's position on this issue.*
- *The Province and the Owners have been working through the legal process and are in active discussions with the objective of resolving this issue.*
- *Although a lengthy process, this issue has been and continues to be addressed by the Province and Project Owners within the legal processes, timeframes and processes established under the Hibernia Royalty Agreement.*

### ***Terra Nova and White Rose Projects***

#### ***Establishment of Transportation Cost Eligibility***

*Although the Province continues to consider alternative transportation solutions for Terra Nova and White Rose, it is difficult to implement a solution when the Province and the Hibernia Owners are still in a dispute over transportation cost eligibility criteria for Hibernia. The transportation assets are shared between the Hibernia and Terra Nova projects, so treatment of costs in one project can have implications for the other project. Thus, a “placeholder” for transportation rules was inserted in the Royalty Regulations 2003 with the intent that the Province would implement a transportation solution and retroactively apply it to the Project. As the Royalty Regulations 2003 also govern the White Rose Project, any transportation solution will be applied retroactively to this Project as well.*

*In the interim, as provided for under the Royalty Regulations 2003 and in consultation with the Owners, the Minister established a \$2.00 per barrel proxy charge for the Terra Nova Owners. In the case of White Rose, the Owners report estimated transportation costs to the Department at the beginning of each year and report actual costs incurred at the end of the year.*

*It is important to note that there has been no loss of royalties payable to the Province with respect to this issue. The Province continues to actively monitor this issue, in the context of the ongoing Hibernia Transportation dispute, and can impose a transportation solution at any time on both the Terra Nova Owners and the White Rose Owners. These Owners will then have to re-file transportation costs previously claimed and pay royalties on the basis of revised costs filed in accordance with the transportation solution.*

#### ***Transportation Cost Estimates***

*The Department acknowledges that the Terra Nova Owners do not provide actual transportation cost information with their annual reconciliations. The Royalty Regulations 2003 do not require the Owners to provide actual cost information since there is currently no transportation solution for Terra Nova. In the interim, the Owners continue to claim the \$2.00 proxy charge which was determined by the Minister in consultation with the Owners. The lack of actual cost information is not a concern as:*

- *Once a transportation solution is implemented by the Province, the Owners will be required to re-file transportation costs (and revise royalties payable accordingly) in accordance with this solution.*

- *The Department captures reasonable estimates of actual transportation costs being incurred by the Terra Nova Owners through cost information filed by other Projects. Transportation assets used by Terra Nova are the same ones being used by the Hibernia Owners who file actual costs.*

*The Department also acknowledges that the cost estimates provided by the White Rose Owners at the beginning of each year were not approved by the Minister; however, the White Rose Owners do file actual costs incurred at the end of each year with their annual reconciliation. Again, as Owners will have to re-file transportation costs once the Province implements a transportation solution, there is no risk of any loss of royalties payable to the Province. The Department will ensure that all estimates are approved in the future.*

### **Annual Reconciliations**

*The Department acknowledges that it has not always assessed the annual reconciliations for Terra Nova and White Rose within the required 60 days of receiving annual reconciliations. This function is performed as part of the front end “desk audit” to review costs for reasonableness or highlight areas of concern for further review by the Department. With respect to this issue:*

- *Delays in performing this function were mainly due to a lack of staff resources which have been exacerbated by the addition of new Projects since the introduction of the Royalty Regulations 2003.*
- *Under the recent Departmental restructuring, Government provided an additional position in this area which will facilitate compliance with legislation.*
- *A delay or failure to perform this function does not result in any royalty loss to the Province. The Department still performs its full on-site audit on all sales and costs claimed by the Owners.*

### *Audit and Monitoring Issues*

#### *Status of Audits*

*The Department acknowledges that there is an inventory of outstanding royalty and cost audits to be performed for the various projects. Upon establishment of the audit function in the Department in 1996, there was already a significant inventory of audits to complete. Over the ensuing years, the redeployment of staff resources to the negotiations of new projects and issues with the recruitment and retention of audit staff made it difficult to reduce the inventory of audits. However, during this period:*

- *Desk audits continued to be performed on monthly and annual royalty returns. These audits assist in the timely identification of significant variances that can be investigated further.*
- *On-site audits continued to be performed as audit resources permitted.*
- *During the last two years, Government approved the Department contracting audit services for both the Hibernia and Terra Nova audits to supplement the work of the Department's audit staff. Draft audit reports for these contracted services have recently been submitted to the Department for its review.*
- *The Department is completing audits within the audit period established in the Hibernia Agreement and Royalty Regulations 2003.*
- *Delays in completing audits have not resulted in a loss of royalties payable to the Province and interest on any amounts owing to the Province as a result of an audit is retroactive.*

*Reducing this inventory of audits and completing audits on a timely basis is a priority for this Department. In this regard:*

- *In the 2008/09 budget, Government provided an additional \$500,000 for three fiscal years to contract audit services to facilitate the objective of addressing this inventory of outstanding audits.*
- *In the recent restructuring of the Department, Government approved an additional two senior audit positions.*

- *This restructuring also resulted in a more senior level focus on the Royalties area with the creation of a dedicated Director of Royalties position and an Assistant Deputy Minister of Royalties and Benefits position.*
- *The Department developed a three year audit plan to facilitate the progression on audits with the goal of having years up to 2007 audited by 2010. This plan proposes to continue contracting audit services to supplement the work of the Department's audit staff.*

*During 2008/09, the Department focused significant effort on staffing this Division and rebuilding its audit capacity. While the Department acknowledges that its audit plan is off schedule to what was planned for 2008, new priorities arose and recruitment of some of the staff was delayed. For example, in 2008 significant audit resources were redeployed on the Hebron negotiations and continued discussions relating to the Hibernia transportation dispute. The Department has reviewed its three year audit plan and has determined that it will still complete the majority, if not all, of the audits as outlined in this plan.*

### **Magnitude of Audit Adjustments**

*As previously stated, the Department agrees that it is important to complete audits on a timely basis and it has put measures in place to address this issue; however it is important to clarify the statement in the Report that the magnitude of adjustments that have occurred as a result of the audit process highlights the importance of completing audits on a timely basis. Although audits of Hibernia from 1997 to 2000 resulted in preliminary reassessments of \$8.66 million in royalties and interest due to the Province (\$3.94 - royalties; \$4.72 - interest), the majority of these preliminary reassessments relate to disallowing all transportation costs claimed by the Hibernia Owners. As noted earlier, the issue of transportation cost eligibility is still in dispute between the Province and Hibernia Owners and consequently these reassessments are subject to change.*

### **Consultant Payments for Audit Services**

*The Department acknowledges that an overpayment was made to a consultant in error. This issue was unique to this particular contract. The Department has informed the consultant of this overpayment and has arranged for recovery of this full amount.*

### **Audit Manual**

*In 2000, the Department issued an Audit Manual to assist audit staff in conducting field audits. The Department also developed standard audit programs and checklists for the planning, auditing and reporting of royalty and cost audits. The Department is in the process of reviewing its audit manual and programs to ensure both are still reflective of current policy and standards.*

### **Desk Reviews**

*The Department acknowledges the points raised by the Auditor General and will continue to review its desk review processes and procedures.*

---



## Highlights

Highlights of a review of seized property at the Department of Natural Resources.

### Why our Office Did this Review

The objective of this review was to determine whether the Department has systems and procedures in place to record, store, monitor and dispose of seized property.

### What our Office Recommends

We recommend that the Department should:

- establish standard procedures for recording and documenting the control of all seized property;
- ensure documentation is completed as required;
- ensure seized property is preserved and protected;
- require Conservation Officers to advise individuals that bonds may be posted instead of retaining seized property that is not required for evidence in court action;
- establish procedures for conducting periodic unannounced inspections of seized property by someone who is not routinely or directly connected with the control of the property;
- require that someone other than the Conservation Officer making the seizure be responsible for storing the seized property; and
- ensure the disposal of seized property is documented.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/agg](http://www.gov.nl.ca/agg). For more information, call the Office of the Auditor General, 709-729-2700 or email [adg@mail@gov.nl.ca](mailto:adg@mail@gov.nl.ca)

Chapter 2, Part 2.16

### DEPARTMENT OF NATURAL RESOURCES

#### Seized Property

The Department of Natural Resources (the Department) is responsible for enforcement activities of the Province's *Forestry Act*, *Animal Protection Act*, *Motorized Snow Vehicle and All-Terrain Vehicle Act*, *Provincial Offences Act*, *Wilderness and Ecological Reserves Act*, *Wildlife Act* and *Endangered Species Act*. During enforcement activities Conservation Officers often seize property used in illegal activities. This property can include automobiles, all-terrain vehicles, firearms, ammunition, knives, backpacks and other miscellaneous items. Because the property can be used as evidence in court cases, it must be adequately recorded, stored and monitored. Furthermore, controls over the final disposition of seized property must be in place and followed.

### What We Found

Our review indicated that controls over seized property require improvement as evidenced by the following:

- The Department could not provide information on the total number of pieces of seized property in its possession because it does not maintain either a centralized manual or computerized system to record seized property.
- Required documentation related to seizure of property was not always on file. Furthermore, the official records that were maintained were not accurate in that the required seizure receipts for 15 items were not on file, 24 items had no tags and 16 items were not recorded on violation reports. The Department has not established a system that would provide a history of all seized property in inventory.
- There are no periodic audits, inspections or managerial review of seized property. As a result, there is no check as to whether seized property is being adequately protected, and policies and procedures are being followed.
- There is no segregation of duties over seized property in that the Conservation Officer who seized the property is also responsible for its safekeeping. As a result, missing or inappropriate use of property may go undetected.
- Seized property is not always adequately stored and protected from deterioration. For example, 6 of 52 items we reviewed were stored in an outdoor compound with only a combination lock on the gate (a pickup, 2 all-terrain vehicles, 2 snowmobiles and a sleigh). As a result, property to be used as evidence may be compromised and the Department may be subject to liability if property deteriorates and has to be returned to owners.
- Individuals are not always advised at the time they are charged that a bond may be posted for the return of their seized property.
- The Department does not adequately document and promptly dispose of all forfeited property. We identified issues with the timeliness of disposal, documentation for disposal and tracking of 16 of 29 pieces of seized property, the disposition of which was directed by the courts.
- There are inconsistencies in how the Department tracks wild game meat provided to charities to serve at fundraising events. In particular, the Department did not always track where all of the meat from a particular animal was sent. As a result, the Department would not be able to alert the appropriate charitable organization should information come to their attention that would bring into question the suitability of the meat for human consumption.

### Background

---

**Legislation** The Department of Natural Resources (the Department) is responsible for the enforcement activities of the Province's *Forestry Act*, *Animal Protection Act*, *Motorized Snow Vehicle and All-Terrain Vehicle Act*, *Provincial Offences Act*, *Wilderness and Ecological Reserves Act*, *Wildlife Act* and *Endangered Species Act*. In addition, it collaborates with other government departments and agencies in the enforcement activities of the Federal *Fisheries Act* (Inland Fish), *Species at Risk Act*, *Wild Animal and Plant Protection and Regulation of International and Inter-Provincial Trade Act*, and the *Migratory Bird Convention Act*.

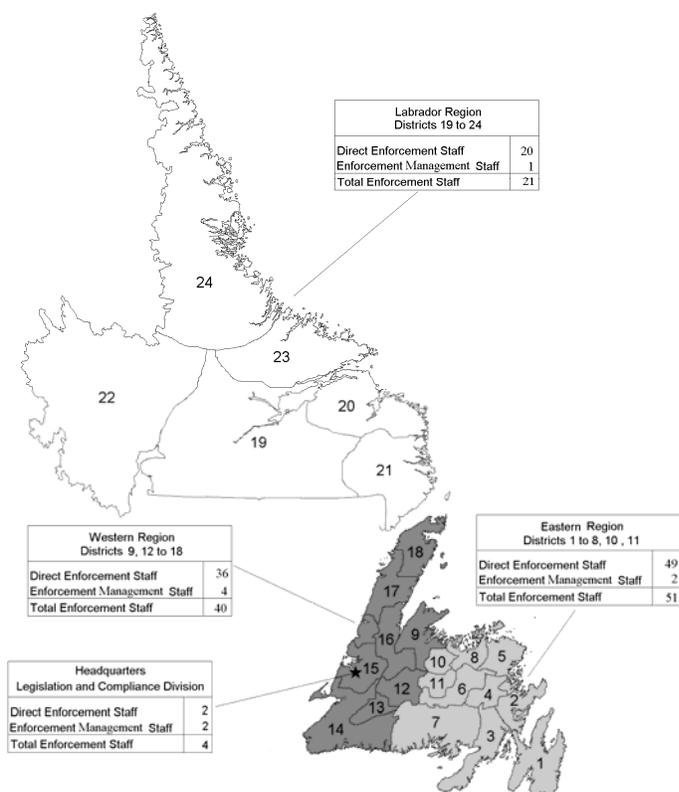
---

**Locations** The Department's headquarters for enforcement activities is located in Corner Brook, with 3 regional offices located in Massey Drive (outside Corner Brook), Gander and Happy Valley-Goose Bay. In addition, there are 15 district and 17 satellite offices located throughout 24 districts in the Province. As at June 2007, there were a total of 116 staff, including 9 management and 107 Conservation Officers involved in enforcement activities. In addition, there were 3 enforcement employees working with the Department of Justice.

Figure 1 shows the Headquarters, 3 enforcement regions, 24 districts and enforcement staffing allocation.

**Figure 1**

**Department of Natural Resources  
Forestry and Wildlife Enforcement Regions  
June 2007**



During enforcement activities Conservation Officers often seize property used in illegal activities. This property can include automobiles, all-terrain vehicles, firearms, ammunition, knives, backpacks and other miscellaneous items.

Because the property can be used as evidence in court cases, it must be adequately recorded, stored and monitored. Furthermore, controls over the final disposition of seized property must be in place and followed.

Inventory management controls are the organization, policies, and procedures designed to provide reasonable protection for seized property. This is especially important because the ownership of seized property does not pass to the Province until a forfeiture order is signed by a Judge. Until such an order is received, responsibility for the seized property remains with the Department.

## Seized Property

Once seized property is forfeited to the Crown it may be used by the Department in its enforcement activities or disposed of through either public auction or destroyed. Seized wild game meat may be provided to charitable organizations to be used in fundraising activities.

## Audit Objectives and Scope

**Audit objective** The objective of this review was to determine whether the Department has systems and procedures in place to record, store, monitor and dispose of seized property.

**Audit scope** We completed our review in April 2008. Our review included an examination of various Government reports and documents, and discussions with officials through visits to Headquarters, the Western and Eastern Regional Offices and six district offices.

## Overall Conclusions

The Department of Natural Resources (the Department) is responsible for enforcement activities of the Province's *Forestry Act*, *Animal Protection Act*, *Motorized Snow Vehicle and All-Terrain Vehicle Act*, *Provincial Offences Act*, *Wilderness and Ecological Reserves Act*, *Wildlife Act* and *Endangered Species Act*. During enforcement activities Conservation Officers often seize property used in illegal activities. This property can include automobiles, all-terrain vehicles, firearms, ammunition, knives, backpacks and other miscellaneous items. Because the property can be used as evidence in court cases, it must be adequately recorded, stored and monitored. Furthermore, controls over the final disposition of seized property must be in place and followed.

Our review indicated that controls over seized property require improvement as evidenced by the following:

- The Department could not provide information on the total number of pieces of seized property in its possession because it does not maintain either a centralized manual or computerized system to record seized property.

## Seized Property

- Required documentation related to seizure of property was not always on file. Furthermore, the official records that were maintained were not accurate in that the required seizure receipts for 15 items were not on file, 24 items had no tags and 16 items were not recorded on violation reports. The Department has not established a system that would provide a history of all seized property in inventory.
- There are no periodic audits, inspections or managerial review of seized property. As a result, there is no check as to whether seized property is being adequately protected, and policies and procedures are being followed.
- There is no segregation of duties over seized property in that the Conservation Officer who seized the property is also responsible for its safekeeping. As a result, missing or inappropriate use of property may go undetected.
- Seized property is not always adequately stored and protected from deterioration. For example, 6 of 52 items we reviewed were stored in an outdoor compound with only a combination lock on the gate (a pickup, 2 all-terrain vehicles, 2 snowmobiles and a sleigh). As a result, property to be used as evidence may be compromised and the Department may be subject to liability if property deteriorates and has to be returned to owners.
- Individuals are not always advised at the time they are charged that a bond may be posted for the return of their seized property.
- The Department does not adequately document and promptly dispose of all forfeited property. We identified issues with the timeliness of disposal, documentation for disposal and tracking of 16 of 29 pieces of seized property, the disposition of which was directed by the courts.
- There are inconsistencies in how the Department tracks wild game meat provided to charities to serve at fundraising events. In particular, the Department did not always track where all of the meat from a particular animal was sent. As a result, the Department would not be able to alert the appropriate charitable organization should information come to their attention that would bring into question the suitability of the meat for human consumption.

### Detailed Observations

---

**Introduction** Controls over the seizure of property, assignment and safekeeping, and disposal must be established, communicated and followed by all personnel. This report provides detailed audit findings and recommendations in the following sections:

1. Recording of Seized Property
  2. Storing of Seized Property
  3. Disposition of Seized Property
- 

#### 1. Recording of Seized Property

---

**Overview** An important control in the seizure of property is the documentation of the seizure through a paper trail showing the seizure, custody, control, transfer, analysis, and disposition of physical and electronic evidence.

The following outlines the sequence of events when a Conservation Officer lays a charge and seizes property:

- **Seizure Receipt** - All seizures must be documented by issuing a seizure receipt. One copy of the receipt is given to the person from whom the seizure is made, one copy is attached to the violation report and one copy is retained by the Conservation Officer. The person from whom the seizure is made is asked to sign a copy of the receipt and, if they refuse, this is to be noted on the receipt.
- **Conservation Officers' Journals** - Conservation Officers' field journals are used to record details of the violation, including the location and any movement of the seized property.
- **Vehicle Condition Report** - When a vehicle is seized this report is required in order to record identification information and the condition of the vehicle.
- **Tags** - Once property is seized it is tagged. The tag includes information on the time, date and place of the seizure as well as the name of the person it is seized from.

## Seized Property

- **Violation Report** - All property is recorded on a violation report which provides the particulars of the violation, including a description of all items seized.
- **Conservation Officer's Case File** - Each Conservation Officer maintains a case file where all documentation associated with the case is kept (e.g. photographs, copy of seizure receipt and violation report).

All property is required to be secured to ensure the item is safely stored and not damaged. Figure 2 shows an outdoor storage compound at the Pasadena District office.

**Figure 2**

**Department of Natural Resources  
Outdoor Storage  
Pasadena District office**



---

To review the Department's recording and control over seized property we examined a sample of 52 items identified in site visits (26 items) and from violation reports (26 items). Details of the 52 items and our findings are included in Appendix A. We identified the following:

## Seized Property

### No database or inventory listing

- The Department could not provide information on the total number of pieces and location of seized property in its possession because details of seized property are not recorded centrally in either a manual or computerized system.

### Exhibits improperly recorded

- 15 of 52 items did not have a seizure receipt in the Conservation Officer's case file. Without this receipt, the condition of an item when seized may either not be properly recorded or the item could be omitted from the violation report. Also, without this receipt there is no evidence that the person from whom the item was seized has acknowledged the incident.
- 24 of 52 items were not tagged. Without tags, the items could either be returned to the wrong person or inadvertently destroyed.
- 16 of 26 items identified during site visits were not recorded on violation reports as required by policy. Items omitted from this document may inadvertently not be brought to the attention of the court as evidence or for forfeiture to the Crown.

### Seized property not properly tracked

In order for the Department to adequately track seized property from when it was seized to its final disposition, we would expect a record documenting the description of the property, the name of the Officer who seized the item and its subsequent possession and movement (e.g. for use as evidence in court or laboratory testing). Our review identified the following:

- Although the Department has seizure receipts, tags, vehicle condition reports, and violation reports, this documentation is not sufficient for tracking purposes because it only documents the seizure of property and not who subsequently handles the property or where it ultimately goes.
- Currently, Conservation Officers track the location of seized property in their own individual journals. These journals are carried by the Officers in the field and are subject to damage or loss and there is no backup record.

Adequate documentation is required in order to defend legal challenges as to the authenticity of the evidence.

### Recommendations

The Department should:

- establish standard procedures for recording and documenting the control of all seized property; and
- ensure documentation is completed as required.

## 2. Storing of Seized Property

### No standards for storage

During the period October 2007 to March 2008, we reviewed 52 pieces of seized property and visited six district offices to determine how well the Department stores seized property. We identified the following:

- There are no standards for packaging or storing seized property. Storage areas for seized property should be constructed of material that would render it incapable of unauthorized access. Ideally, indoor storage areas should be equipped with fire sprinklers, smoke detectors, and burglar alarms. Departmental property should never be co-mingled with seized property and evidence. We identified the following issues:
  - seized property was stored in an outdoor compound with only a combination lock on the gate;
  - buildings used to store seized property did not have either sprinkler systems or burglar alarms;
  - departmental property is being stored along side of seized property;
  - unwrapped quarters of wild game meat that could be provided to charities were stored in the same freezer as road kill; and
  - a blood covered axe was placed uncovered in a locker. This not only prevents any lab tests on the blood from being used as evidence, but also exposes officers to blood borne diseases.

## Seized Property

### Inadequate protection from damage or deterioration

- 6 of 52 items were not adequately stored and protected from deterioration. For example the following were stored outside:
  - 1 pickup was stored outside for two years before being released back to its owner. As a result of this inadequate storage, the Department paid the owner \$2,000 for the vehicle as it was no longer roadworthy;
  - 2 all-terrain vehicles;
  - 2 snowmobiles; and
  - 1 sleigh.

As a result, property to be used as evidence may be compromised and the Department may be subject to liability if property deteriorates and has to be returned to owners.

### Figure 3

#### Department of Natural Resources Seized Pickup and ATV February 2008



## Seized Property

### No required notification that bonds can be posted

- Individuals are not always advised at the time they are charged that a bond may be posted for the return of their seized property.

The *Wildlife Act* has a provision for the posting of bonds by persons charged with an offence for the return of their seized property. Through our discussions with Officers in various Districts, we note that individuals are not always advised at the time of their arrest that a bond may be posted for the return of their property. The acceptance of a bond for the fair market value of the property not needed as evidence would protect the Department from any liability for damage or loss in value of any item that may be returned.

### Inadequate review

- There are no periodic audits, inspections or managerial review of seized property. As a result, there is no check as to whether seized property is being adequately protected, and policies and procedures are being followed.

### No segregation of duties

- There is no segregation of duties over seized property in that the Conservation Officer who seized the property is also responsible for its safekeeping. As a result, missing or inappropriate use of property may go undetected.

## Recommendations

The Department should:

- ensure seized property is preserved and protected;
- require Conservation Officers to advise individuals that bonds may be posted instead of retaining seized property that is not required for evidence in court action;
- establish procedures for conducting periodic unannounced inspections of seized property by someone who is not routinely or directly connected with the control of the property; and
- require that someone other than the Conservation Officer making the seizure be responsible for storing the seized property.

### 3. Disposition of Seized Property

**Introduction** When property is seized, it is kept until the charges and any court proceedings are concluded. As a result of court proceedings, seized property is either returned to the owner or forfeited to the Crown. Once the disposition of seized property is determined, it is important for the Department to proceed with the disposition as soon as possible, both to finalize files and to free up its limited storage space.

The Department has established policies and procedures for the proper disposal of seized property. All property forfeited to the Crown is to be forwarded to the regional office following a 30 day appeal period during which the owner may appeal the decision. For items to be returned to the owner, a Seized Item Release form is completed and signed by the receiver of the property and a third party witness.

Compliance with these policies and procedures is necessary to avoid personal, as well as Departmental liability.

**Documentation not adequate** We reviewed 52 items of seized property and found that 21 were forfeited to the Crown and 8 were ordered returned to the owner. Our review of these 29 items indicated the following:

- Of the 21 items forfeited to the Crown there were issues with 15 as follows:
  - 8 were ordered forfeited in October 2004; however, they were still in storage at the district office and not forwarded to the regional office as required;
  - 4 items were disposed of without documentation;
  - 1 item had documentation that was not signed by the person receiving the item; and
  - 2 items could not be examined because the Department did not know the location of the items at the time of our visit.
- Of the 8 items ordered returned to the owner there was an issue with 1 in that the item (pick-up truck) was still in the Department's possession because it had deteriorated to the point that the owner could not use it.

### Disposal of wild game meat not tracked

Under the *Wild Life Regulations*, wild game meat forfeited to the Crown can be provided to charitable organizations. When the Department provides the charitable organization with wild game meat, it also issues a permit for the charity to sell a meal containing the wild game meat. We reviewed the practice of providing wild game meat to charitable organizations at three District Offices and found the following:

- 2 Districts (Pasadena and Lewisporte) did not track where all of the meat from a particular animal was sent. For example, if the four quarters of a moose were provided to four different charities in different locations in the Province, there would be no way for the Department to make this connection in the event of identification of an issue with the quality of the meat in any one of the four locations.

As a result, the Department would not be able to alert the appropriate charitable organization should information come to their attention that would bring into question the suitability of the meat for human consumption.

#### Figure 4

#### Department of Natural Resources Tagging and Wildlife Storage Gambo District Office



## Seized Property

---

- 1 District (Clarenville) did not issue a permit to serve wild game meat even though it provided the charitable organization with the meat. As a result, the charity would not be able to prove that it acquired the wild game meat legally.
- 

### Recommendation

The Department should ensure the disposal of seized property is documented.

---

## Department's Response

---

*Your report outlined several issues related to the tracking and storage of property that is seized through enforcement activities. We are pleased to report that we are in the process of acquiring and implementing a computerized occurrence system (NEMESIS), which was specifically designed for this purpose. The system is owned and maintained by the Wildlife Enforcement Branch of Environment Canada and is used by several other provincial wildlife enforcement agencies across the country. When the system is fully implemented later this year, it will provide us with enhanced capability to record occurrences and violations, as well as keep a detailed digital inventory and history of seizures. Once fully implemented, we will also be integrating an audit process to help us verify the information contained in the system. We believe this will address the concerns you have raised in this regard.*

*The report raised issues related to the manner in which some seized items are stored. The department has secure indoor storage at most of its district and regional offices and significant sized indoor storage facilities in Pasadena and Gander. The department has also rented storage space in the past, as required. We have had instances where vehicles have been stored in outside compounds pending a decision of the court as a result of a lack of indoor storage space. In those cases, it was felt that security would not be an issue and the risk of losing evidence minimal. We do understand the concerns that you have raised in regards to this practice and we will certainly take them under consideration in the future.*

## Seized Property

*In regards to our current practice for the control of seized property, we follow a process that we believe ensures the continuity of the file and evidence. It has been our belief that the conservation officer who seizes the property is the appropriate individual to retain control of that property until the matter goes to court. This enables the conservation officer to testify in court that the evidence has not been tampered with in any way as it has been under his/her control. This also works well in our organization as our offices are decentralized. At that same time, we do take note of your concerns and give this approach further thought.*

*The issues you have raised related to the return and disposal of seized property by conservation officers are currently being addressed. The NEMESIS system, once implemented, will also track the disposal of seized property. Conservation Officers are also currently engaged in an ongoing comprehensive Conservation Law Enforcement Training program. While the program does include these issues, we will ensure that specific attention is focused on proper procedures for seizure, disposal and return of exhibits where they are not required for court purposes. It will also be reinforced to conservation officers that they are required to advise individuals at the time they are charged that a bond may be posted for the return of their seized property.*

*Our practice of distributing wild game meat (seizures) to charitable organizations and fundraising events is currently under review given increased concerns over food quality and safety. We appreciate your input on this matter and will incorporate it in our decision making.*

---

## Seized Property

### Appendix A

#### Department of Natural Resources Seized Property Findings 2008

Item	Location	Seizure Date	Seizure Receipt	Properly tagged	Recorded on Violation Report	Adequately Stored	Disposition	Notes
<b>From Site Visit</b>								
Axe containing blood	Massey Drive	2007-10-17					Pending	
Skinning knife	Massey Drive	2007-10-17					Pending	
Hunting knife	Massey Drive	2007-10-17					Pending	
Hunting knife	Massey Drive	2007-10-17					Pending	
Sharpening Tool	Massey Drive	2007-10-17					Pending	
Big Game Moose Licence	Massey Drive	2007-10-17					Pending	
Back Pack	Massey Drive	2007-10-17					Pending	
Pocket knives (2)	Massey Drive	2007-10-17		N	N		Pending	
Compass	Massey Drive	2007-10-17		N	N		Pending	
Rain gear	Massey Drive	2007-10-17		N	N		Pending	
Binoculars	Massey Drive	2007-10-17		N	N		Pending	
Black Bear Licence	Massey Drive	2007-10-17		N	N		Pending	
Hats (2)	Massey Drive	2007-10-17		N	N		Pending	
Browning 308 calibre rifle	Massey Drive	2007-10-17					Pending	
Big Game Moose License	Massey Drive	2007-10-17					Pending	
Browning 308 calibre rifle magazine with 4 bullets	Massey Drive	2007-10-17					Pending	
Spent 308 calibre bullet casing	Massey Drive	2007-10-17					Pending	
30-30 Rifle	St. George's	2007-09-21					Forfeited	
12 rounds 30-30 Winchester bullets	St. George's	2007-09-21		N			Forfeited	
Black Pickup Truck	Pasadena			N		N	Returned	Still on hand
Honda ATV	Pasadena			N	N	N	Pending	
ATV	Pasadena			N	N	N	Pending	
Ford F150	Gander	2007-07-08		N			Pending	
GMC Ventura 3500	Gander	2007-07-08		N			Pending	
Chevy Cavalier	Gander	2007-07-08		N			Pending	
Pickup 4x4 Chevy	Gander	2007-07-08		N			Pending	

## Seized Property

Item	Location	Seizure Date	Seizure Receipt	Properly tagged	Recorded on Violation Report	Adequately Stored	Disposition	Notes
<b>From Violation Reports</b>								
1993 Skidoo Snowmobile	Pasadena	2004-12-10		N		N	Forfeited	
Black sleigh	Pasadena	2004-12-10		N		N	Forfeited	
Packsack with 2 knives, rope, etc.	Pasadena	2004-12-10					Forfeited	Disposed of without documentation
Yamaha snowmobile	Pasadena	2005-01-11		N		N	Forfeited	
1996 GMC Truck	Pasadena	2005-09-14	N				Forfeited	Transfer not signed
Knife	Pasadena	2005-09-14	N	N			Forfeited	
Buck knife	Lewisporte	2004-12-10					Returned	
Backpack	Lewisporte	2004-12-10					Returned	
2 knives	Lewisporte	2004-12-10					Returned	
Steel	Lewisporte	2004-12-10					Returned	
Axe	Lewisporte	2004-12-10					Returned	
Alarm clock	Lewisporte	2004-12-10					Returned	
Hunting vest	Lewisporte	2004-12-10					Returned	
350 Big Bear quad	Clarenville	2003-12-15	N				Forfeited	Location not documented
Pack Sack #1	Clarenville	2003-12-15	N				Forfeited	October 2004
Saws	Clarenville	2003-12-15	N	N			Forfeited	October 2004
2 pairs of gloves	Clarenville	2003-12-15	N	N	N		Forfeited	October 2004
Pack Sack #2	Clarenville	2003-12-15	N	N	N		Forfeited	October 2004
3 hunting knives	Clarenville	2003-12-15	N		N		Forfeited	October 2004
2 sheaths	Clarenville	2003-12-15	N	N	N		Forfeited	October 2004
Sharpening stone	Clarenville	2003-12-15	N		N		Forfeited	Disposed of without documentation
1 hammer	Clarenville	2003-12-15	N	N	N		Forfeited	October 2004
Green dragger twine	Clarenville	2003-12-15	N		N		Forfeited	Disposed of without documentation
16 white fibre bags	Clarenville	2003-12-15	N	N	N		Forfeited	October 2004
ATV	Clarenville	2005-10-14	N				Forfeited	Location not documented
2 Planks	Clarenville	2005-10-14	N				Forfeited	Disposed of without documentation
			<b>15</b>	<b>24</b>	<b>16</b>	<b>6</b>		



## Highlights

Highlights of a review of the inspection and licensing of slaughter facilities by the Department of Natural Resources for the period 1 January 2007 to 31 October 2008.

### Why our Office Did this Review

The objective of our review was to determine whether the Department and the GSC are complying with slaughter facility inspection and licensing requirements of the *Meat Inspection Act*, the *Meat Inspection Regulations* and Departmental policy.

### What our Office Recommends

We recommend that the Department should:

- work together with the GSC to create an MOU;
- ensure that risk assessment analysis documents are always updated to reflect the current assessment of a facility;
- create a follow-up visit policy to ensure corrective action on deficiencies noted during inspections;
- ensure that the annual inspection process continues as intended even though licences no longer expire;
- inspections are completed on a timely basis;
- inspection forms are completed clearly and consistently;
- the new inspection form is designed to ensure that items are not missed during the inspection process;
- inspection forms and the inspector policy manual are updated to ensure that all appropriate items within the *Act* and *Regulations* are adequately addressed; and
- inspectors who perform slaughter facility inspections are issued a certificate of appointment by the Minister as required by the *Act* before conducting inspections.

### What the Department Said

To provide balance to this report and to ensure full disclosure, the Department was asked to formulate a response to our findings and conclusions. The Department's response, verbatim, is included at the end of this report. Readers are encouraged to consider the Department's comments in this regard.



To view the full report, refer to the web site [www.gov.nl.ca/ag](http://www.gov.nl.ca/ag). For more information, call the Office of the Auditor General, 709-729-2700 or email [adgmail@gov.nl.ca](mailto:adgmail@gov.nl.ca)

Chapter 2, Part 2.17

### DEPARTMENT OF NATURAL RESOURCES

#### Inspection and Licensing of Slaughter Facilities

The Department of Natural Resources (Department), through the Animal Health Division, is responsible for the meat inspection program. This program involves mandatory licensing of slaughter facilities and the non-mandatory inspection of an animal prior to slaughter and the slaughter process of that animal. The inspection process is carried out by the Environmental Health Officers and Agricultural Inspector of the Government Service Centres (GSC) of the Department of Government Services.

During the year ended 31 December 2007, there were 23 licensed slaughter facilities in the Province. The legislative requirements of the program are outlined in the *Meat Inspection Act* and the *Meat Inspection Regulations*.

### What We Found

Our review indicated that the Department is not in full compliance with the *Act* and *Regulations*. In particular, slaughter facilities were operating without a valid licence, and licences were being issued to slaughter facilities even though the facilities had deficiencies. We also identified issues with follow-up inspections and inspection documentation. Our conclusions are based on the following:

There were 19 slaughter facilities that operated for a period of time in 2007 without a valid licence. Of these 19, 12 facilities had six month temporary licences as a result of deficiencies identified in the previous inspection. Of these 12, 9 operated for a period of six months or more following the expiry of the previous licence.

In 2007, the Department issued licences to 6 slaughter facilities even though deficiencies were noted during the inspection process. Deficiencies would include, for example, hand washing not available on the kill floor, immediate cooling of meat not available and facility cleaning not being performed with the appropriate chemicals. These deficiencies were deemed to be non-critical to immediate food safety; however, they are important and are expected to be corrected. One facility with six deficiencies identified in 2006, received a licence in 2007 even though three of the six deficiencies remained. Another facility with six deficiencies identified in 2006, received a licence in 2007 even though two of the six deficiencies remained.

The required annual slaughter facility inspections were not always completed on a timely basis. At October 2008, 9 of the 20 licensed slaughter facilities had not been inspected in over a year.

Follow-up inspections at slaughter facilities where deficiencies were identified were not documented. As a result, the Department could not demonstrate that the required corrective action was undertaken either within a reasonable period of time or within the time frame specified by the Department.

The Department has not entered into a Memorandum of Understanding (MOU) with the Department of Government Services to clearly define the roles and responsibilities of both Departments relating to slaughter facility inspection services.

Inspection forms did not address all areas required under the *Regulations* and forms were not consistently completed by inspectors. In addition, the Department's policy manual did not adequately address all of the requirements of the *Act* and *Regulations*.

### Background

---

#### Introduction

The Department of Natural Resources (Department), through the Animal Health Division, is responsible for the meat inspection program. This program involves mandatory licensing of slaughter facilities and the non-mandatory inspection of an animal prior to slaughter and the slaughter process of that animal.

---

#### Slaughter facility risks

All food-related processes, whether primary or secondary, have inherent risks of human illness associated with them. According to the Department, there are three types of hazards encountered in slaughtering operations:

- Chemical hazards - for example, antibiotics or sanitizers in the meat;
- Physical hazards - for example, metal or wood fragments;
- Microbiological hazards – for example, bacteria and related toxins that can be passed from food and cause illness in humans.

The purpose of the inspection and licensing processes administered by the Department is to ensure that meat processed for consumption in Newfoundland and Labrador meets food safety requirements.

The Minister of Natural Resources is responsible for appointing inspectors for the administration of the *Meat Inspection Act (Act)*. The inspection process is carried out by the Environmental Health Officers and Agricultural Inspector of the Government Service Centres (GSC) of the Department of Government Services. Currently, the GSC has 33 Environmental Health Officers and 1 Agricultural Inspector appointed for the administration of the *Act*.

Inspection authority has also been granted to the Animal Health Divisions' veterinarians and Food Safety Specialist. Currently, the Animal Health Division has 10 veterinarians and 1 Food Safety Specialist appointed for the administration of the *Act*.

---

#### Slaughter facilities by region

Figure 1 shows the number of slaughter facilities, by region, currently operating on the Island portion of the Province. There are currently no licensed slaughter facilities in Labrador.

**Figure 1**

**Slaughter Facilities by Region  
As at 31 October 2008**

<b>Region</b>	<b>Slaughter Facilities</b>
Eastern Avalon	12
Western Avalon	3
Central	2
West Coast	3
<b>Total slaughter facilities</b>	<b>20</b>

Source: Department of Natural Resources

As Figure 1 shows, 12 of the 20 licensed slaughter facilities currently operating in the Province are in the Eastern Avalon region. The remaining facilities are throughout the Western Avalon, Central and West Coast regions.

---

### **Legislation**

All slaughter facilities are required to be licensed in accordance with the *Meat Inspection Act (Act)* and the *Meat Inspection Regulations (Regulations)* under the *Act*. The legislation provides for animal and meat inspections in slaughter facilities.

The *Act* and *Regulations* were written based on standards of good practice that reduce the overall risk of human illness from meat and meat products slaughtered in Newfoundland and Labrador.

---

### **Slaughter facility inspection and licensing**

The Department has the general mandate to be involved in any aspect of animal health that is justifiably in the public interest and within those budgetary limits set by the Government. This includes the control of food quality at the production or primary processing level under the *Act*.

Under the *Act* and *Regulations*, all slaughter facilities must be licensed. The only exemptions are for those facilities used strictly for the provision of meat to the operator and the operator's family and for slaughter facilities registered under the *Meat Inspection Act (Canada)*, which provides for the licensing and inspection of establishments involved in the import or export of and inter-provincial trade in meat products.

## Inspection and Licensing of Slaughter Facilities

In addition to mandatory facility licensing, the *Act* provides for non-mandatory inspection services where an inspection of an animal is done prior to slaughter and the slaughter process of that animal is observed by the inspector to ensure that the slaughter is performed in accordance with the *Act* and *Regulations*. This results in the stamping of the finished product which provides increased access to retail markets.

The Department's Meat Inspection Program Inspection Policies/Procedures Manual requires slaughter facilities to be licensed annually, on the anniversary of their licence date. This licence issuance or renewal by the Director of the Animal Health Division is based on an annual inspection.

---

### Audit Objectives and Scope

**Audit objective** The objective of our review was to determine whether the Department and the GSC are complying with slaughter facility inspection and licensing requirements of the *Meat Inspection Act*, the *Meat Inspection Regulations* and Departmental policy.

**Audit scope** Our analysis of slaughter facility inspection and licensing covered the period 1 January 2007 to 31 October 2008.

We reviewed slaughter facility files and reviewed inspection reports for compliance with the *Act* and *Regulations* and established policies, procedures and guidelines. We also held discussions with Department and GSC officials.

We completed our review in December 2008.

---

### Overall Conclusions

During the year ended 31 December 2007, there were 23 licensed slaughter facilities in the Province. The Department of Natural Resources (Department), through the Animal Health Division, is responsible for the meat inspection program. This program involves mandatory licensing of slaughter facilities and the non-mandatory inspection of an animal prior to slaughter, and the slaughter process of that animal. The legislative requirements of the program are outlined in the *Meat Inspection Act* and the *Meat Inspection Regulations*.

## Inspection and Licensing of Slaughter Facilities

Our review indicated that the Department is not in full compliance with the *Act* and *Regulations*. In particular, slaughter facilities were operating without a valid licence, and licences were being issued to slaughter facilities even though the facilities had deficiencies. We also identified issues with follow-up inspections and inspection documentation. Our conclusions are based on the following:

There were 19 slaughter facilities that operated for a period of time in 2007 without a valid licence. Of these 19, 12 facilities had six month temporary licences as a result of deficiencies identified in the previous inspection. Of these 12, 9 operated for a period of six months or more following the expiry of the previous licence.

In 2007, the Department issued licences to 6 slaughter facilities even though deficiencies were noted during the inspection process. Deficiencies would include, for example, hand washing not available on the kill floor, immediate cooling of meat not available and facility cleaning not being performed with the appropriate chemicals. These deficiencies were deemed to be non-critical to immediate food safety; however, they are important and are expected to be corrected. One facility with six deficiencies identified in 2006, received a licence in 2007 even though three of the six deficiencies remained. Another facility with six deficiencies identified in 2006, received a licence in 2007 even though two of the six deficiencies remained.

The required annual slaughter facility inspections were not always completed on a timely basis. At October 2008, 9 of the 20 licensed slaughter facilities had not been inspected in over a year.

Follow-up inspections at slaughter facilities where deficiencies were identified were not documented. As a result, the Department could not demonstrate that the required corrective action was undertaken either within a reasonable period of time or within the time frame specified by the Department.

The Department has not entered into a Memorandum of Understanding with the Department of Government Services to clearly define the roles and responsibilities of both Departments relating to slaughter facility inspection services.

Inspection forms did not address all areas required under the *Regulations* and forms were not consistently completed by inspectors. In addition, the Department's policy manual did not adequately address all of the requirements of the *Act* and *Regulations*.

### Detailed Observations

---

**Overview** This report provides detailed audit findings and recommendations in the following sections:

1. Memorandum of Understanding
  2. Licensing of Slaughter Facilities
  3. Inspection of Slaughter Facilities
- 

#### 1. Memorandum of Understanding

---

The GSC provides slaughter facility inspection services to the Department. The Department retains legislative and policy responsibility for the licensing of slaughter facilities. It relies on the inspection services delivered by the GSC.

This service relationship is similar to the relationship that the Department of Government Services has with other departments and agencies. The delivery of permitting, inspecting, licensing, and enforcement services is done by the GSC on behalf of a number of partner departments and agencies. This is covered by agreements where the partners retain legislative and policy responsibility.

With this sort of relationship, it is critical that roles and responsibilities of both departments be clearly defined in a Memorandum of Understanding (MOU) so that there is a common understanding about services, priorities, and responsibilities. An MOU describes an agreement between parties to define a relationship where one party is the customer and one is the service provider. An MOU would record a common understanding about services, priorities, and responsibilities.

---

**No MOU  
between GSC  
and the  
Department**

During our review, officials informed us that an MOU between the two departments has been in the drafting process for more than a year with no set date for completion. We found examples where there was no common understanding about services, priorities and responsibilities.

## Inspection and Licensing of Slaughter Facilities

For example, in 2007, the Department introduced and attempted to implement a meat surveillance program to obtain and test samples of meat and swabs of facility surfaces. Department officials informed us that this is an important addition to the facility inspection process that would add to the health safety measures already in place in the facility inspection process. Although the Department has had the inspection kits and lab equipment available since 2007, the program has not yet been implemented. During 2008, the Department and the GSC determined that they needed to clarify roles and responsibilities prior to the implementation of this process.

Without a common understanding about services, priorities and responsibilities, there is a risk that meat processed for consumption would not meet food safety requirements.

---

### Recommendation

The Department should work together with the GSC to create an MOU to clarify their roles and responsibilities under the meat inspection program.

---

## 2. Licensing of Slaughter Facilities

---

### Introduction

The *Regulations* state that “All plants must be licensed under these regulations unless they are registered as establishments under the *Meat Inspection Act (Canada)* or unless they are operated solely for the provision of food for the operator and the operator’s family”. Departmental policy requires that slaughter facilities be licensed annually, on the anniversary of their licence date.

The Director of the Animal Health Division holds the authority to issue, suspend or revoke a licence in accordance with the *Regulations*. A risk assessment analysis, based on the results of the inspections performed by the GSC, is completed by the Department. The Director reviews the completed assessment and makes a decision as to whether, based on these results, a licence will be issued, suspended or revoked.

In the inspection results and licensing assessment process performed by the Department, there are certain instances where the licence is issued with conditions noted that are required action items for completion by the operator within a certain timeframe. These items are deemed to be non-critical to immediate food safety; however, they are important and are expected to be corrected. An example of non-critical issues include the requirement to have

cooler surfaces that are made of cleanable, chemically resistant material. This requires subsequent follow-up by the inspector to ensure that the corrective actions have been taken by the operator. On the other hand, an example of a critical deficiency would be taking a dead animal, other than approved wild game, to a slaughter facility. This would result in the closure of the facility.

In 2006, based on an in-depth inspection process, the Department determined that the most appropriate approach to addressing non-compliance issues was to issue or revoke licences based on the following categories:

- **Full licence** – In many cases there were some changes necessary (e.g. unapproved chemicals for sanitation use). These improvements were expected to be underway within 6 months of the licence being issued and completed prior to the next in-depth inspection;
- **Temporary six month licence** – Problems were identified as a concern, but they didn't require closure of the slaughter facility (e.g. an operational cooler with an uncleanable surface, but proper sanitation evidenced throughout the facility); and
- **Revoked licence** – The licence was revoked if there were problems with the slaughter facility that were considered to be an immediate threat to food safety (e.g. bringing dead animals into a slaughter facility for cut up).

Operators were advised during the temporary licensing process that there would be follow-up visits completed on a pre-determined basis to ensure that action items were being addressed. For example, for a six month temporary licence, it was expected that follow-up be progressing at the three month mark.

---

Our review of the licensing process indicated that not all slaughter facilities operating in the Province had a valid licence. Figure 2 provides details of our findings.

**Figure 2**

**Slaughter facilities that operated without a valid licence  
Year Ended 31 December 2007**

Number of months operating without a licence	No. of facilities operating in 2007	Number of facilities operating for a period of time in 2007 without a valid licence		
		Total	Temporary Licence	Full Licence
< 1 - 2		5	0	5
3 - 5		5	3	2
6+		9	9	0
<b>Total</b>	<b>23</b>	<b>19</b>	<b>12</b>	<b>7</b>
<b>% operating without a licence</b>	<b>83%</b>			

Source: Department of Natural Resources

**Slaughter facilities operating without a valid licence**

Figure 2 indicates that:

- 19 of 23, or 83%, of slaughter facilities operated without a valid licence for a period of time during the year ended 31 December 2007.
- Of particular note is that 12 of the 19 licences that expired during the year were six month temporary licences. The slaughter facility was issued a temporary licence as a result of significant issues identified during the last in-depth inspection.

We note that one slaughter facility that had a temporary licence that expired early in 2007, did not have an inspection until eight months after expiry of its temporary licence. This inspection resulted in the revocation of that operator's licence, as none of the conditions of the temporary licence had been met.

- 9 of the 19 slaughter facilities that were operating without a valid licence operated for a period of six months or more following expiry of the previous licence.

## Inspection and Licensing of Slaughter Facilities

### Insufficient documentation on updated assessment

We reviewed the risk assessment analysis related to 23 slaughter facilities and found one instance where a risk assessment analysis on file contained unsatisfactory findings that led to a licence revocation conclusion within the assessment. However, the licence was issued less than a month later with no documentation of an updated assessment or conclusion.

---

### Follow-up visits and discussions with facility operators are not documented

Our review indicated that follow-up visits are not always documented as follows:

- **Full licences:** follow-up visits to determine the status of full licences issued with conditions were not always documented and results were not always communicated by the GSC inspectors to the Department; and
- **Temporary licences:** follow-up visits to assess the status of conditions associated with temporary licences issued in 2006 were not always documented and results were not always communicated by the GSC inspectors to the Department.

As a result of not documenting follow-up visits, there was insufficient evidence as to whether or not timely corrective action was taken by the operator to correct deficiencies identified during inspections.

---

### Licences no longer required to be renewed annually

Up to March 2007, the Department required that slaughter facility licences be renewed annually on the anniversary of the slaughter facility's licence date.

However, effective upon issuance of 2007 licences, most of which were issued in the Fall of 2007, the Department changed its requirement relating to the annual licence renewal so that licences were issued without expiry dates.

Although the change in policy is not in contravention of the *Regulations*, in our opinion, it weakens the process in that it removes a deadline (licence expiration) that previously triggered an annual inspection.

---

## Inspection and Licensing of Slaughter Facilities

### Slaughter facilities not in full compliance with the Regulations

In 2006, based on an in-depth inspection process, the Department determined that a number of slaughter facilities were not in compliance with the *Regulations*.

Although there have been improvements in compliance since then, we found that some slaughter facilities are being licensed even though they are not in full compliance with the *Regulations*. In 2007, the Department issued licences to 6 slaughter facilities even though deficiencies were noted during the inspection process. The deficiencies were deemed to be non-critical to immediate food safety; however, they are important and are expected to be corrected. For example:

- One slaughter facility that received a temporary licence had six deficiencies noted in its 2006 inspection assessment. Upon inspection in 2007, three of the six deficiencies remained. Despite these remaining three deficiencies, a full licence was granted. These three deficiencies included: hand washing not available on the kill floor; immediate cooling of meat not available; and facility cleaning not being performed with appropriate chemicals.
- One slaughter facility that received a temporary licence had six deficiencies noted in its 2006 inspection assessment. Upon inspection in 2007, two of the six deficiencies remained. Despite these remaining two deficiencies, a full licence was granted. These two deficiencies included hand washing not available on the kill floor and inadequate pest control measures to prevent entry of pests into the plant from external sources.

### The Department does not have a follow-up policy for deficiencies

During in-depth inspections, issues can be identified which require corrective action by the slaughter facility. Depending on the severity of the issue, a licence may be revoked or continued with the understanding that the identified issues will be corrected. We identified the following:

- **For continued licences**
  - Dates were not always established for when issues have to be corrected; and
  - Follow-up on issues identified which were required to be remediated by an established timeframe was not always performed.

## Inspection and Licensing of Slaughter Facilities

- **For revoked licences**
  - Follow-up was not being completed to ensure that facilities that have had their licences revoked have discontinued operations. Although local media reported that a slaughter facility which had its licence revoked during 2007 continued to operate without a licence, the matter was not followed-up by the Department.

### Recommendations

The Department should:

- ensure that risk assessment analysis documents are always updated to reflect the current assessment of a facility;
- create a follow-up visit policy to ensure corrective action on deficiencies noted during inspections. These follow-up visits and discussions with facility operators should be documented; and
- ensure that the annual inspection process continues as intended even though licences no longer expire.

## 3. Inspection of Slaughter Facilities

### Introduction

Slaughter facilities are inspected to determine compliance with the *Act* and *Regulations*. Slaughter facility inspections are carried out by Environmental Health Officers located in the various GSC offices across the Province and the Agricultural Inspector located in the St. John's GSC office. The Department produces a monthly schedule of required inspections, which it distributes to the GSC.

Information obtained during an inspection is captured on an inspection form. The inspection form is submitted to the Department for assessment in determining whether a licence is issued, continued or revoked. Therefore, it is critical that the inspection results be complete and accurate.

**Inspections not always completed on a timely basis**

Our review indicated that inspections are not always completed on a timely basis. We reviewed information on the monthly inspection schedules for the period 1 January 2007 to 31 October 2008 and identified overdue inspections. The details on these overdue inspections as at October 2008, along with statistics at the same point in time in the prior year, are outlined in Figure 3.

**Figure 3**

**Inspections Overdue  
October 2007 and 2008**

# Months Overdue	Inspections Overdue			
	Oct 2007		Oct 2008	
	#	%	#	%
<1 – 2	5	25%	5	25%
3 – 5	1	5%	4	20%
6+	3	15%	0	0%
Total	9	45%	9	45%
<b>Total facilities requiring inspection</b>	20		20	

Source: Department of Natural Resources

Figure 3 indicates that:

- as at October 2008, 9 of the total of 20, or 45%, of the slaughter facility inspections were overdue.
- as at October 2007, 9 of the total 20, or 45%, of the slaughter facility inspections were overdue.

Given the Department's decision in March 2007 that all future licence issuances would no longer expire, a schedule of inspection due dates and adherence to the schedule is increasingly important to ensure that all meat processing health risks are kept at an acceptable level.

## Inspection and Licensing of Slaughter Facilities

### Inspection forms were not completed clearly or consistently

Our review of inspection forms completed for the slaughter facilities for the period 1 January 2007 to 31 October 2008 indicated the following:

- Some inspection forms were not fully completed in that certain items were left blank without any explanation as to why they were not completed.
- While we would have expected to see a “yes”, “no” or “n/a” answer on the inspection forms, the inspection forms sometimes contained such things as “—” and “?”, which resulted in a reader not being able to make a conclusion about the inspection item.

When forms are not completed clearly and consistently, there is an increased risk that a non-compliance issue will go undetected and not be factored into licence issuance, continuance or revocation.

---

The inspection form is a guide for inspectors to ensure that all items within the *Meat Inspection Regulations* are covered during the inspection process. A new inspection form was introduced during the Summer of 2008. We reviewed the inspection form and found the following:

### Increased risk of undetected non-compliance

- The previous form required inspectors to answer each item; however, the new form only requires answers or comments for non-compliance items. As a result, there is an increased risk that items on the checklist will be missed during the inspection process.

### Inspection form does not fully address Legislation

- We compared the inspection form to the *Regulations* to determine whether all areas were covered on the form introduced in the Summer of 2008. Our review indicated that the *Regulations* were not adequately addressed on the inspection form. For example, there was either inadequate reference or no specific reference to the following sections of the *Regulations* on the form:
  - Section 9(a): “*Chill rooms shall be equipped with a direct reading thermometer of known accuracy*” (inadequate reference);
  - Section 31: “*A person shall not permit an animal not intended for slaughter in a plant to be in that plant*” (no reference); and
  - Section 38: “*Hides shall not be kept in a room in which carcasses or meat are chilled or otherwise stored, cut, handled, prepared or packed*” (no reference).

**Policy manual  
does not fully  
address  
Legislation**

In addition, we compared the policy manual to the *Act* and *Regulations* to determine whether all relevant areas were covered in the manual. Our review indicated that the *Act* and *Regulations* were not adequately addressed in the policy manual because there was no specific reference to the following sections:

- Section 7 of the *Act*:

*“(1) An owner or occupier of land or premises described in section 6, and an employee of that owner or occupier, shall help an inspector in carrying out his or her duties under this Act.*

*(2) A person shall not*

*(a) hinder, obstruct or interfere with the inspector in the course of his or her duties;*

*(b) provide an inspector with false information or refuse to provide him or her with information; or*

*(c) fail to produce for inspection or seizure and detention anything that by section 6 the inspector may inspect or seize and detain.”*

- Section 5 of the *Regulations*:

*“If approved, the licence shall*

*(a) be issued as in the required form;*

*(b) continue in force until it is suspended or revoked by the director;*

*(c) not be transferred;*

*(d) be subject to the required annual licensing fee.”*

- Sections 84 to 87 of the *Regulations*:

“84. An inspector may detain meat or meat products where he or she believes on reasonable and probable grounds that there is a contravention of these regulations with respect to that meat.”

“85. Where, after a hearing, the director finds that there is a contravention of these regulations in respect of meat or meat products under detention, the director may direct that the meat or meat products be destroyed or otherwise disposed of in a manner that he or she considers advisable.”

“86. Where a person is convicted of an offence under these regulations in respect of meat or meat products that are under detention, the director may direct that the meat or meat products be destroyed or otherwise disposed of in a manner that he or she considers advisable.”

“87. Where meat or meat products are under detention, a person shall not sell, offer to sell, move, disturb, allow or cause to be moved or disturbed, receive or process such meat or meat products.”

As a result, inspectors are not being provided with adequate guidance in all areas of the *Act* and *Regulations*.

---

**One inspector had not been issued a certificate of appointment**

The *Act* requires that a certificate of appointment be signed by the Minister and issued to each inspector. Inspection certificates were issued for the first time on 12 February 2007. Prior to that, all appointments were disclosed in the Newfoundland and Labrador Gazette.

We found that during that period of our review (1 January 2007 to 31 October 2008), there was one inspector who had performed a slaughter facility inspection but who had not been issued a certificate of appointment by the Minister. In this case, the certificate of appointment was not issued until 3 December 2008.

---

### Recommendations

The Department should ensure that:

- inspections are completed on a timely basis;
- inspection forms are completed clearly and consistently;
- the new inspection form is designed to ensure that items are not missed during the inspection process;
- inspection forms and the inspector policy manual are updated to ensure that all appropriate items within the *Act* and *Regulations* are adequately addressed; and
- inspectors who perform slaughter facility inspections are issued a certificate of appointment by the Minister as required by the *Act* before conducting inspections.

### Department's Response

*As this program is the joint responsibility of the Forestry and Agrifoods Agency, for policy, program development and licensing, and the Department of Government Services, for field inspections and enforcement, this is a combined response from both departments with respect to their areas of responsibility.*

*In general terms, we acknowledge the report's overall conclusions and recommendations as helpful to the management of the program. However, there are a number of specific observations with respect to the assumptions and conclusions in your report that we would like to address.*

#### **1. Memorandum of Understanding**

*It is acknowledged that a formal document such as a Memorandum of Understanding (MOU) between the Forestry and Agrifoods Agency and the Department of Government Services would be useful in clarifying roles and responsibilities where program policy and delivery cross departmental mandates. However, there is a broader range of functions involved in this case, which includes licensing and inspection of food premises and bacteriological monitoring of water quality (dairy farms), as well as*

*environmental protection (livestock farms). The MOU is currently in final draft form and being reviewed by the departments. It is expected to be signed before the end of the fiscal year (March 2009).*

*It should be noted that the absence of an MOU does not mean that people are not clear on their primary responsibilities, nor did it preclude the implementation of a proposed meat surveillance program. This surveillance program requires further analysis, including the capacity and workload issues with respect to the resources available within the Department of Government Services. Even with the signing of the MOU, this analysis will have to be done and resource issues resolved.*

### **2. Licensing of Slaughter Facilities**

*With respect to the continuation of licenses, as explained to your auditor during the audit process, deficiencies fall into critical and non-critical categories. If, in the opinion of those employees trained and legally responsible for making these decisions (Inspectors, Food Safety Specialist, Chief Veterinary Officer), there is a food safety risk that is not being managed appropriately and which poses a risk to public safety (i.e. a critical risk) then the license will either be suspended or revoked until such time as that risk is removed. If a risk is deemed to be non-critical, staff will work with the operator on removing the risk as appropriate but the license will not necessarily be removed or suspended. This could include such examples as hand washing facilities not actually being on a kill-floor in a very small abattoir but actually being a few feet away in an adjoining room. This is technically a deficiency but not one that requires revocation of a license. The other examples given in this section and the overall report would be assessed in a similar fashion.*

*In all cases, if there is a direct risk to food safety, licenses have been suspended or revoked. As previously noted, the examples cited by the auditor do not, in our view, represent critical food safety risks. The hand washing facilities have been explained previously. The cooling of meat was related to abattoirs having coolers that were not large enough to hold a complete carcass. In such cases, they would be required to cut up the carcass before it went into the cooler, to limit their slaughter to smaller animals such as lambs (this would be stated on their permit), or to put a cooler in the kill room as a short-term temporary solution to “set” the animal before cutup. The issue of the use of appropriate chemicals was where an operator was using household dish soap and bleach for cleaning equipment rather than commercial grade cleaners and disinfectants. The question of inadequate pest control was either due to the use of wood shavings on the floor (which might attract rodents) or issues external to the plant which may attract rodents, but not the actual presence of pests.*

*We agree to having fixed dates for compliance with critical deficiencies but will not revoke licenses for facilities that have non-critical deficiencies.*

### License Expiry Dates

*We understand the value of having fixed dates by which time a facility must be inspected however we do not agree with the recommendation to having licenses expire on these fixed dates. Target dates for inspections are part of the program and all approaching inspection dates are monitored on a monthly basis. If an annual inspection is not completed by a fixed date, which might be due to any number of reasons (e.g. adverse weather, staffing issues, inability to contact an operator because they are out of province or only operate the facility seasonally), this does not mean that there is an issue with the facility. Compliance is primarily related to any identified food safety risks in the facility and the ability of the operator to manage those risks on an on-going basis.*

### **3. Inspection of Slaughter Facilities**

*It is acknowledged that documentation and the format of inspection forms has been evolving due to the need to balance having a tool that is practical for field purposes and at the same time ensuring regulatory compliance. In general, the system was established for the needs of the program but not necessarily those of an auditor. In practice, if there is ever a question on the completion of an inspection form, the inspector is contacted for a discussion to make sure that there is no ambiguity. We accept, however, that this may not create a well documented, auditable trail.*

*Every single regulation is not noted on the inspection form since sometimes one section of the Regulations covers the same issue as another but in a different manner. In addition, given that the policy manuals are directed at inspection staff, those sections related to the role of the Director (e.g. sections 5(a), 85, and 86 - as noted on pages 15 and 16 of the report) would not normally be included in this documentation. It should be noted that Section 5 (b) of the Regulations that relates to suspension of licenses is currently on the inspection form as the first sentence.*

*The forms and documentation requirements will be reviewed in consultation with the Department of Government Services to ensure the proper documentation of inspections. Revisions can be implemented early in the 2009-10 fiscal year. The policy manual will also be amended to address all sections of the Regulations.*

## Inspection and Licensing of Slaughter Facilities

*It is also acknowledged that there had been insufficient documentation on follow up visits for facilities which had been issued either full or temporary licenses in 2006. We feel comfortable at this point, however, that inspections are generally up to date and that any food safety risks existent at the time have been resolved.*

### *Inspector not Appointed*

*We acknowledge that one new inspector had not been properly appointed by ministerial letter. This was an administrative oversight and that letter of appointment was issued on December 3, 2008. It is important to note that, notwithstanding the letter of appointment; the inspector was a fully certified health inspector and properly trained and qualified to carry out these inspections. The process for identifying and appointing new inspectors will be addressed through discussion with Government Services.*

---

## Inspection and Licensing of Slaughter Facilities

**CHAPTER  
3  
SPECIAL REPORTS**

### Report under Section 12 of the Auditor General Act

#### House of Assembly

Section 12(1) of the *Auditor General Act* states that, “*The auditor general shall as he or she considers necessary but at least annually report to the House of Assembly on...(b) whether, in carrying out the work of the office, the auditor general received all the information including reports and explanations the auditor general required.*”

The requirement to provide my Office with unrestricted access to such information comes from section 17 of the *Act* which states that, “*Except as provided by another Act that expressly refers to this section, every department of government, every agency of the Crown and every Crown controlled corporation shall furnish the auditor general with information regarding its power, duties, activities, organization, financial transactions and methods of business as the auditor general requires, and the auditor general shall be given access to all books, accounts, financial records, reports, electronic data processing records, explanations, files and all other papers, things or property belonging to or in use by the department, agency of the Crown or Crown controlled corporation and necessary to the performance of the duties of the auditor general under this Act.*”

In January 2008, our Office decided to conduct a review of operations at the Canada - Newfoundland and Labrador Offshore Petroleum Board (CNLOPB). On 26 February 2008, we issued a special report to the House of Assembly relating to the refusal of the CNLOPB to provide unrestricted access to information necessary to conduct our intended review.

#### Access to Reports

Special reports issued by the Office of the Auditor General are available on the Office's web site at: <http://www.gov.nl.ca/ag/reports.htm>.

