REPORT OF THE AUDITOR GENERAL

To the House of Assembly

On Reviews of Departments and Crown Agencies

2012

Office of the Auditor General
Newfoundland and Labrador

The Auditor General reports to the House of Assembly on significant matters which result from the examinations of Government, its departments and agencies of the Crown. The Auditor General is also the independent auditor of the Province's financial statements and the financial statements of many agencies of the Crown and, as such, expresses an opinion as to the fair presentation of their financial statements.

VISION

The Office of the Auditor General is an independent Office of the Legislature which, through audit, adds credibility to information provided by Government to the House of Assembly so that the Members of the House of Assembly can hold Government accountable for the prudent use and management of public resources.

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January 2013

The Honourable Ross Wiseman, M.H.A.
Speaker
House of Assembly

Dear Sir:

In compliance with the *Auditor General Act*, I have the honour to submit, for transmission to the House of Assembly, my Report on Reviews of Departments and Crown Agencies for 2012.

Respectfully submitted,

TERRY PADDON, CA
Auditor General

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COMMENTS OF THE AUDITOR GENERAL

Comments of the Auditor General

This is my first report as Auditor General on Reviews of Departments and Crown Agencies. This report reflects the work of the Office of the Auditor General over the past year which focuses on specific programs within Government departments and agencies. A separate report is issued related to the Consolidated Summary Financial Statements for the year ended March 31, 2012.

The *Auditor General Act* requires that I report, at least annually, to the House of Assembly on the work of the Office. This report, and the report on the Consolidated Summary Financial Statement of the Province, fulfill the requirements of the *Auditor General Act*.

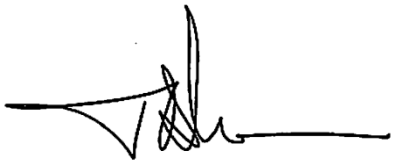
We plan our work based on a risk assessment of various programs administered by Government departments or through crown agencies. We also receive information and requests from individuals outside our office which we evaluate to determine whether we will undertake work in a particular area. This report provides recommendations resulting from our review of the following 13 different programs and crown agencies:

- Occupational Health and Safety in Government
- College of the North Atlantic
- Income Support and Accounts Receivable
- Pesticides Control
- Newfoundland and Labrador Liquor Corporation - Regulatory Services
- HealthLine
- Newfoundland and Labrador Centre for Health Information
- Western Regional Health Authority
- Monitoring of Municipalities
- Special Assistance Grant Program
- Forest Industry Diversification Program
- Government Purchasing Agency - *Public Tender Act* Exceptions
- Insurance Adjusters, Agents and Brokers Regulation

The information is provided to Members of the House of Assembly for their consideration. Recommendations contained in this report are intended to strengthen the overall level of accountability within Government and help ensure a greater level of stewardship of public money. I look forward to continued collaboration with the Public Accounts Committee as they consider the recommendations contained in this Report.

Comments of the Auditor General

I wish to acknowledge the cooperation and assistance that my Office has received from Government departments and agencies during the conduct of our reviews. I also wish to thank the staff of the Office of the Auditor General for their support, dedication and professionalism throughout the year.



TERRY PADDON, CA
Auditor General

CHAPTER 2

OUR OFFICE

Our Office

The Office of the Auditor General operates from two locations - Mount Pearl and Corner Brook. The staff of the Office contribute, as a team, in the preparation of the 2012 Report on Reviews of Departments and Crown Agencies.

The following is an alphabetical list of staff of the Office of the Auditor General as of December 2012:

Nicole Abbott
Marc Blake
Paul Burggraaf, CAPM
Greg Butler
Keith Butt, CA
John Casey, CMA
Jeff Cook
Gertrude Critch
Tony Dingwell, CA
Lisa Duffy, CA
Robert George
Gregg Griffin
Cayla Hillier
Jeremy Hynes
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Brenda Kavanagh
Trena Keats, CA
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Melissa Lewis
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James Mallard, CGA
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Thomas Pritchard
Pauline Reynolds, CMA
Sandra Russell, CA
Allison Simms
Lindy Stanley, CA
Brad Sullivan, CA
Scott Walters, FCA
David White, FCGA
Tony Wiseman

Our Office

CHAPTER 3

REVIEWS OF DEPARTMENTS AND CROWN AGENCIES

PART 3.1

EXECUTIVE COUNCIL - HUMAN RESOURCE SECRETARIAT

OCCUPATIONAL HEALTH AND SAFETY IN GOVERNMENT

Executive Summary

The *Occupational Health and Safety Act* (the *Act*) and *Regulations* require that employers establish and maintain written occupational health and safety (OHS) policies and programs at all provincial workplaces.

In 2006, Government established Strategic Human Resource Management Units (SHRMUs) to, among other things, assist Departments in developing, implementing and managing their OHS programs.

On June 1, 2009, Government approved an OHS policy for departments and selected agencies (Departments) requiring that they establish and maintain written OHS policies and programs and comply with OHS legislation at all provincial workplaces.

Our review indicated that OHS programs had not been established as required, Departments were not in compliance with the requirements of the *Act* and *Regulations* and monitoring was not being carried out. Therefore, it is possible that government employees were not operating in a safe work environment.

OHS Programs Not Implemented

Our review indicated that only 13 of the 28 (46.4%) Departments had developed and implemented written OHS programs as required under Government's OHS policy.

Departments Not Complying with the *Occupational Health and Safety Act* and *Regulations*

Our review indicated that OHS committees and worker health and safety representatives (Worker Representatives) were not always established and trained in the workplaces of Departments and that OHS committees did not always carry out their responsibilities as required under the *Act* and *Regulations*.

During the calendar year 2010, we found instances where OHS committees:

- were not established as required;
- were not trained as required;
- did not meet quarterly as required;

- did not meet at all; and

- did not carry out workplace inspections to ensure that safe working conditions were being maintained.

We also found instances where Worker Representatives were not established and trained as required.

We could not determine whether all Departments were complying with the *Act* and *Regulations* during the calendar year 2011 with respect to the establishment, training and responsibilities of OHS committees and Worker Representatives, as the 2011 information we requested in December 2012 could not be readily provided by some Departments.

Occupational Health and Safety Not Monitored by SHRMUs

SHRMUs are responsible for ensuring that OHS programs are effective and that Departments are complying with the *Act* and *Regulations.*

We asked the SHRMUs to provide us with the information we required to determine whether Departments were complying with OHS legislation during the calendar year 2010. We found that SHRMUs had to obtain some or all of the workplace information from their Departments and that several months had passed before we received the information from some of the SHRMUs. SHRMUs cannot effectively monitor Department compliance with the *Act* and *Regulations* as they do not have ready access to the workplace information that is necessary to determine such compliance.

Monitoring activity includes conducting OHS compliance audits at Department workplaces. We found that most SHRMUs did not carry out compliance audits at Department workplaces to ensure those workplaces were complying with their OHS programs and with OHS legislation.

In addition, on March 31, 2011, once the Social Sector SHRMU had developed a draft OHS program for its Departments, it transferred full responsibility for occupational health and safety to the Departments, even though some Departments had not yet implemented their OHS programs. Contrary to other SHRMUs, the Social Sector SHRMU indicated that its role in OHS was more coordination than monitoring. This may affect the Department's ability to implement an effective OHS program.

Occupational Health and Safety Reporting is Inadequate

Government policy requires that Departments report to the Human Resource Secretariat (HRS) on an annual basis regarding OHS performance. Government policy also requires that the HRS support OHS corporately within the public service by *"…reviewing and reporting information regarding departmental programming and activities with respect to occupational health and safety"*.

We found that some Departments did not report OHS information to the HRS for the fiscal years ended March 31, 2010 and March 31, 2011. Furthermore, the OHS information that was reported to the HRS was not complete, sufficient or appropriate for determining OHS performance, and therefore not useful to the HRS or Cabinet Secretariat for planning and decision making purposes.

For the fiscal year ended March 31, 2012, only 9 of the 28 (32.1%) Departments had reported OHS information to the HRS. This is contrary to Government policy which requires that Departments report annually to the HRS on OHS performance and that the HRS review such performance.

Background

The *Occupational Health and Safety Act* (the *Act*) and *Regulations* require that employers establish and maintain written occupational health and safety (OHS) policies and programs at all provincial workplaces. Written OHS policies and programs increase workplace health and safety, demonstrate employer commitment and specify employer and employee accountability and responsibility for workplace health and safety. OHS programs provide the plans and systems for such things as:

- training workers and supervisors in safe work practices;
- establishing and operating OHS committees;
- recognizing, evaluating and controlling hazards; and
- emergency responses.

In 2006, Government was aware that there were unacceptable levels of compliance with OHS legislation throughout most Departments and that OHS policy and program frameworks were not in place. Government established Strategic Human Resource Management Units (SHRMUs) to, among other things, assist Departments in developing, implementing and managing their OHS programs to ensure they included all the elements required under the *Act* and *Regulations.*

On June 1, 2009, Government approved an OHS policy which applies to all Departments and their employees. Responsibilities under the policy are as follows:

- Departments must comply with the *Act* and *Regulations* and adhere to specific responsibilities identified in the legislation, including developing, implementing and evaluating OHS programs. Departments must also report to the Human Resource Secretariat (HRS) on an annual basis regarding OHS performance;

- managers, supervisors and employees must comply with the *Act* and *Regulations* and adhere to specific responsibilities identified in the legislation, including cooperating with each other in the interest of occupational health and safety; and

- the HRS must support occupational health and safety corporately within the Government, such as providing support for program development and training, as well as, reviewing and reporting OHS information obtained from Departments.

The HRS is responsible for all corporate human resource functions within Government, including occupational health and safety. There are 6 SHRMUs within the HRS that support 28 Departments in the area of compliance with the *Act* and *Regulations.*

Table 1 shows the SHRMUs and the number of Departments, workplaces and employees they supported as at December 31, 2010.

Table 1

Occupational Health and Safety in Government
SHRMUs and the Number of Departments, Workplaces and Employees Supported
As at December 31, 2010

SHRMU		Departments	Number of	
			Workplaces	Employees
Child, Youth and Family Services	1	Department of Child, Youth and Family Services	3	64
Sub Total				
Executive Council	1	Department of Business	2	35
	2	Department of Finance	6	428
	3	Department of Labrador and Aboriginal Affairs	2	27
	4	Cabinet Secretariat	5	59
	5	Communications Branch	1	9
	6	Government House	1	13
	7	Intergovernmental Affairs Secretariat	1	17
	8	Office of the Chief Information Officer	6	318
	9	Public Service Commission	1	56
	10	Public Service Secretariat	7	66
	11	Rural Secretariat	3	17
	12	Women's Policy Office	1	10
Sub Total			**36**	**1,055**
Justice	1	Department of Justice	102	1,521
Sub Total				
Resource Sector	1	Department of Environment and Conservation	36	405
	2	Department of Fisheries and Aquaculture	21	129
	3	Department of Innovation, Trade and Rural Development	24	205
	4	Department of Natural Resources	52	802
	5	Department of Tourism, Culture and Recreation	34	480
Sub Total			**167**	**2,021**
Social Sector	1	Department of Education	7	269
	2	Department of Government Services	25	520
	3	Department of Health and Community Services	4	239
	4	Department of Human Resources, Labour and Employment	31	786
	5	Department of Municipal and Provincial Affairs	5	128
	6	Fire and Emergency Services	4	27
	7	Government Purchasing Agency	1	12
	8	Labour Relations Agency	3	36
Sub Total			**80**	**2,017**
Transportation and Works	1	Department of Transportation and Works	117	1,654
Sub Total				
Total	**28**		**505**	**8,332**

Source: Human Resource Secretariat

As indicated in Table 1, at December 31, 2010, the 6 SHRMUs supported 8,332 employees in 505 workplaces throughout 28 Departments of Government. We were unable to update Table 1 for the year ended December 31, 2011 as some Departments could not readily provide the information we required.

Objectives and Scope

Objectives

The objectives of our review were to determine whether:

- Departments were complying with the *Act* and *Regulations*;
- SHRMUs were supporting Departments in developing, implementing and managing their OHS programs; and
- the HRS was reviewing and reporting the OHS performance of Departments.

Scope

Our review covered the period April 1, 2006 to December 31, 2011. Our review included an analysis of the occupational health and safety programs and information obtained from the SHRMUs and the HRS. In addition, we held discussions with officials of the HRS and the SHRMUs.

We completed our review in December 2012.

Detailed Observations

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

1. Occupational Health and Safety Programs
2. Compliance with the *Occupational Health and Safety Act* and *Regulations*
3. Occupational Health and Safety Monitoring and Reporting

1. Occupational Health and Safety Programs

Overview

A written OHS **policy** is required at provincial workplaces where less than 10 workers are employed. A written OHS **program** is required at provincial workplaces where 10 or more workers are employed. The *Regulations* state that an OHS Program *"…shall be signed and dated by the employer…"* and requires that the OHS program include elements such as:

- a statement of the employer's commitment to cooperate with the OHS committee and workers in the workplace with respect to OHS;
- a statement of the respective responsibilities of the employer, supervisors, OHS committee and workers with respect to OHS;
- a plan for orienting and training workers and supervisors in safe work practices necessary to eliminate, reduce or control hazards in the workplace;
- provisions for establishing and operating an OHS committee, including employer and Worker Representatives;
- a system for the recognition, evaluation and control of hazards;
- written safe work procedures appropriate to the hazards in the workplace;
- an emergency response plan; and
- a provision for monitoring the implementation and effectiveness of the OHS program.

SHRMUs are responsible for assisting the Departments in developing, implementing and managing their OHS programs. We reviewed OHS policy and program information obtained from the SHRMUs that supported Government Departments. We held discussions with SHRMU and HRS officials.

Our review identified the following:

OHS programs not implemented

Only 13 of 28 (46.4%) Departments had implemented written OHS programs as required under Government's OHS policy. We found the following related to specific SHRMUs:

- The OHS program provided by the CYFS SHRMU was implemented and included the elements required under OHS legislation and was approved by the Department in October 2012.

- The OHS programs provided by the Resource Sector SHRMU were implemented and included the elements required under OHS legislation and were approved by the Departments in May and November 2012.

- The OHS program provided by the Justice SHRMU was implemented and included the elements required under OHS legislation, however, the program had not been formally approved by the Department.

- The Executive Council SHRMU provided us with a sector wide draft OHS program for the 12 Departments it supported. Our review indicated that while the draft program included elements required under OHS legislation, it was still under review and had not been approved for implementation in the Departments.

- The Social Sector SHRMU provided us with a sector wide draft OHS program for the 8 Departments it supported. Our review indicated that, while the draft program included elements required under the OHS legislation, it had not been approved for implementation in 3 of the 8 (37.5%) Departments.

- The Transportation and Works SHRMU provided us with an OHS program that had been implemented since 2004. Our review indicated that the OHS program did not include the legislative requirement that the program be reviewed and revised if necessary, every three years. At the time of our review, the SHRMU indicated they were in the process of carrying out their first review and revision of the OHS program since it was approved in 2004.

OHS programs had not been fully established, therefore, it is possible employees were not operating in a safe work environment.

Recommendation

SHRMUs and Departments should ensure that OHS programs are developed and implemented as required under Government policy and in accordance with the *Occupational Health and Safety Act* and *Regulations.*

2. Compliance with the *Occupational Health and Safety Act* and *Regulations*

Overview

Departments are responsible for ensuring that OHS committees and worker health and safety representatives (Worker Representatives) are established in the workplace and carry out their responsibilities in accordance with the *Act* and *Regulations.* The *Act* states:

- *"Where 10 or more workers are employed at a workplace, the employer shall establish an occupational health and safety committee to monitor the health, safety and welfare of the workers employed at the workplace."*

- *"Where less than 10 workers are employed at a workplace, the employer shall ensure that a worker not connected with the management of the workplace is designated as the worker health and safety representative to monitor the health, safety and welfare of workers at the workplace."*

We reviewed workplace information obtained from the SHRMUs and held discussions with SHRMU officials. We identified issues with:

A. The Establishment and Training of OHS Committees and Worker Representatives
B. OHS Committee Responsibilities

2A. The Establishment and Training of OHS Committees and Worker Representatives

Introduction

Where OHS committees and Worker Representatives are established in the workplace, the *Act* and *Regulations* states that they be trained in accordance with requirements of the Workplace, Health and Safety Compensation Commission (WHSCC).

We reviewed information provided by the SHRMUs in connection with the OHS committees and Worker Representatives established in Department workplaces during the calendar year 2010. Our review indicated the following:

OHS committees and Worker Representatives not established and trained

OHS committees and Worker Representatives were not always established and trained in the workplaces of Departments as required under the *Act* and *Regulations.* Table 2 shows the SHRMUs, the total number of workplaces they supported and whether there were OHS committees or Worker Representatives established and trained as required during 2010.

Table 2

Occupational Health and Safety in Government
Number of OHS Committees/Representatives Required, Established and Trained
For the Calendar Year 2010

SHRMU	Number of Workplaces Supported						
	OHS Committee (10 or more workers in workplace)			Worker Representative (less than 10 workers in workplace)			Total
	Required	Established	Trained	Required	Established	Trained	
Child, Youth and Family Services	2	1	1	1	1	1	3
Executive Council	22	20	19	14	14	14	36
Justice	25	24	21	77	25	19	102
Resource Sector	44	43	36	123	87	38	167
Social Sector	42	40	29	38	38	30	80
Transportation and Works	65	65	58	52	52	41	117
Total	**200**	**193**	**164**	**305**	**217**	**143**	**505**

Source: Strategic Human Resource Management Units (SHRMUs)
n/a: Information not available

As Table 2 indicates, 200 of the 505 (39.6%) workplaces had 10 or more workers during 2010. We found the following:

- in 7 of the 200 (3.5%) workplaces, OHS committees were not established as required; and
- in 29 of the 193 (15%) workplaces where there was an OHS committee in place, the committee members were not trained as required.

As Table 2 indicates, 305 of the 505 (60.4%) workplaces had less than 10 workers. We found the following:

- In 88 of the 305 (28.9%) workplaces, Worker Representatives were not established as required. In 48 of the 88 (54.5%) workplaces where there was no Worker Representative, there was only one worker at the workplace and Departments indicated that, in these workplaces, the Workplace Health, Safety and Compensation Commission (WHSCC) had advised them that no Worker Representative was required. However, our review indicated that the position of the WHSCC on this matter contradicts the requirements of OHS legislation.

- In 74 of the 217 (34.1%) workplaces where there was a Worker Representative established, the Worker Representative was not trained as required.

We could not determine whether all Departments were complying with the *Act* and *Regulations* with respect to the establishment and training of OHS committees and Worker Representatives during the calendar year 2011 as the 2011 information we requested in December 2012 could not be readily provided by some Departments.

2B. OHS Committee Responsibilities

Introduction

The *Act* and *Regulations* require that where an OHS committee is established in the workplace, the committee must:

- meet at least once every 3 months;

- record and provide minutes of committee meetings to the WHSCC; and

- participate in workplace inspections that the employer is required to conduct to ensure safe working conditions are maintained.

We reviewed information provided by the SHRMUs in connection with the responsibilities of OHS committees that were established in Department workplaces during 2010. Our review indicated the following:

OHS committees not carrying out responsibilities as required

OHS committees did not always carry out their responsibilities as required under the *Act* and *Regulations*. We found the following:

- In 153 of the 193 (79.3%) workplaces where there was an OHS committee established, the committee did not meet quarterly as required. Furthermore, in 19 of the 153 (12.4%) workplaces where the committee did not meet quarterly, the committee had not met at all.

- In 15 of the 174 (8.6%) workplaces where OHS committees held meetings, the OHS committee did not record and provide minutes of the meetings to the WHSCC.

- In 60 of the 193 (31.1%) workplaces where there was an OHS committee established, the committee did not carry out any workplace inspections to ensure that safe working conditions were being maintained.

We could not determine whether all Departments were complying with the *Act* and *Regulations* with respect to OHS committee responsibilities during the calendar year 2011 as the 2011 information we requested in December 2012 could not be readily provided by some Departments.

Departments were not complying with the *Act* and *Regulations*, therefore, it was possible government was not ensuring employees were operating in a safe working environment.

Recommendation

Departments should comply with the *Occupational Health and Safety Act* and *Regulations.*

3. Occupational Health and Safety Monitoring and Reporting

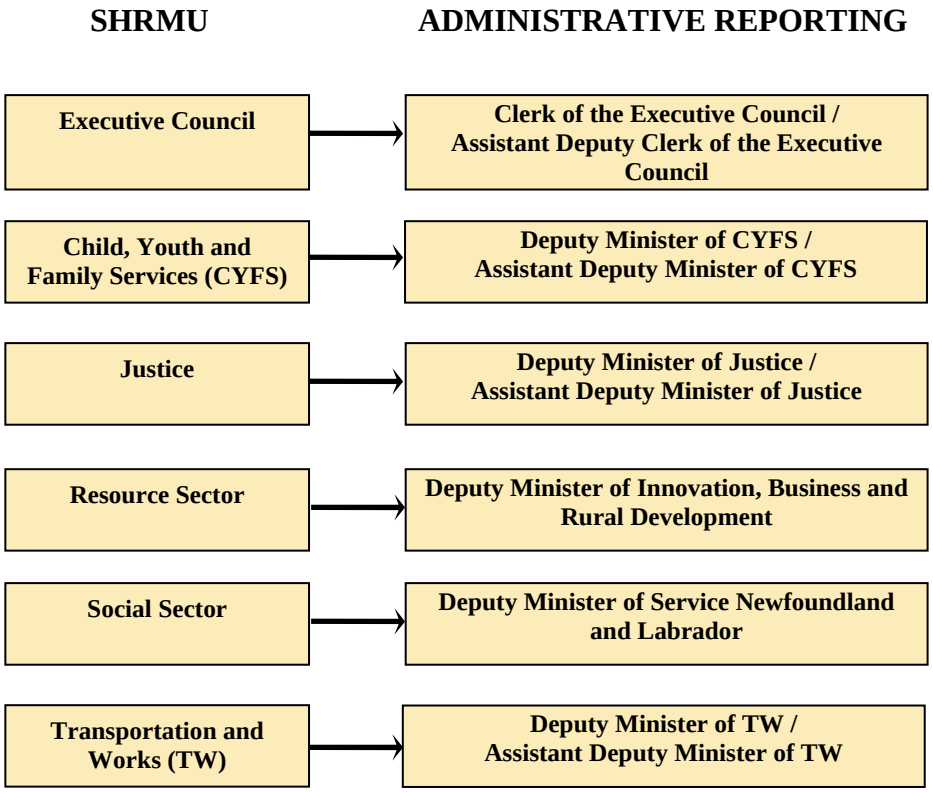
Overview

SHRMUs monitor the OHS performance of Departments to ensure that OHS programs and services are effective and comply with the *Act* and *Regulations*. Departments are required to report annually to the HRS regarding their OHS performance.

Up until July 30, 2012, each SHRMU reported administratively to one Department of Government. Figure 1 shows the Departments to which the SHRMUs reported.

Figure 1

Occupational Health and Safety in Government
Departments to which the SHRMUs Reported
As of July 30, 2012



Source: The Human Resource Secretariat

On July 31, 2012 the SHRMUs began reporting to the Assistant Deputy Minister responsible for the HRS Client Services Division, however, they continue to communicate with the Deputy Ministers of Departments on administrative matters.

We reviewed OHS information reported to the HRS by Departments and we held discussions with HRS and SHRMU officials. We identified issues with:

A. Monitoring the Effectiveness of OHS Programs
B. OHS Information Reported by Departments

3A. Monitoring the Effectiveness of OHS Programs

Introduction

SHRMU Integrated Disability Managers (IDMs) are responsible for monitoring the Departments they serve to ensure that OHS programs and services are effective and comply with the *Act* and *Regulations*. OHS consultants were hired by some SHRMUs to assist the IDMs in carrying out their responsibilities. Monitoring activity includes conducting OHS compliance audits at Department workplaces to ensure compliance with the *Act* and *Regulations*, including whether:

- OHS programs contained the required elements;
- OHS committees and workers were established and trained;
- OHS committees met regularly and kept minutes; and
- Departments were complying with orders that were issued by the OHS Branch of Service NL.

Our review indicated the following:

OHS information was not readily available

We asked the SHRMUs to provide us with the information we required to determine whether Departments were complying with OHS legislation during the calendar year 2010. Information we requested from the SHRMUs included:

- the number of workplaces and the number of workers at each workplace;
- the names and OHS training certificate numbers for OHS committee members and Worker Representatives at each workplace;
- the dates of OHS committee meetings and whether minutes were forwarded to the WHSCC; and
- the dates of workplace inspections and whether there was documentation supporting the workplace inspections that were carried out.

We found that the SHRMUs had to obtain some, or all, of this information from their Departments and that several months had passed before we received the information from some of the SHRMUs. SHRMUs cannot effectively monitor Department compliance with the *Act* and *Regulations* when they do not have ready access to the information that is necessary to determine such compliance.

In December 2012, we requested that SHRMUs provide us with the same information for the calendar year 2011. However, some SHRMUs could not readily provide us with the required information.

In addition, on March 31, 2011, once the Social Sector SHRMU had developed a draft OHS program for its Departments, it transferred full responsibility for occupational health and safety to the Departments, even though some Departments had not yet implemented their OHS programs. Contrary to other SHRMUs, the Social Sector SHRMU indicated that its role in OHS was more coordination than monitoring. This may affect the Department's ability to implement an effective OHS program.

Compliance audits were not carried out

During the calendar year 2010, 4 of the 6 (66.7%) SHRMUs indicated that they did not carry out compliance audits at Department workplaces to ensure the workplaces were complying with the *Act* and *Regulations*. Only the Justice SHRMU and the Transportation and Works SHRMU indicated that they had carried out compliance audits at Department workplaces during 2010.

3B. OHS Information Reported by Departments

Introduction

Government policy requires that Departments report to the HRS on an annual basis regarding OHS performance. Government policy requires that the HRS support OHS corporately within the public service, such as "*…reviewing and reporting information regarding departmental programming and activities with respect to occupational health and safety"*.

Each year, Departments provide the HRS with an annual Human Resource Accountability Report (Accountability Report). The Accountability Report provides the HRS with information regarding key human resource activities occurring in the Departments, including activities in the area of occupational health and safety. Accountability Reports prepared by the Departments are based on standardized templates provided by the HRS which are meant to guide Departments in the information they should be collecting and providing to the HRS. Information provided in the Accountability Reports is used by the HRS for planning purposes and summary reports are provided to Cabinet Secretariat in support of their decision making.

Our review indicated the following:

OHS information reported in 2009-10 was not complete or useful

As at March 31, 2010, 25 of the 28 (89.3%) Departments reported information to the HRS regarding their OHS performance, as required by Government's OHS policy.

The OHS information reported to the HRS by the 25 Departments for the fiscal year ended March 31, 2010 was not complete. Furthermore, the OHS information that was reported was not sufficient or appropriate for determining OHS performance, and therefore not useful to the HRS or Cabinet Secretariat for planning and decision making purposes. We found that:

- 11 of the 25 (44%) Departments that did report to the HRS, did not provide information with regard to the status of their OHS programs.

- While Departments reported the number of OHS committees that were in place, they did not report the number of workplaces where OHS committees were required to be in place. As a result, the information reported was not useful to the HRS for the purpose of determining OHS performance in this area.

- 9 of the 25 (36%) Departments that did report to the HRS, did not provide information to indicate whether their OHS committees were complying with the *Act* and *Regulations*.

- 11 of the 25 (44%) Departments that did report to the HRS, did not provide information to indicate whether the OHS committees were trained in occupational health and safety; and

- 11 of the 25 (44%) Departments that did report to the HRS, did not provide information to indicate the number of inspections their OHS committees had carried out. Furthermore, when Departments did provide the number of inspections carried out, there was no indication as to whether those inspections were sufficient or appropriate to reduce the health and safety risk in the workplace.

OHS information reported in 2010-11 was not useful

As at March 31, 2011, 26 of the 28 (92.9%) Departments reported information to the HRS regarding their OHS performance, as required by Government's OHS policy.

The completeness of OHS information reported to the HRS by the 26 Departments for the fiscal year ended March 31, 2011 had improved over 2009-10. However, the information reported was still not sufficient or appropriate for determining OHS performance, and therefore not useful to the HRS or Cabinet Secretariat for planning and decision making purposes. We found that:

- While Departments reported the number of OHS committees that were in place, they did not report the number of workplaces where OHS committees were required to be in place. As a result, the information reported was not useful to the HRS for the purpose of determining OHS performance.

- While Departments did provide the number of inspections carried out, there was no indication as to whether those inspections were sufficient or appropriate to reduce the health and safety risk in the workplace.

OHS information not reported in 2011-12

The HRS indicated that the template for the Accountability Report had changed for the March 31, 2012 report in that OHS-related information was reported only if occupational health and safety was identified by Departments as one of their top three priorities or challenges. The HRS indicated that only 9 of the 28 (32.1%) Departments identified occupational health and safety as one of their top three priorities and therefore included OHS information in their March 31, 2012 Accountability Reports. This is contrary to Government policy which requires that Departments report annually to the HRS on OHS performance and that the HRS review such performance.

Monitoring of OHS programs was not being carried out, therefore, it is possible government was not ensuring employees are operating in a safe working environment.

Recommendations

SHRMUs should monitor the Departments they support to ensure that OHS programs are effective and that there is compliance with the *Occupational Health and Safety Act* and *Regulations*.

Departments should provide the HRS with sufficient and appropriate information for determining OHS performance.

Secretariat's Response

The report primarily contains information for the calendar year 2010 which had been submitted to the Office of the Auditor General (OAG) in 2011-12. A request for additional information, for the calendar year 2011, was made by the OAG on December 20, 2012, and due on January 4, 2013. Information was forwarded to the OAG by Strategic Human Resource Management (SHRM) units, however, due to the restricted timeline, the information could not be fully confirmed by the 28 departments/agencies. As a result, the OAG determined this information would not be included in the report.

The Human Resource Secretariat and the Provincial Government departments and agencies recognize the significance of the issues related to Occupational Health and Safety. It concurs with the information outlining the status of activities relating to OHS in 2010. Since the original data was collected, there have been improvements in the areas outlined by the report.

1. *Since 2010, there has been considerable effort in developing and revising OHS programming within the Provincial Government. Over the last two years, many of the departments and agencies outlined in the report have developed or completely revised the program manuals which existed in 2010. As an example, the report indicated that 15 departments had not implemented written OHS programs. The Executive Council SHRM unit which supports 12 of those 15 departments and agencies revised their OHS programming in the third quarter of 2012 and is currently going through the final stages of approval.*

2. *Since 2010, there has been a concerted effort to improve committee training, membership and meeting requirements as outlined in the report. For example, over the last two years, SHRM units have implemented the best practice of providing training to individuals where they are the sole employee. As was indicated in the OAG report, it is the opinion of the OHS Division of Service NL that this initiative exceeds the intent of the OHS Act and Regulations.*

3. *Since 2010, there have been changes to monitoring efforts in the area of Occupational Health and Safety.*

    a. *In 2012, the Human Resource Secretariat, in partnership with SHRM units, Departments and the WHSCC, developed a strategy to complete OHS audits on an annual basis or as recommended by the WHSCC auditor. This initiative is currently in the final stages of executive review and if approved will be implemented in the coming months.*

    b. *In 2011-12, the annual Human Resource Secretariat accountability report required departments/agencies to identify its top three human resource issues and challenges. The template for the accountability report had changed from prior years and the 2011-12 report reflected a state of transition with respect to collecting human resource information. As such, in 2011-12, OHS-related information was reported in this context only if occupational health and safety was identified by the department as one of their top three priorities or challenges.*

    To compliment this report, the departments and agencies were also provided with a detailed OHS quarterly reporting template in 2011-12 which provides detailed OHS information in preparation for the 2012-13 accountability report.

4. *Since 2010, there have been a number of OHS related efforts completed in the departments and agencies of the Provincial Government, not outlined in the OAG report. These would include but not be limited to policy development and/or completion of :*

    - *Working alone policies*
    - *Accident investigations*
    - *Hearing Loss policies*
    - *Risk assessments*
    - *Workplace Violence Prevention Programming*
    - *OHS links on departmental websites*
    - *Confined space assessments*
    - *Ergonomic assessments*
    - *OHS Training including: Fall Arrest Training, WHMIS, First Aid, Use of Force, OHS Manual Familiarization, Fire Warden/Deputy Warden, Fire Extinguisher, Site Specific Safety Plan Training, Safety and the Supervisor Training, Safety for All Training, and Knuckle Boom Training*

- *Monitoring of OHS orders*
- *Development of Communication Strategies*
- *OHS Safety Moments*
- *Onboarding/Student Orientation (OHS component)*
- *NAOSH Week Initiatives*
- *Inspection Program (including a revision to the Inspection Form)*
- *Accident Investigation Program (including a revision to the Accident Investigation Form)*
- *Safe Work Practice Development, Review and Updates*
- *Prescription Safety Eyewear Program*
- *Hearing Conservation Program*
- *Marine Fatigue Management Program*
- *H1N1 Pandemic Preparedness*
- *Job Hazard Analysis*
- *Principal Contractor Strategy including revisions of the Master Safety Specifications and Contractor Safety Reporting Structure*
- *Recruitment of the Fire Protection Officer position*
- *Fire and Life Safety Inspections (ongoing)*
- *Evacuation Planning*
- *Fire and Life Safety Newsletters*
- *Visitor Safety Policy*
- *High Visibility Apparel Policy*
- *Revision of forms including Hazard Assessment Form, Work Refusal Form and Tool Box Meeting Forms*
- *Cell Phone Use and Driving Policy*
- *Assessment of Traffic Control Manual*
- *Creation and recruitment of OHS Officer III (Air Services Division)*

The Human Resource Secretariat would like to thank your office for its review of the OHS programming within government. We will continue to work with our departments and agencies to ensure the environments in which our employees work are healthy and safe.

PART 3.2

DEPARTMENT OF ADVANCED EDUCATION AND SKILLS

COLLEGE OF THE NORTH ATLANTIC

Executive Summary

During the 2012 fiscal year, the College of the North Atlantic (the College) employed 2,002 staff (1,265 instructional staff and 737 administrative and support staff) on a full or part-time basis. Of these, 478 were employed at the Qatar campus. For the fiscal year 2012, the College spent $113.3 million on salaries and employee benefits.

The *College Act, 1996* requires the College to make policies to govern the organization, administration and operation of the College that adhere to the personnel administrative procedures of the Province unless otherwise approved by the Minister of Advanced Education and Skills. In addition, the College is required to comply with the *Public Service Commission Act* which states that recommendations for appointments to and promotions within the public service shall be based on merit principles. Merit principles guide the recruitment and selection process through fairness, equity, transparency, efficiency and effectiveness.

Our review of compensation and recruitment practices at the College identified issues relating to recruitment, file documentation and compensation.

Recruitment

Our review of job competitions identified instances where:

- the required job analysis was not completed;
- positions were not always classified;
- positions were filled where the minimum qualifications were not met;
- it appeared qualified candidates were screened out from the interview and job competition;
- the Selection Board Report was not completed to support the decision; and
- upscale hiring was not appropriately approved.

File Documentation

Our review also identified instances where the required documentation was not always on file. For example:

- assessment matrix forms not always completed or signed;
- reference check forms not on file;
- confidentiality statements not signed;
- appointment letters or contracts not signed;
- orientation checklists not completed;
- certificates of conduct not on file; and
- conflict of interest forms not complete.

Compensation

Our review identified issues with employee compensation, including relocation expenses, and employee leave and overtime. Specifically:

- relocation expenses were not always properly reimbursed to employees;
- employees had overdrawn their leave and overtime balances;
- documentation to support leave and overtime transactions were not always on file;
- overtime was not always approved in advance of overtime worked; and
- in one instance, termination benefits were paid out over 2 years to lessen taxes payable by an employee.

Background

Overview

The College of the North Atlantic (the College) is the Province's only public post-secondary college. For the 2010-11 academic year, the College had a total student enrolment of 24,720 attending 17 campuses in the Province and 2,481 attending the campus in the State of Qatar. The College offers over 100 full-time diploma and certificate programs, over 60 apprenticeship programs, various contract training and community education courses, and over 200 distance education courses. The College employs approximately 2,000 full and part-time employees. Figure 1 shows the location of the 17 Provincial campuses.

Figure 1

College of the North Atlantic
Location of Provincial Campuses

Financial position

Table 1 summarizes the financial position of the College for the fiscal years 2010 through to 2012.

Table 1

College of the North Atlantic
Financial Position
Fiscal Years Ended March 31
($000s)

	2010	2011	2012
Financial Assets			
Cash	$ 41,765	$ 22,865	$ 11,335
Receivables	13,255	17,369	12,504
Liabilities			
Payables and accruals	(13,718)	(16,684)	(11,450)
Deferred revenue	(6,451)	(5,191)	(5,907)
Deferred capital contributions	(6,573)	(9,831)	(13,406)
Due to Qatar Campus	(22,858)	(8,603)	(2,143)
Vacation entitlement	(7,805)	(8,598)	(9,474)
Severance	(13,640)	(14,656)	(15,376)
Net financial assets (debt)	**(16,025)**	**(23,329)**	**(33,917)**
Non-financial assets			
Tangible capital assets	20,889	25,508	28,032
Prepaid expense	1,263	1,445	1,581
Inventory	1,336	1,366	1,387
Accumulated Surplus (deficit)	**$ 7,463**	**$ 4,990**	**$ (2,917)**

Source: Audited Financial Statements

As at March 31, 2012, the College reported a net debt of $33.9 million and an accumulated deficit of $2.9 million.

Operating results

Table 2 provides an overview of revenue and expenses of the College for fiscal years 2010 through to 2012.

Table 2

College of the North Atlantic
Revenues and Expenses
Fiscal Years Ended March 31
($000s)

	2010	2011	2012
Revenue			
Grant-in-aid	$ 80,395	$ 80,624	$ 84,106
Facilities	2,441	3,427	3,831
Administration	161	324	319
Instructional	25,681	29,405	24,871
Student services	671	735	711
Information technology	227	-	-
Resale	4,666	4,909	4,490
Apprenticeship	2,811	3,585	3,720
Continuing education	782	853	929
Contracts	7,891	6,731	5,509
International	979	1,155	1,156
Special projects	6,433	2,381	3,007
Qatar project	0	10,201	10,167
Total revenues	**133,138**	**144,330**	**142,816**
Expenses			
Facilities	11,239	12,491	13,080
Administrations	15,785	15,737	16,228
Instructional	71,703	75,346	79,611
Student services	10,585	10,368	11,271
Information technology	11,493	8,345	7,285
Resale	5,772	5,988	5,757
Apprenticeship	3,614	3,826	4,040
Continuing education	696	684	774
Contracts	7,219	6,185	5,342
International	688	629	620
Special projects	3,036	2,875	3,357
Qatar projects	-	2,703	1,975
Total expenses	**141,830**	**145,177**	**149,340**
Deficit before unfunded adjustments	(8,692)	(847)	(6,524)
Severance pay	(1,318)	(984)	(781)
Vacation pay	(597)	(643)	(601)
Deficit	**$ (10,607)**	**$ (2,474)**	**$(7,906)**

Source: Audited Financial Statements

The College has operated with a deficit in each of the last 3 years, totaling approximately $21 million.

Salaries and benefits by program

Table 3 provides information on the College's salary and benefit expenses by program.

Table 3

College of the North Atlantic
Salaries and Benefits
Fiscal Years 2010 to 2012
($000s)

Salaries and Benefits	2010	2011	2012
Facilities	$ 1,551	$ 1,775	$ 1,827
Administration	11,427	11,866	11,965
Instructional	62,979	67,383	72,052
Student services	8,380	8,548	9,600
Information technology	5,077	5,304	5,124
Resale	1,833	1,995	1,952
Apprenticeship	2,759	2,970	3,036
Continuing education	528	520	560
Contract	5,029	4,569	3,900
International	358	352	322
Special projects	1,446	1,290	1,573
Qatar Project	-	1,556	1,394
Total Salaries and Benefits	**$ 101,367**	**$ 108,128**	**$ 113,305**

Source: Audited Financial Statements

The table indicates that for the year ended March 31, 2012, salaries and benefits were $113.3 million. In addition, during 2012, $1.4 million (2011 - $1.6 million) in vacation pay and severance entitlement was recorded.

Human Resources Division

The Human Resources Division of the College manages human resources. The Executive Director of Human Resources reports to the President and Chief Executive Officer and is responsible for 32 employees.

Objective and Scope

Objective

The objective of our review was to determine whether compensation and recruitment practices were in accordance with Government and College policies and procedures.

Scope

Our review commenced in February 2012 and covered the fiscal years March 31, 2011 and March 31, 2012. Our review included interviews with College officials and an examination of College human resources policies and procedures, competition and personnel files, and payroll and leave data.

Detailed Observations

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

1. Recruitment
2. Compensation

1. Recruitment

Overview

The *College Act, 1996* requires that the College make policies to govern the organization, administration and operation of the College that adhere to the personnel administrative procedures of the Province unless otherwise approved by the Minister of Advanced Education and Skills. In addition, the College is required to comply with the *Public Service Commission Act* which states that recommendations for appointments to and promotions within the public service shall be based on the merit principles. Merit principles guide the recruitment and selection process through fairness, equity, transparency, efficiency and effectiveness. Public Service Commission guidelines do not apply to contractual arrangements.

Our review identified issues in the following areas:

A. Job Competitions
B. Hiring and Personnel Documentation

1A. Job Competitions

Introduction

The College carries out job competitions for bargaining unit positions, non-bargaining positions and senior executive positions. Job competitions range from temporary, part-time, to permanent, full-time, positions.

We reviewed 23 recruitment files, 7 of which were considered special hires by the College. These special hires included recalls, upscale hires, hard to fill positions, and retirees.

Our review identified the following:

No job analysis or worksheet incomplete

Government policy requires a job analysis be completed prior to the start of the competition process. The job analysis identifies the critical duties and qualifications required for the position as well as the selection criteria and evaluation tools to be used in the ranking of candidates, an important part of achieving fairness, equity and transparency. Our review identified that 2 files did not have a job analysis worksheet completed.

Positions not classified

7 of the 23 recruitment files reviewed required classifications to be approved by the Classification and Compensation Division of the Human Resource Secretariat. Qatar positions are not required to be classified and instructor positions are classified by the faculty collective agreement. Our review identified that 3 of the 7 positions were not classified:

- 1 new position, Administrator of Applied Research, was created for a research project and was filled through a secondment. Our review identified that the position was not classified nor did the position have a position description approved. In addition, Government policy for secondments requires approval from the Public Service Commission for assignments beyond 12 months. This appointment was for 24 months; however, approval from the Public Service Commission was not obtained.

- 2 positions were classified in 1998, however, since 1998 the titles and duties of these positions had changed. College officials indicated that the two current positions of Campus Administrator and Dean were both considered to be classified through the 1998 classification for the positions of Associate District Administrator/Chair of Trades. However, since 1998, this position had been split into the 2 new positions with different duties. Given the significant changes in the positions since 1998, these positions should have been submitted for classification. In addition, the position descriptions were not updated.

Minimum qualifications not met

The College has established minimum qualifications for instructional staff. Our review identified that 3 job postings for 5 instructional positions did not require the minimum established qualifications. Specifically, the job postings required Bachelor degrees or Masters degrees with lesser qualifications considered instead of the required Masters degrees. College officials indicated that permission was obtained from the respective profession's accrediting organization to change the minimum qualifications due to the hard-to-fill nature of the position, however, documentation of the approval was not provided. Our review identified that 2 candidates with Bachelor degrees were hired from 2 competitions and 3 individuals that did not have Bachelor degrees were hired from the other competition.

Confidentiality statement not signed

Government policy requires that job competitions be administered by a selection board. The board is a committee of officials acting within policies and processes approved by the Public Service Commission and normally consist of up to 3 members. Government policy requires all members of the selection board to sign an Information and Confidentiality Statement for each job competition that indicates the responsibilities of the board, the merit principles, an oath of confidentiality and the penalties for committing an offense under the *Public Service Commission Act*. Our review identified that:

- 2 competition files did not have a signed confidentiality statement; and

- 2 competition files had a confidentiality statement, however, the statement was not signed by all 3 members of the selection board. For 1 competition, the department representative and the technical representative had not signed the statement and for another competition, the chair had not signed the statement.

Candidates not adequately screened

The Government staffing manual requires all applicants to be fairly screened by comparison, first, to the advertised requirements and, then, to the education and experience of the other applicants. Government practices also require screening be completed based on the requirements advertised for the position and not to lower qualifications. If no qualified candidates apply, the position is required to be re-advertised at the lower level.

Our review identified 5 competitions where, in our opinion, candidates were not properly screened or documentation was not adequate to support the screening process as follows:

- For 1 competition, 3 candidates were screened out but appeared to meet the qualifications in the job advertisement and had more experience than the individual hired. The reason given on the screening worksheet was the applicants lacked the required experience, however, no explanation was provided on file to support the reasons given. For example, one applicant had 6 years of similar experience with a Government agency and 7 years of similar experience in the private sector, a second applicant had 15 years of similar experience with Government, and a third applicant had 11 years of similar experience with Government and the private sector.

  This screening process resulted in only 2 applicants being interviewed for the position. One of the applicants interviewed had 21 years experience at a Government agency, however, the applicant was not scored in the assessment matrix. The document noted the applicant was not ranked but no explanation was provided to support why the applicant was not scored. The hired candidate was a current employee of the College with 5 years experience.

- For 2 competitions, candidates were screened using qualifications that were lower than that required in the job advertisement. In 1 file, the job advertisement required a bachelor degree, however, candidates that did not have a bachelor degree were selected for interviews. In the other file, candidates who had a bachelor degree were selected for interviews, however, the job advertisement required a masters degree but did indicate that other education qualifications may be considered.

- For 1 competition, 1 of the 7 candidates was screened out for lacking the required experience although they appeared to meet the qualifications described in the advertisement. The position required 2 years senior management experience preferably in a post-secondary environment. Our review identified that the candidate had 4 years senior management experience in a post-secondary environment and 7 years in industry. The screening process resulted in 2 candidates being interviewed, both current employees of the College.

- For 1 competition**,** one candidate was screened out as College officials indicated that the candidate did not have a required safety certificate, however, a review of the applicant's resume indicated that the applicant did have the certificate requested in the advertisement.

Interview answers not on file

The Government staffing manual states that interview questions should include preferred answers that support the job analysis. Our review identified that 9 competition files did not include the preferred answers to the questions asked during the interview process.

Assessment Matrix Form issues

The Government staffing manual prescribes that an Applicant Assessment Matrix form should be completed immediately after each candidate is interviewed. The matrix is used as a scoring guide to measure the knowledge, abilities and personable suitability of each candidate and supports the selection of the recommended candidate. A summary of the matrices with the recommended candidate score is included in the Selection Board Report. Our review identified that 4 files had issues with the Applicant Assessment Matrix form as follows:

- for 2 competition files, the matrix was not prepared;
- for 1 competition file, the form was not signed as being prepared immediately after the interview. Specifically, interviews were held on the December 14 and 15, 2010, however, the form was not dated until February 8, 2011; and
- for 2 competition files, the matrix was not dated and the score of the recommended candidate on the matrix did not agree to the score on the Selection Board Report.

Delays in competition process

For 1 competition, the process extended beyond 16 months. The initial posting for the position was August 11, 2011, however, as of December 2012, the position was still not filled because the competition was on hold as the current employee had decided not to retire. Our review of the competition process identified that 3 applications were received in response to the first internal posting. Of the 3 applicants, 2 met the requirements of the job posting which included a preference for candidates with a Chartered Accountant or Certified General Accountant designation. On November 1, 2011, all 3 applicants were sent letters that the competition was cancelled.

On November 2, 2011, the position was again advertised internally, and on April 2, 2012 it was advertised publicly but a candidate has not yet been hired. In both postings, a change was made in the qualifications to now require a Chartered Accountant designation instead of a preference for a Chartered Accountant or Certified General Accountant. In addition, the requirements in the approved position description from the Classification and Compensation Division of the Human Resource Secretariat indicated that an accounting designation was required for the position, and did not specify any particular designation. By specifying the particular designation, not only did the College not abide by the approved position description qualifications, it may have limited the number of qualified candidates. Furthermore, changing the requirements for a position after the receipt of qualified applicants, may affect the perception of fairness and objectivity of the competition process.

References forms not on file

The Government staffing manual indicates two references are required for each recommended candidate, not only the successful candidate. A lack of reference checks could result in the hire of unsuitable staff.

Our review identified 10 candidates that did not have two reference forms or documentation that references were checked for either the successful candidate or the other recommended candidates as follows:

- 6 competition files did not have two reference forms completed or other documentation for the successful candidate. 3 of the files did not have any reference forms or documentation that references were checked and 3 files had only one reference form completed for the successful candidate.

- 4 of the 5 competition files that had candidates recommended, other than the top ranked candidate, did not have any reference forms or documentation that a reference check was made for the recommended candidates.

Selection Board Report not adequate

Government policy requires the selection board submit a recommendation package for the appointment of candidates. The package must include a Selection Referral Certificate, a Selection Board Report, an Interview Matrix and copies of the applications for the recommended candidates.

The merit principles include the concept of fairness and that the competition process be free of bias. Therefore, there should be documentation that the selection and approval process is distinct from the recommendation process and that the competition was reviewed and approved by staff independent from the selection board.

In our sample of 23 competitions, 5 competitions did not require a Selection Board Report as there was no competition process due to recalls, secondments, or cancellation of the competition. Our review of the 18 files that required a Selection Board Report identified that 10 reports were not adequate as follows:

- 2 files did not have a Selection Board Report;
- 1 file for 5 positions did have a Selection Board Report, however, it did not include the names of 2 of the successful candidates; and
- 7 files did not have a signature for the approval of the recommendations of the Selection Board.

Rule of three

The *Public Service Commission Act* states *"In respect of each appointment or promotion, the board of examiners shall recommend 3 candidates in order of merit and this list shall be submitted to the chief executive officer concerned for final selection provided that the board may recommend less than 3 if it is considered that fewer than 3 candidates are qualified."* Therefore, we would expect the majority of job competitions to result in 3 recommended candidates.

Our review identified that 10 of the 17 files that had a Selection Board Report did not have 3 recommended candidates for the position. In 8 of the 10 competitions, only one candidate was recommended in the Selection Board Report.

Upscale hires not approved appropriately

The Technical and Vocational Instructors Salary Scale at the College is based on classes one to six, and the salary for each instructor is determined based on their education and experience. An upscale hire occurs when an external candidate is hired at a step above step 1 on the pay scale of a position. The faculty agreement indicates that the maximum upscale salary employees may be paid is as follows:

i) Classes one and two - up to Step 4;
ii) Classes three, four and five - up to Step 7; and
iii) Class six - up to Step 8.

In addition, Government policy for upscale hiring indicates that the Chief Executive Officer may approve upscale hires within the normal minimum/maximum of the applicable salary scale and where this criterion is not met, Treasury Board approval is required.

Our review of 5 files where the competition resulted in upscale hires identified the following:

- 5 employees in 3 competition files were paid a salary that was higher than the maximum allowed in the faculty collective agreement, however, Treasury Board approval was not obtained. Specifically:
  - In 1 file, an employee was hired in 2010 on class 5, Step 11 of the instructor scale and was paid a salary of $71,494, when the maximum allowed under the collective agreement was Step 7 at $59,650;
  - In another file, an employee was hired in 2009 and was paid a negotiated salary of $65,000 when the maximum allowed under the collective agreement was Step 7 at $57,356; and
  - In the third file, 3 employees were hired in 2011 and were paid a negotiated part-time salary based on an annual salary of $72,026 when the maximum allowed under the collective agreement was Step 4 at $51,501.
- There was no documented approval from the President to pay an upscale salary to one employee who was paid a part-time salary based on $75,005 per year when the salary on Step 1 of the applicable scale was $59,742.

1B. Hiring and Personnel Documentation

Introduction

Once an applicant is successfully recruited, the College enters into an employment contract with the employee either through the collective agreements in place for support and faculty staff, an employment contract for Qatar employees or signed letters of hire for management employees. The College maintains personnel files for each employee which is used to consolidate hiring and employment documents.

Our review of a sample of 65 personnel files identified issues with file documentation.

Signed letter of hire/contract not obtained

The letter of hire/contract was not signed by the employee in 10 files.

Orientation checklists not completed

Effective September 8, 2010, College policy provided specific employee orientation procedures such as offering regularly scheduled orientation sessions for new employees, the completion of an orientation checklist and orientation follow-up. The policy applied to all new employees with contracts of at least 6 months and included an overview orientation and a job specific orientation.

Our review identified that there were no orientation checklists completed for any of the 9 employees in our sample that were hired after the effective date.

Certificates of conduct not obtained

The job advertisements for the College require a successful candidate to provide a certificate of conduct. Our review identified 6 employees did not have a certificate of conduct on file.

Conflict of interest forms not obtained

The College has an extensive conflict of interest policy. The policy requires all employees of the College to sign a conflict of interest form and to acknowledge they have received and read the conflict of interest policy. It indicates the consequences of failing to inform their supervisor and the President of real, apparent or potential conflict of interest. Employees are required to disclose, in writing, to the President any situation where an association, proprietorship, partnership or company, in which the employees or relatives of the employees have an interest, plan to bid on a contract with the College for the supply of goods or services, or purchase of goods or services from the College. It prohibits the use of the College facilities, equipment, or information obtained in their employment unless written approval from the President is obtained. It also prohibits the acceptance of gifts (other than gifts of nominal value) by the employee or their relatives, or the acceptance of other benefits arising out of activities associated with their employment. College policy requires all employees to complete a form on their annual anniversary date confirming the employees are not engaged in any activity that would constitute a conflict of interest.

Our review identified the following issues:

- 50 employees did not have a conflict of interest form in their personnel file. A review of these 50 employees identified the following:
    - 26 employees were working in Qatar of which 6 were in executive or senior management positions. College officials indicated that the conflict of interest form was not used for Qatar employees because there was a paragraph related to conflict of interest in their contracts. However, this paragraph does not include all issues covered by the College policy. For example, the paragraph does not include any requirements for relatives, gifts, or the use of College facilities, equipment or information. College policy requires all existing policy and procedures to apply to Qatar to the fullest extent possible. Where this is impractical an amended policy is to be prepared and approved by the President of the College.
    - 24 of these employees were working in Newfoundland of which 9 were in executive or senior management positions.
- For the employees who had conflict of interest forms on file, the form was only signed for the original hire date. There were no additional forms signed on the anniversary date of the employee. College officials indicated that they were not aware that an annual form was required to be completed.

Given that the College operates internationally, in varying cultures, compliance with this policy would reduce the risk of a negative impact on the reputation of the College.

Recommendations

The College should:

- obtain all documentation for recruitment files as required by Government policies and practices;
- ensure all positions are classified;
- hire only staff that meet the minimum qualification requirement guidelines;

- screen all job competitions in accordance with the merit principle and Government practices;
- obtain at least two references for both successful and recommended candidates;
- review the job competition process to determine the reason for the majority of competitions not obtaining the rule of three;
- ensure employees comply with the conflict of interest policy; and
- obtain Treasury Board approval for upscale hires where required.

2. Compensation

Overview

Compensation is governed by the collective agreement for unionized employees (NAPE and CUPE) and Government personnel policies and procedures for non-unionized and management employees.

During the 2012 fiscal year, the College employed 2,002 staff (1,265 instructional staff and 737 administrative and support staff) on a full or part-time basis. Of these, 478 were employed at the Qatar Campus. For the fiscal year 2012, the College spent $113.3 million on salaries and employee benefits.

Our review of compensation identified errors in the application of both Government policies and the requirements of the collective agreements as follows:

A. Employee Compensation
B. Employee Leave
C. Employee Overtime

2A. Employee Compensation

Introduction

Our review identified issues with employee compensation, including relocation expenses related to the recruitment of employees.

Position classification not approved

We reviewed the classifications for 9 positions from listings obtained from the College of new positions added and positions recently sent for classification to the Classification and Compensation Division of the Human Resource Secretariat of the Provincial Government. Our review identified that 1 position was not sent for classification. College officials indicated that the employee was being paid the rate for another position but the job duties were not the same as that position.

Reimbursement of relocation expenses

The College spent approximately $140,000 in fiscal 2011 and $88,000 in fiscal 2012 on relocation expenses. The College has approved policies and procedures covering relocation expenses. Prior to the commencement of employment, the employee must submit for approval a Request for Relocation Expenses form, which provides details of the relocation plan and costs. The employee must also complete a Relocation Expense Agreement, which provides the return in service arrangements of the employee. Once these forms are completed by the employee and approved by the Executive Director of Human Resources, the employee submits a travel claim(s) with supporting documents for any relocation expenses to the Human Resources Division for review and approval. Once approved, it is forwarded to the Finance Division for payment.

Our review of relocation expense claims totaling $137,989 for 6 employees identified two issues with claimed expenses as follows:

- 1 employee claimed relocation expenses of $4,063 related to their former principal residence, including legal expenses of $2,211, a mortgage penalty of $1,428 and a house appraisal of $424. Our review identified that the employee did not sell their former residence but re-financed the mortgage on the former residence. College and Government relocation policy do not provide for the reimbursement of refinancing expenses and therefore, these costs should not have been approved for reimbursement.

- 1 employee included airfare costs for their spouse and a dependent in their Request for Relocation Expenses that was approved in January 2010. Based on information provided by the employee, College officials prepared the employee's relocation claim in November 2010. A review of this claim identified that $711 was claimed for only one family member's airfare even though the information provided noted "travel for spouse & dependent child" and the attached airfare invoice supported 2 amounts of $711 for the employee's spouse and dependent. As a result, the employee was underpaid $711.

2B. Employee Leave

Introduction

As at March 31, 2012, the College reported $9.5 million (2011 - $8.6 million) in unpaid vacation entitlements for approximately 2,000 employees. Management are required to comply with Government's Paid Leave policy while bargaining unit employees are required to comply with leave articles in their respective collective agreements. Qatar employees are governed by leave policies as described within the Terms, Conditions, and Benefits of Employment for Employees of CNA - Qatar.

Employees requesting leave must submit a standard leave form to their supervisor for approval. Once approved, the leave form is forwarded to the employee's respective Regional Human Resource Division for approval and input into the College leave information system.

Our review included an overview of the leave process, a review of internal and external auditor reports, an analysis of the leave databases and a sample of 42 employee leave records. Our review identified the following:

Leave procedures not documented

The College does not have documented procedures for employee leave including procedures for requesting, approving, processing and monitoring employee leave. The College does have a standard leave form, and College officials indicated that they follow the leave articles within the respective collective agreements and Government Paid Leave policy, however, specific procedures to be followed to ensure compliance with these policies are not documented. With approximately 2,000 employees located at 26 campuses submitting leave requests to four regional human resources divisions throughout the Province for processing, documented procedures would ensure leave is consistently and adequately requested, approved, processed and monitored.

Leave issues raised in auditor reports

The College's internal auditor and the College's external auditor reported a number of significant issues with employee leave as follows:

- The internal auditor conducted an audit on leave entitlements and the monitoring of absences related to severance, annual leave and time off in lieu. The October 2010 internal audit report raised significant issues with the processing of annual leave including a lack of segregation of duties, inadequate reviews by Human Resource Managers, no documentation of a reconciliation of attendance records with data entered, and a lack of documentation to support data entries.

- The external auditor's management report for the fiscal year 2010 identified that adequate controls had not been implemented to ensure that system generated reports were complete and accurate. Also, in the 2011 management report, the external auditor reported that employees' entitlements to vacation were not being tracked appropriately in the system which resulted in inaccurate information for financial reporting purposes.

Leave forms not always on file

Our review identified 1 instance where employee leave forms were not on file to support the leave that was recorded in the leave system. Specifically, 3 leave forms for a total of 31 annual leave days were not provided. As a result, we were unable to verify that the leave was accurate and properly approved.

Leave forms do not include approval date

Leave forms do not provide for the approval date of the employees' supervisor. Without the date of the supervisor's approval, our review could not determine if annual and paid leave was approved prior to the leave being taken or that sick leave was approved in a timely manner.

Excess annual leave carried forward

Our review identified instances where leave balances were carried forward in contradiction to the terms and conditions of employment. Specifically:

- The College support staff collective agreement allows an employee to carry forward unused annual leave up to the employee's annual entitlement, the maximum of which is 25 days. Our review of the College's leave database identified 27 employees with annual leave balances as at March 31, 2012 ranging from 25.5 days to 81.3 days.

- Contracted employees at the Qatar campus are required to have their unused annual and paid leave balances paid to the employee at the end of their employment contract. Unused balances are not allowed to be carried forward to any future contract. Our review identified one employee hired under a 2-year contract at the Qatar campus who was paid 61 annual leave days on July 31, 2010 when their contract expired. However, 29.5 of the 61 annual leave days paid out were carried forward from an employment contract that expired on August 31, 2008. The College should have paid out the 29.5 days in August 2008 at the salary rate at that time.

Doctor notes not always on file to support sick leave

13 of our sample of 42 employees had sick leave which required a doctor note to support the leave taken. Our review identified 2 employees who did not always have the doctor note required to support the sick leave they had taken. Specifically:

- 1 employee took 42 days from October 2010 to December 2010 and 16 days from May 2011 to June 2011; and
- 1 employee took 8 days from May 2010 to February 2011.

Leave overdrawn

Our review identified that leave balances were overdrawn by employees on a number of occasions during the period of our review, April 1, 2010 to March 31, 2012. Specifically:

Annual Leave:

- 6 instances were identified where employees' annual leave balances were overdrawn. Specifically:
  - one employee was overdrawn 16 days as at July 31, 2011;
  - one employee was overdrawn 12.5 days as at August 31, 2010;
  - one employee was overdrawn 11.5 days as at August 31, 2011;
  - one employee was overdrawn 10.5 days as at August 31, 2011;
  - one employee was overdrawn 3.9 days as at April 1, 2010; and
  - one employee was overdrawn 2 days as at August 31, 2011.

- An analysis of the College's leave database identified that as at March 31, 2012, 35 employees had overdrawn their annual leave balance ranging from 1 day to 19.5 days.

Sick Leave:

- 1 instance was identified where an employee's sick leave balance was overdrawn by 7.03 days as at March 31, 2012.

- An analysis of the College's leave database identified that as at March 31, 2012, 19 employees had overdrawn their sick leave balance ranging from 1.25 days to 51.73 days.

As a result, employees have accessed a benefit they have not earned and are not entitled to. This is also contributing to issues in the calculation and management of leave.

Recalculation of leave identified errors

Our review of leave included a recalculation of employee leave using information provided by the College including opening leave balances, entitlements and leave forms. Our recalculations identified that 5 employee annual and paid leave balances were not calculated properly or adequately supported and 3 employee sick leave balances were not calculated properly or adequately supported.

Other leave issues

1 employee retired on June 30, 2010 and, as part of the employee's termination benefits, the employee was owed $93,734 for 266.75 unused annual leave days. The employee requested that the termination benefits be paid out over two taxation years to lessen tax consequences. Our review identified that the College paid the employee $43,536 in July 2010 upon retirement and the remaining $50,198 was not paid until January 2011. Government or College policy does not provide for the splitting of termination payments.

2C. Employee Overtime

Introduction

The College paid employees $2.7 million for overtime worked in fiscal 2011 and $1.2 million for the period April 1, 2011 to January 31, 2012. In addition, as at March 31, 2012, the College reported $778,694 owing for 21,942 hours (2011- $817,121 for 24,793 hours) in time off in lieu of overtime pay (TOIL).

The College requires each employee to complete and submit an overtime report, providing details of the purpose and times of the overtime to be worked, to their supervisor for approval. Supervisors submit these reports to the Human Resources Division for processing. We identified the following issues with overtime:

Approval of overtime

The College recognizes that excessive overtime can contribute to a significant increase in operating costs for the College. As a result, the College requires that all overtime worked must have the prior authorization of an employee's supervisor. Our review of overtime for a sample of 19 employees who submitted 260 overtime forms between April 1, 2010 and March 31, 2012, identified the following:

- 2 employees on 2 occasions were compensated for overtime worked that was not approved by a supervisor.
- 1 employee was compensated for overtime worked that was approved by the supervisor, however, there was no approval date to indicate that the approval was prior to the overtime worked.
- 14 employees were credited for overtime worked that was approved by a supervisor after the overtime was worked. For example, 1 employee worked 2 days of overtime in March and April 2010, however, the overtime form was not prepared and approved by the employee's current supervisor until April 2012.
- 1 employee had overtime recorded in the database, however, the related overtime forms could not be located. As a result, we could not determine if the supervisor approved the overtime.

Errors in overtime records

The College overtime policy states that supervisors are responsible for maintaining a system of recording and tracking overtime. The College's Human Resources Division maintains a computerized database for tracking all leave and other statistics related to employees.

Based upon information provided by the College, our review of the overtime leave bank disclosed differences for 4 employees as follows:

- 1 employee had a TOIL balance understated by 1.5 days;
- 1 employee had a TOIL balance understated by 27.5 days;

- 1 employee had a TOIL balance overstated by 2 days; and
- 1 employee had a TOIL balance overstated by 13.25 hours.

The differences were a result of overtime forms not on file to support the overtime worked, leave forms not on file to support the TOIL taken or unsupported adjustments.

Overdrawn overtime banks

As at March 31, 2012, our review disclosed that 23 employees had overdrawn their overtime leave banks. These employees owed a total of 246 hours ranging from 1 hour to 94. This overdrawn TOIL totaled approximately $10,131. The College overtime policy does not allow overtime leave to be taken in advance of overtime earned.

Other overtime issues

1 employee was credited with 94.5 hours of earned TOIL in June 2010, however, in April 2012, the College identified that the TOIL for another employee with the same name had been entered into the employee bank at that time in error. Subsequent to June 2010, the employee used this balance that had been credited in error. In April 2012, the College corrected the posting error, which resulted in the employee having a negative TOIL balance of 94.25 hours as at March 31, 2012.

Our review of the circumstances surrounding the error disclosed the following weaknesses in the system:

- The overtime form did not have a place where the employee could enter his employee number which could have been used for data entry purposes; and
- The time between when the error was made until it was detected was 21 months.

Recommendations

The College should:

- compensate its employees in accordance with signed employment contracts; and
- monitor and record employee leave and overtime in accordance with its policies and collective agreements.

College's Response

General Comments

The Auditor General's report identifies issues related to recruitment, file documentation and compensation. The College acknowledges gaps exist within its processes due to a variety of challenges over the past two fiscal years. Substantive steps to close those gaps have already been made and will continue over the next several months. The College also notes some issues within this report relating to employees of a separate entity, CNA-Q, which CNA has been contracted to administer on behalf of the State of Qatar but which is not governed by either the Human Resource policies of the Government of Newfoundland and Labrador or the Public Service Commission Act.

Response to Specific Observations

Recruitment

The College acknowledges there were weakness in some of its recruitment activities and documentation procedures during the period audited. Since that time considerable effort has been made to deal with those weaknesses including creating a new Talent Acquisition Division within the Human Resources Department. As a result, inconsistencies that existed within the old structure are now being addressed provincially through new business processes, reassignment of accountabilities and clear role definition. Specifically, the Division is implementing changes that will address many of the concerns noted in the audit as follows:

1.A JOB COMPETITIONS

No Job Analysis or Worksheet Incomplete

The College acknowledges inconsistencies with up-to-date job analysis and worksheets and agrees such documents are necessary for effective recruitment. The College is committed to ensuring these documents are completed. As of February 1, 2013 the talent acquisition specialists will not conduct any recruitment activities unless prerequisite documents are received from the hiring managers which will allow for the subsequent completion of job analyses and worksheets.

Positions Not Classified

The College acknowledges the positions in question have not been submitted to the Classification and Compensation Division of the Human Resource Secretariat for classification. The College is committed to ensuring all positions are classified as per government policy and assigned this responsibility to the College's Manager of Compensation and Benefits for compliance. In addition, since December 2012 the College has re-profiled some positions with the Human Resources division and one manager is now responsible for all classification actions.

Minimum Qualifications Not Met

The College agrees the formal, written permission from the accrediting organization was not in the audited file for these hard-to-fill positions. As is often the case with hard-to-fill recruitment competitions, there is an urgent need to fill a position in order to meet our educational obligations to students. The College will request and ensure formal, written responses from the appropriate accrediting associations are contained within the file.

Confidentiality Statement Not Signed

The College agrees selection board chair confidentiality statements were either not signed at all or not signed by all three members of the selection board. Confidentiality is an important component of the Selection Board member's role and is covered for each employee by the College's mandatory confidentiality statements. Selection board chairs will make a concerted effort to ensure confidentiality statements are signed by all selection board members for each competition file.

Candidates Not Adequately Screened

The selection board is comprised of certified selection board chair, a departmental representative and a technical advisor. They work as a team to ensure adequate screening occurs. The College will work with the Public Service Commission (PSC), which is responsible for certification of selection board chairs, to ensure fair screening practices are maintained and properly documented.

Interview Answers Not on File

The College acknowledges the Government staffing manual requires interview questions with corresponding preferred answers be completed prior to the commencement of interviews and that audited files did not contain such documentation. Communication will occur with selection boards to ensure full compliance with policy.

Assessment Matrix Form Issues
The College agrees the assessment matrix form should be completed immediately after each candidate is interviewed. The college will communicate with its selection board chairs to ensure this important step is conducted in a timely manner.

Delays in Competition Process
The College followed its normal recruitment process for this competition however the qualifications for the position were reviewed during the process which did contribute to a delay. The revised qualifications determined through this process were deemed by the College to be necessary to ensure the best candidate was recruited.

Reference Forms Not on File
The College acknowledges for certain competition files the minimum two references for all recommended candidates is not always on file. The selection board chairs will ensure two references are completed for all recommendable candidates.

When considering existing College employees who have been identified as recommended candidates for a competition it is College practice not to conduct reference checks provided the recruitment for the positions were within a reasonable period of time. It is also College practice that at least one reference should be from the candidate's immediate supervisor, however, as the supervisor is often the technical advisor or the departmental representative on the selection board; in those cases they cannot act as a referee. This often results in only one available reference.

Selection Board Report Not Adequate
The College acknowledges that selection board reports were not adequate prior to April 2012. Selection board chairs have been instructed by the College in conjunction with the PSC to ensure selection board reports contain all necessary recommendation documentation for the appointment of candidates. This package includes a selection referral certificate, selection board report, interview matrix and copies of the applications for the recommended candidates.

Rule of Three

The College is aware of the Rule of Three policy and adheres to it whenever possible, however there are many competitions where there are few applicants who meet the minimum qualifications often resulting in less than three recommendable candidates. As the Rule of Three also provides that "…the board may recommend less than 3 if it is considered that fewer than 3 candidates are qualified", *it is the College's position that it is in compliance with the rule in all of the instances cited in the report. The College will, in the future, request selection board chairs to document instances/reasons of less than three applicants or less than three recommendable candidates for specific competitions where this occurs.*

Upscale Hires Not Approved Appropriately

The College notes the concerns as raised and will work with Human Resource Secretariat officials to develop a policy on upscale hiring specific to the College's that is matched to current labour market salary scales and conditions. To ensure consistency in its upscale hire processes and decisions, the College has implemented a special upscale hire form that requires the President's review and signature before it can be processed.

1B. SIGNED LETTER OF HIRE/CONTRACT NOT OBTAINED, ORIENTATION CHECKLISTS NOT COMPLETED, CERTIFICATES OF CONDUCT NOT OBTAINED, CONFLICT OF INTEREST FORMS NOT OBTAINED

The College acknowledges critical documentation such as signed contracts, orientation checklists, certificates of conduct and conflict of interest forms for personnel files have not always been obtained in the most efficient manner with appropriate follow up. Within the recent restructuring of the human resources department, the business processes of both compensation and benefits and talent acquisition have been revised to address the documentation concerns cited by the AG.

Compensation/Policies

The new Compensation and Benefits Division of the HR Department is a consolidation of all compensation and benefits activities derived from the former regional based system. As a result, inconsistencies that existed within the old structure are now being addressed from a provincial perspective with new business processes, accountabilities and role definition. While a number of processes are still manual, the College is working toward an automated solution that will address the concerns noted in the audit.

2.A POSITION CLASSIFICATION NOT APPROVED

The College acknowledges the position in question has not been submitted to the Classification and Compensation Division of the Human Resource Secretariat for classification. The College is committed to ensuring all positions are classified as per government policy and assigned this responsibility to the College's Manager of Compensation and Benefits for compliance. Since December 2012 the College has re-profiled some positions with the Human Resources division and one manager is now responsible for all classification actions.

Reimbursement of Relocation Expenses
The employee was required to relocate as a condition of her employment with CNA. While the Auditor General has correctly stated that relocation expense policies of government and the College contemplate reimbursement of costs associated with the sale of the employee's principal residence, given that the relocation policies strive to achieve lowest cost relocation options, and given that the costs incurred by the employee to lease the principal residence were lower than the costs which would have been incurred had the employee sold the principal residence, her relocation claim was approved.

In the case of the second employee identified the College will review the claim and take appropriate action regarding the identified underpayment.

2.B EMPLOYEE LEAVE

Leave Procedure Not Documented
The College follows the leave policy as documented on the Human Resource Secretariat website and the relevant collective agreements governing College employees. The College is presently developing its own policy and procedure consistent with Government policy to address the issues raised in the auditor report in addition to implementing a PeopleSoft module to track employee leave.

Leave Issues Raised in Auditor Reports
The introduction of the PeopleSoft module will enable the College to address the segregation of duties, managerial oversight, documentation and reconciliation issues identified by the College's internal audit staff. The module will also aid the College in producing accurate employee leave entitlement financial reports.

Leave Forms Not Always on File
The introduction of the PeopleSoft module will eliminate the paper leave documents and track leave requests, approvals and usage reducing the likelihood of these types of errors.

Leave Forms Do Not Include Approval Date
Once the new PeopleSoft module is implemented the process will be fully automated. In the mean time the current leave forms will be revised to include the date of approval by the supervisor as noted in the AG report.

Excess Annual Leave Carried Forward
The College acknowledges there are a number of employees who have accumulated and carried forward more than their annual entitlement. There are a number of employees who accumulated excess annual leave while on long term sick leave as permitted under their collective agreement. These employees were unable to take the required amount of leave. The College will work with these employees to eliminate any leave in excess of the normal annual entitlement.

Contract employees assigned to the Qatar campus are paid from project funds in Qatar and do not carry annual leave liabilities over to CNA. All leave is paid out to employees at the end of their final contract in Qatar. The employee in question has been paid as noted in the audit report at no expense to the College.

Doctor Notes Not Always on File to Support Sick Leave
The College will review all sick leave balances and take appropriate action to ensure notes are on file in compliance with sick leave policy and respective collective agreements.

Leave Overdrawn

Annual Leave
The leave balances noted were for 2010 and 2011. Once the employees have been identified to the College, a review of their current balances will be conducted.

Sick Leave
There are instances of employees being overdrawn however balances are normally recovered in the following year or upon termination if no new leave is earned.

Recalculation of Leave Identified Errors
The College is conducting a review of leave balances including entitlement and balances as part of the implementation of its new PeopleSoft module.

Other Leave Issues
The College acknowledges the splitting of termination benefits was incorrect and will take necessary action to ensure full compliance in the future.

2.C. EMPLOYEE OVERTIME, APPROVAL OF OVERTIME, ERRORS IN OVERTIME RECORDS, OVERDRAWN FROM THEIR OVERTIME BANKS, OTHER OVERTIME ISSUES

The College acknowledges there have been issues with the approval and recording of overtime and is taking steps to improve its processes. Employee Overtime is a concern that involves all departments of the College. First of all, the College's Hours of Work and Overtime Policy is now under review. Both the NL and Qatar operations are developing parallel policy and procedure documents. The issue of pre-approvals is being addressed and any incomplete forms are being returned immediately to the supervisor for appropriate action. College supervisors will ensure that the policy is strictly adhered to and communicate that this type of practice is unacceptable. HR staff will also be more diligent in addressing issues related to overtime documentation. The PeopleSoft module will provide a system to allow better management of overtime with the preapproval as a requirement for submission of overtime for payment. The overdrawn overtime banks will be reviewed and individual files will be adjusted as required.

PART 3.3

DEPARTMENT OF ADVANCED EDUCATION AND SKILLS

INOME SUPPORT AND ACCOUNTS RECEIVABLE

Executive Summary

The Income Support Division of the Department of Advanced Education and Skills (the Department) delivers programs, services and benefits to residents of Newfoundland and Labrador who require assistance.

Our review identified concerns with accounts receivable and income support payments as well as other issues.

Accounts Receivable

The outstanding balance of income support overpayments has increased between March 31, 2009 and March 31, 2012. The number of clients with receivable balances has consistently increased from March 31, 2010 to March 31, 2012.

Our review of the accounts receivable information has indicated that:

- overpayments that have been detected are not being evaluated on a timely basis;
- the action memo process, which results in the recording of accounts receivable, was not being completed in a timely manner, which delayed the initiation of recovery and collection efforts;
- evidence received in overpayment investigations was not being reviewed in a timely manner; and
- accounts receivable were not being written off in accordance with the Department's Collections Policy Guide.

Our review also noted that the accounts receivable balance includes amounts that the Department does not have the authority to collect and credit balances exist due to processing errors.

Income Support Payments

Individuals and families who may be eligible for the Income Support Program can apply to the Department in order to receive financial benefits and other services to assist in meeting daily living expenses.

Our review found that:

- all allowable benefits were not paid to clients; and
- stale-dated cheques and direct deposit rejections were not being investigated.

Other Findings

Our review identified that:

- the electronic Income and Employment Support Policy and Procedure Manual is not easy to navigate;
- there are inefficiencies caused by the incompatibility of systems used by the Department; and
- the system used by the Department to collect overpayments through the Federal Set-off Program limits the recovery of those overpayments as a result of only allowing one client within a family unit to be set up in the system at a time.

Background

Overview

The Income, Employment and Youth Services Branch (the Branch) of the Department of Advanced Education and Skills (the Department) is responsible for four divisions, including the Income Support Division (the Division).

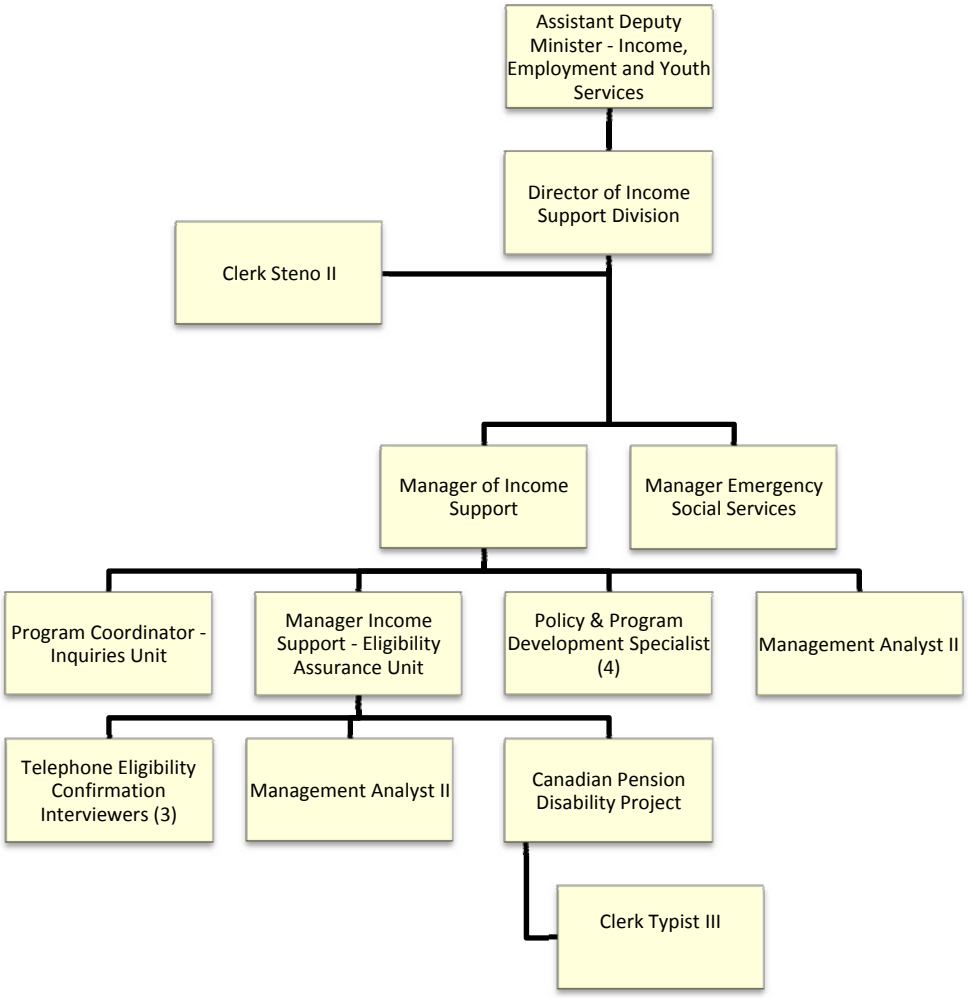
The Division delivers programs, services and benefits to residents of Newfoundland and Labrador who require assistance. The policies and programs of the Division are guided by the *Income and Employment Support Act* (the *Act*) and the *Income and Employment Support Regulations* (the *Regulations*).

Income Support Division

The Division has 17 positions. Figure 1 shows the organizational structure of the Division.

Figure 1

Advanced Education and Skills
Income Support Division
Organizational Structure



Source: Department of Advanced Education & Skills

Income Support Program

The Income Support Program (the Program) provides low income individuals and families with financial benefits and other services designed to assist in meeting their basic living requirements.

The services offered by the Program include:

- basic assistance for food, clothing, shelter and other personal needs;
- special allowances such as medical transportation, special diets, blind persons allowance and special needs assistance;
- emergency and disaster services when required;
- prescription drugs and medical equipment and supplies provided through the Department of Health and Community Services;
- services of Support Application Social Workers who assist clients or members of the general public to obtain support orders or agreements on behalf of dependent children; and
- referrals to other divisions, departments or agencies when clients are identified as having a specific need such as employment services and personal or family counselling.

The Corporate Services Branch and the Labour Market Development and Client Services Branch assist the Division in its delivery of the Program. The Corporate Services Branch provides financial and administrative services. The Labour Market Development and Client Services Branch provide regional services to clients.

In instances where income support recipients receive higher payments than they are entitled to, the overpayment must be repaid to the Department.

Table 1 shows the number of Income Support offices, by region, operating in the Province as at March 31, 2012, as well as related income support benefits paid in the year and receivable balances.

Table 1

Advanced Education and Skills
Income Support Information by Region
As at and for the Year Ended March 31, 2012

Region	District Offices	Income Support Benefits		Accounts Receivable Balances
		Amounts Paid	Number of Cases	
Avalon	8	$118,808,742	15,655	$22,637,564
Central	11	58,719,692	8,365	5,764,936
Western	7	6,378,647	1,108	4,074,333
Labrador	6	42,708,516	6,179	1,531,333
Total	**32**	**$226,615,597**	**31,307**	**$34,008,166**

Source: Department of Advanced Education and Skills

During the year ended March 31, 2012, income support benefits totaling $226.6 million were paid to 31,307 income support cases. Cases represent single individuals and also families who may have more than one client within the family.

There were 18,985 clients who had an outstanding receivable balance as at March 31, 2012. Some clients may no longer be receiving income support.

Objectives and Scope

Objectives

The objectives of our review were to determine whether:

- overpayments were recorded as accounts receivable and collected on a timely basis; and
- payments to recipients were in accordance with the *Act* and *Regulations* and Department policy.

Scope

Our review was completed in November 2012 and covered the period April 2010 to November 2012. It included interviews with Department officials, an examination of Department policies and procedures, and testing to ensure compliance with the *Act* and *Regulations* and Department policy.

Detailed Observations

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

1. Accounts Receivable
2. Income Support Payments
3. Other Findings

1. Accounts Receivable

Overview

The outstanding balance of income support overpayments has increased between March 31, 2009 and March 31, 2012.

Table 2 shows the accounts receivable balance for the fiscal years ended March 31, 2009 through to March 31, 2012.

Table 2

Advanced Education and Skills
Income Support - Accounts Receivable
For the Years Ended March 31

	2009	2010	2011	2012
Total accounts receivable, opening	**$29,514,057**	**$29,116,558**	**$28,901,935**	**$31,024,871**
New overpayments arising during year	5,278,119	4,312,564	6,090,845	7,752,090
Collections during year	(4,502,559)	(4,241,624)	(3,808,763)	(3,788,307)
Write offs	(1,575,379)	(692,269)	(208,959)	(1,062,436)
Other adjustments	402,320	406,706	49,813	81,948
Total accounts receivable, closing	**$29,116,558**	**$28,901,935**	**$31,024,871**	**$34,008,166**
Allowance for doubtful accounts	(16,937,389)	(17,048,978)	(18,165,082)	(19,598,227)
Net receivable	**$12,179,169**	**$11,852,957**	**$12,859,789**	**$14,409,939**

Source: Department of Advanced Education and Skills

As shown in Table 2, the accounts receivable balance has increased from $29,116,558 as at March 31, 2009 to $34,008,166 as at March 31, 2012, an increase of $4,891,608, or 16.8%.

Table 3 stratifies the account receivable balances based on amounts owing by clients.

Table 3

Advanced Education and Skills
Income Support - Accounts Receivable
Stratification of Balances Owing
For the Years Ended March 31

Amount	2010			2011			2012		
	#	Balance	Average	#	Balance	Average	#	Balance	Average
> $50,000	5	$287,751	57,550	7	$404,935	57,848	8	$452,836	56,605
$25,000-50,000	45	1,440,916	32,020	50	1,616,893	32,338	54	1,744,737	32,310
$10,000-25,000	405	5,876,203	14,509	467	6,791,815	14,544	532	7,729,932	14,530
< $10,000	17,343	21,297,065	1,228	18,052	22,211,228	1,230	18,391	24,080,661	1,309
Total	**17,798**	**$28,901,935**	**$1,624**	**18,576**	**$31,024,871**	**$1,670**	**18,985**	**$34,008,166**	**$1,791**

Source: Department of Advanced Education and Skills

The number of clients in each strata, as well as balances owing, has increased over the past three years. The average balance owing overall has also increased over the past three years. As of March 31, 2012, there were 8 accounts with a balance owing in excess of $50,000. These 8 accounts totaled $452,836 and had an average balance per client of $56,605.

Reasons for overpayments

Overpayments can arise for a variety of reasons. Table 4 summarizes the main reasons for overpayments outstanding as of March 31, 2012.

Table 4

Advanced Education and Skills
Income Support Receivable by Type
As at March 31, 2012

Type	# of Instances	% of total	Balance	% of total	Average receivable
Overlap of income support and other income	14,304	40.1%	$19,486,251	57.3%	$1,362
False pretenses	1,463	4.1%	5,392,302	15.9%	3,686
Overpayment resulting from change in client circumstances	3,323	9.3%	2,367,113	7.0%	712
Security deposit	6,579	18.5%	1,240,176	3.6%	189
Client incarcerated	1,624	4.6%	1,137,469	3.3%	700
Other reasons	8,340	23.4%	4,384,855	12.9%	526
Total	**35,633**		**$34,008,166**		**$954**

Source: Department of Advanced Education and Skills

Overlap of income support and other income occurs when a recipient receives income support benefits at the same time they receive other income, such as employment earnings, employment insurance or CPP. In excess of 50% of the cases where there was an overlap in income support and other income was due to undeclared earnings.

False pretenses overpayments occur when a recipient knowingly receives income support benefits to which they were not entitled. False pretenses had the highest average receivable as at March 31, 2012 at $3,686.

During our review, we identified issues in the following areas related to income support accounts receivable:

A. Detection of Overpayments
B. Action Memos
C. Collections

1A. Detection of Overpayments

Introduction

Overpayments arise for a variety of reasons. One of the tools utilized by the Department to detect overpayments is a computer interface with various Federal and Provincial programs.

Interface results not being evaluated on a timely basis

An interface allows different computer systems to share or exchange information with each other. The Department interfaces with various Federal and Provincial entities or programs, such as the Canada Revenue Agency, Workplace Health, Safety and Compensation Commission and Employment Insurance.

The Department sends an electronic file of income support recipients to the organizations responsible for those programs. The organization compares the Department file against its own files based on social insurance numbers. The organization then returns a file containing comparison information for each of the income recipients in the Department's electronic file. The interface results are then distributed to regional Department offices for action.

We reviewed a sample of 20 overpayments which arose in the fiscal year ended March 31, 2012.

In 6 of the 20 items we reviewed, over a year had elapsed between the date the Department received the results of the interface and the date the receivable was created. In 1 of these 6 instances, a receivable totaling $14,971 was created in December 2011 related to earnings in 2006, 2008, and 2009. However, these earnings were reported to the Department in 2008, 2009 and 2010, respectively. Furthermore, the results of the client's 2007 earnings also resulted in an overpayment which was recorded as a receivable in 2010. If the review of results had been performed on a more timely basis, the payments to this client could potentially have been adjusted earlier, resulting in a lower receivable.

Interface results are not being evaluated on a timely basis.

1B. Action Memos

Introduction

When an overpayment is identified, the Department creates a client receivable through an action memo process. An action memo is an electronic document created within the Client Automated Payment System (CAPS) which details the source and calculation of the overpayment. Action memos are also used to reduce existing receivable balances, if necessary.

When an overpayment is identified, a Client Services Officer (CSO) is responsible for creating an action memo. The CSO will start the action memo and classify it as "In progress". Once all work has been completed by the CSO they will change the action memo status to "Recommended". After it is recommended by the CSO, there are various approval levels required depending on the amount of the action memo. For amounts less than $1,000, the Payment Authorization Unit (PAU) of the Division approves the action memo. For amounts greater than $1,000, the action memo requires the approval of both the Client Services Manager (CSM) and the PAU.

At any step in the approval process, an action memo can be returned to the CSO for adjustment. After the action memo is adjusted and resubmitted, the approval process is repeated. Once all appropriate approvals are obtained, the action memo is recognized as either a client receivable or client credit note, as appropriate.

As part of our review, we analyzed all action memos outstanding as at November 8, 2012. We also reviewed the status of a sample of 25 action memos that had not been processed at two dates, March 22, 2012 and November 8, 2012.

Our review indicated the following:

Action Memos not being processed in a timely manner

As at November 8, 2012, we found that 131, or 20%, of outstanding action memos had remained unchanged for more than 90 days.

Table 5 shows the status of action memos requiring action on the part of an employee as at November 8, 2012.

Table 5

Advanced Education and Skills
Status of Action Memos
As at November 8, 2012

Status	Total		No change in:					
			< 90 days		90-180 days		> 180 days	
	#	Amount	#	Amount	#	Amount	#	Amount
In progress	97	$49,202	44	$13,710	17	$6,276	36	$29,216
Recommended	47	117,548	45	116,899	2	649	-	-
Returned for adjustment by CSM	7	18,027	-	-	4	16,402	3	1,625
Approved – sent to PAU	318	390,169	318	390,169	-	-	-	-
Returned for adjustment by PAU	181	193,250	112	122,973	42	30,860	27	39,417
Total	**650**	**$768,196**	**519**	**$643,751**	**65**	**$54,187**	**66**	**$70,258**

Source: Department of Advanced Education and Skills

The 650 action memos outstanding as at November 8, 2012 totaled $768,196. Of these, $70,258, or 9%, had been outstanding for more than 180 days with no change in status. Also, $54,187, or 7%, had been outstanding between 90 and 180 days with no change in status. Most of these action memos with no action for a significant period of time were either “In progress” and awaiting completion by a CSO, or “Returned for adjustment by PAU” and awaiting adjustment by the CSO who had originally created the action memo.

In one instance, an action memo pertaining to a large overpayment to a married adult was initiated by a CSO. Upon review, the PAU returned it to the CSO for adjustment and requested that the overpayment be transferred to the spouse, since there was a credit in that account. This return for adjustment was created in April 2012. As of November 8, 2012, no further action had been taken by the CSO.

As a result of action memos not being completed in a timely manner, collection efforts on receivables are delayed.

Delay in initiating recovery

For clients currently receiving income support, the method of collecting any outstanding receivable balances is limited by the *Act* to withholding 5% of the client's benefits, until it is fully repaid.

In 5 of a sample of 25 accounts we reviewed, an action memo had been created relating to an overpayment, however, the action memo had not yet been approved. As a result, these clients continued to receive the full amount of their income support benefits as they had no other receivable in their accounts. In 4 of the 5 instances, no action had been taken on the action memos in over 15 months. Furthermore, in 1 of these 4 instances, the action memo had been returned to the CSO by the PAU in May 2010 with a comment stating that the covering period of the receivable was described in the wrong field. As of November 8, 2012, 30 months later, the correct field had still not been used by the CSO to correct the action memo.

As a result of the Department not following up on action memos in a timely manner, the 5% recovery on the income support benefit was delayed by more than a year for 4 of the 5 outstanding action memos.

Delay in initiating collection efforts

We reviewed overpayments from former clients who are no longer receiving income support. The Finance and General Operations Division of the Department is responsible for collecting these overpayments. The Division receives a monthly listing of all clients for which a receivable is recorded for the first time, and collection efforts commence.

In 5 of the 25 items we reviewed, an action memo had been created relating to an overpayment but the action memo had not yet been approved. These clients were no longer receiving income support payments and they had no receivable balance on their accounts. As a result of the delay in approval of the action memos, there were no efforts being made to contact the clients and recover the overpayment.

In 2 of the 5 items, no action had been taken on the action memo in more than 17 months.

The Department was not following up on action memos on a timely basis to ensure collection of a client receivable was not delayed.

Evidence not being reviewed in a timely manner

Our review identified one instance where information was requested from a client on May 13, 2010, related to an investigation of a possible overpayment. The requested information was received by the Department on May 25, 2010. However, as of March 22, 2012, almost 2 years later, the action memo had still not been sent for approval. The action memo was approved subsequent to March 22, 2012 and ultimately resulted in a receivable of $2,428.

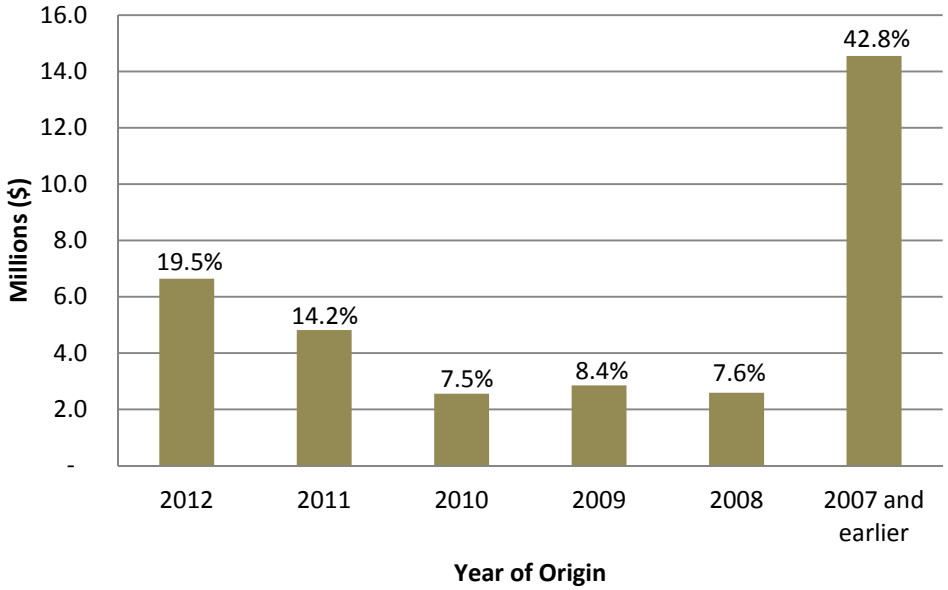
1C. Collections

Introduction

Our review also examined the age of the accounts receivable balances as of March 31, 2012. Chart 1 shows the percentage of receivables still outstanding as at March 31, 2012, by year of origin.

Chart 1

Advanced Education and Skills
Outstanding Accounts Receivable by Year of Origin
As at March 31, 2012



Source: Department of Advanced Education and Skills

Generally, collection of accounts receivable becomes more difficult as the accounts get older. Chart 1 shows that 42.8% of the accounts receivable balance as at March 31, 2012 originated in 2007 and earlier.

Any client that is currently receiving income support and who also has a receivable balance has 5% of their semi-monthly income support payment deducted and applied against the receivable balance until it is repaid.

If an overpayment recipient is no longer receiving income support, options available to the Department to collect these accounts include:

- restitution agreements, where the Department enters into an agreement with the former client for the repayment of the amount due;
- certificates of judgment, where a certificate is filed with the Registrar of the Supreme Court; and
- garnishment, where the overpayment is recovered through garnishment of money payable to the recipient by another person.

Table 6 shows collections for fiscal years 2009 through to 2012.

Table 6

Advanced Education and Skills
Income Support Collections
For the Years Ended March 31

	2009	2010	2011	2012
Total accounts receivable, opening	$29,514,057	$29,116,558	$28,901,935	$31,024,871
New overpayments recorded during year	5,278,119	4,312,564	6,090,845	7,752,090
Total accounts receivable for collection during year	**$34,792,176**	**$33,429,122**	**$34,992,780**	**$38,776,961**
Receipts	$3,065,963	$2,743,010	$2,257,004	$2,182,474
Recoveries	1,475,034	1,530,046	1,586,976	1,633,949
Refunds	(38,438)	(31,432)	(35,217)	(28,116)
Total collections	**$4,502,559**	**$4,241,624**	**$3,808,763**	**$3,788,307**
Percentage of receivables collected	**12.9%**	**12.7%**	**10.9%**	**9.8%**

Source: Department of Advanced Education and Skills

Recoveries are amounts that were deducted from income or employment support payments made to active clients. Receipts are amounts that were collected from all other sources, including former clients. Refunds include credits that have been issued to clients.

We reviewed a sample of 50 accounts receivable balances as at March 31, 2012 and identified the following issues:

Overstated accounts receivable

Balances that are identified as uncollectible should be considered for write off. Financial Collection Officers (FCOs) identify these balances and recommend them for write off. Once it is approved within the Division, the write off of any account receivable balance greater than $1,000 must be approved by the Treasury Board. Write offs less than $1,000 can be approved by the Deputy Minister of the Department.

We found 2 instances in our sample of 50 where an account receivable was recorded, however, the Department did not have any authority to collect. These collections are not being pursued and the balances have not been submitted for write off. We also found 3 instances where accounts receivable balances were recommended for write off, however, they had not yet been approved by the Division.

Details of receivable balances that the Department did not have authority to collect are as follows:

- In one instance, the receivable resulted when an amount related to a child welfare case was recorded in the system in error. This occurred in 2005, more than seven years ago. The Department has no authority to collect receivables that arise as a result of child welfare cases, however, the balance was still recorded as a receivable.

- In the second instance, the client was subsidized by the Department of Health and Community Services. Department officials advised that the Department does not pursue collection efforts pertaining to overpayments to clients that are subsidized by the Department of Health and Community Services.

Details of receivable balances that the Department had not yet submitted for write off are as follows:

- In one instance, a receivable was recommended for write off by the FCO in 2009 since the client was deceased. More than three years have passed and the balance has not yet been submitted for write off.

- In the second instance, there has been no contact with the client for more than six years. The receivable was recommended by the FCO for write off in 2010. More than two years have passed and the balance has not yet been submitted for write off.

- In the third instance, the receivable was recommended by the FCO for write off in 2009. More than three years have passed and the balance has not yet been submitted for write off.

As a result, the accounts receivable balance was overstated by receivable amounts that the Department does not have the authority to collect or for which write offs have not yet been approved.

Credit balances resulting from processing errors

During our review, we found 2 instances in our sample of 50 where a client had a credit balance even though these clients were not entitled to receive any monies from the Department. Errors in recording related overpayments, in both instances, resulted in the credit balances.

As a result, these clients have a credit balance even though they are not entitled to any refund from the Department.

Not following the Collections Policy Guide regarding write off of accounts receivable

During our review, we found 3 instances in our sample of 50 where the Department had received no payments towards the outstanding balance in more than six years and had no contact with the client. In all 3 instances, the balances remain in accounts receivable.

- In one instance, the Division had last contacted the client in 1997. There was no documentation in the file to indicate that the client was aware of an amount owing. No payments were received against the account receivable. The balance is still recorded as an account receivable, and has not been considered for write off.

- In the other two instances, the Division has not been able to contact the clients since 2002. However, the balances are still in accounts receivable and no further action has been taken.

In each of these 3 instances, the Department explained that the clients were still young and could potentially avail of the Program in future years. If this were to happen, the Department would be able to collect on these amounts again by taking recovery on these benefit payments.

According to the Department's Collections Policy Guide *"Legislation states that if there is no contact in six years the case must be written off…"*. Therefore, the Department is not following its Collections Policy Guide regarding the write off of accounts receivable.

Recommendations

The Department should:

- ensure that interface results are being evaluated on a timely basis;
- ensure that action memos are being processed in a timely manner;
- ensure that accounts receivable balances are accurate and collectible; and
- follow its Collections Policy Guide for the write off of accounts receivable.

2. Income Support Payments

Overview

Individuals and families who may be eligible for the Program can apply to the Department in order to receive financial benefits and other services to assist in meeting daily living expenses. Once approved, clients generally receive payments twice a month from the Department.

Table 7 shows income support benefits paid by the Department for the 2010 through to 2012 fiscal years by type of assistance.

Table 7

Advanced Education and Skills
Income Support Benefits
For the Years Ended March 31

Type of benefit	2010	2011	2012
Basic Assistance	$200,563,071	$205,681,370	$208,006,790
Transportation	9,866,219	11,332,502	11,607,869
Special Needs	7,580,362	6,744,761	7,000,938
Total	**$218,009,652**	**$223,758,633**	**$226,615,597**

Source: Department of Advanced Education & Skills

There were 916,073 payments made from CAPS during the fiscal year ended March 31, 2012. We reviewed the 15 highest payments and 5 random payments made during the year.

Allowable benefits not paid to clients

Our review of the 15 highest payments during the 2012 fiscal year identified 4 instances where a benefit that the client was entitled to was not paid for a period of time.

- In one instance, a client qualified for a disability supplement upon submission of a medical certificate. The client file included documentation that indicated that the client had been disabled from birth and had made employees aware of this disability on five occasions over a period of approximately six years. There was no documentation in the file to suggest that the client was made aware of their eligibility for the supplement. A payment of $6,073 was issued in July 2011 for payment of the supplement, retroactive to September 2005.

- In the second instance, when a client's housing circumstances changed, all allowable benefits were not included in the recalculation of their income support. The file was reassessed and the client was awarded retroactive benefits, totaling $8,697, that they were entitled to after their change in circumstances. As was noted in the system, this caused "financial hardship" to the client.

- In the third instance, a client had been receiving various special diet allowances. Upon a change in housing circumstances, an error was made in the recalculation of the client's total benefits. The client requested an internal review of their file after being made aware of this benefit, and was awarded retroactive benefits totaling $5,574 covering a six year period, the maximum permitted under the *Act*.

- In the fourth instance, a client had not received all allowable board and lodging benefits that they were entitled to under a special agreement with the Eastern Regional Health Authority. They were issued retroactive benefits totaling $5,600.

Therefore, clients were not always receiving allowable benefits to which they were entitled.

Department not investigating stale-dated cheques

The Department of Finance periodically sends the Department a list of cheques that have not been cashed for six months or more. The Department is responsible for investigating why the cheques were not cashed and report back to the Department of Finance with appropriate recommended remedial action.

Of the 20 payments we reviewed, we found 2 instances where an accumulation of cheques were not cashed for a period of time, in excess of six months. In both instances, all stale-dated cheques were returned to the Department and a replacement cheque was prepared. The circumstances around both instances are as follows:

- In one instance, a landlord had not cashed their cheques for a period of 18 months. The landlord notified the Department and requested a replacement cheque for the stale-dated cheques.

- In another instance, a landlord had not been able to cash their cheques as they were ill in the hospital. After a period of 15 months, all their cheques were returned and a replacement cheque was generated.

In each of these instances, the replacement cheque was prepared as a result of the landlord contacting the Department. The Department had not initiated the investigation. As a result, it appears the Department is not monitoring the listing of stale-dated cheques and taking appropriate action.

Direct deposit rejections not investigated and corrected

Many clients of the Program receive their benefits through direct deposit. At each date of issue, a listing is returned to the Finance and General Operations Division of the Department of direct deposit payments that were rejected for various reasons. The listing is reviewed by a Finance and General Operations Division employee who makes a note in the individual's file that the direct deposit was rejected and reverses the payment in the system. It is also the responsibility of that employee to notify the appropriate CSO of the rejection. The CSO is responsible to investigate the cause of the rejection and take corrective action.

Our review identified one instance where a direct deposit was rejected 14 consecutive times because the direct deposit information was not entered properly. In each of the 14 rejections, a rejection note was added to the client's file and the payment reversed. However, there was no documentation to indicate that a CSO was notified and/or that any steps were taken to contact the recipient. Corrective action was only taken when a CSO reviewed the file for an unrelated reason.

As a result, direct deposit rejections are not always investigated and corrections made on a timely basis.

Recommendations

The Department should ensure that:

- income support recipients are made aware of all benefits available so that they can better understand what they are entitled to; and
- there is an investigation of stale-dated cheques and direct deposit rejections.

3. Other Findings

Electronic Policy and Procedure Manual not easy to navigate

The Department has recently made the Income and Employment Support Policy and Procedure Manual available in an electronic format on its intranet for use by its employees. Discussion with Department officials indicated that while the table of contents could be searched, it was not possible for employees to search for key words within sections. This could make it difficult for employees to find specific information within the Manual.

Incompatible systems

All payments to income support recipients are managed within CAPS. All notes related to a client's income support payments, receivable balance and payments against the receivable balance are recorded in this system.

The Provincial Collection System (PCS) is used by the Finance and General Operations Division in its collection efforts from clients no longer receiving income support benefits. Employees within this division enter their notes in the PCS. The PCS generates such things as the initial letters to inactive clients and monthly statements.

The PCS is not compatible with CAPS. Once a month, the Office of the Chief Information Officer (OCIO) generates a report for the Department of all clients within CAPS that have a receivable recorded in their accounts for the first time, and any client changes within CAPS, such as a change in address. This information is then distributed to various FCOs within the Department to update the PCS as necessary.

For all new overpayments created within CAPS, a FCO must review CAPS information to determine the circumstances surrounding each overpayment and re-enter all relevant notes into the PCS.

As a result of the incompatibility of the two systems, collection efforts may be delayed or complicated by the lag in information. For example, if a client has a restitution agreement with the Department and misses a payment, the Finance and General Operations Division is not aware of the missed payment until the next month when the PCS has been updated. Also, prior to sending an initial letter regarding an overpayment, a FCO must compare all relevant contact information to CAPS to ensure the PCS information is correct.

This incompatibility between the two systems results in significant inefficiencies within the Department.

The system limits recovery of overpayments

One of the collection mechanisms used by the Department to collect overpayments is the Federal Set-Off Program. If the Department is unable to reach a repayment agreement with inactive clients, the Department may utilize this program whereby federal payments are garnished from clients who have a receivable balance with the Department. This is done within the PCS as it interfaces directly with the Federal government.

Within the PCS, overpayments are assigned to cases, meaning a family unit. As a result of PCS limitations, only one client can be assigned in the Federal Set-Off Program at one time, even though both spouses in a family unit may have overpayments. Therefore, if both spouses have an overpayment, and one adult is set-up in the Federal Set-Off Program, if the other adult receives a payment from the Federal government, such as an income tax refund, the Department would not be notified of this and would not be able to garnish this payment.

Periodically, the Department will switch the person that is enrolled into the Federal Set-Off Program in an attempt to recover overpayments.

Recommendations

The Department should:

- determine whether the electronic Policy and Procedure Manual should be modified to allow easier navigation by employees;
- consider the incompatibility between CAPS and the PCS and determine whether there is an alternative solution; and
- investigate whether there is the possibility of being able to set-up both members of a family unit into the Federal Set-Off Program.

Department's Response

1A. Detection of Overpayments

Recommendation:
The Department should ensure that interface results are being evaluated on a timely basis.

Response:
The Department has recently implemented a number of changes to improve the timeliness of processing interface results which detect potential non-reporting of income as well as fraud. These efforts include improved identification of cases that are of the greatest priority in terms of possible overpayments and detection of fraud. As well, staffing resources have been assigned to focus specifically on the timely processing of interfaces.

1B. Action Memos

Recommendation:
The Department should ensure that action memos are being processed in a timely manner.

Response*:*
The Department has identified several instances where work from the processing of action memos was left in progress due to staff moving to other positions or departments. As a result, the Department has implemented measures which would monitor these situations and to ensure that the work is reassigned.

In addition, the Department has developed a daily report on the number of action memos in the queue for processing and as a result, business process standards have been implemented. Client Services Managers will regularly send reminders to staff to check their work queues and address any outstanding issues during performance feedback sessions. In addition, a regional report will be generated once a month outlining any outstanding action memos that have a status of "in progress", "returned for adjustment" or "recommended". This tool will assist managers in identifying and addressing issues.

The Department acknowledges that there was an increase in the number of overpayments exceeding $50,000 by one (1) case from the previous year. Additionally, the Department is focusing an effort on the prosecution of cases where the non-reporting of income has led to significant overpayments. With an increased effort by the Department on fraud detection, there is an increased likelihood of more overpayments being generated.

1C. Collections

Recommendation:
The Department should ensure that accounts receivable balances are accurate and collectible.

Response:
The Department is working through a number of older accounts with balances that are due to be written off, including those identified in the report. This will result in remaining accounts receivable balances being accurate and collectible. The Department is also currently prioritizing accounts reaching the six-year limit to ensure all collection avenues are being explored before accounts reach write-off status.

Recommendation:
The Department should follow its Collections Policy Guide for the write-off of accounts receivable.

Response:
The Department will review its collections policy guide and related write-off procedures to ensure they are comprehensive and relevant, and will ensure they are accurately and consistently applied.

2. Income Support Payments

Recommendation:
The Department should ensure that income support recipients are made aware of all benefits available so that they can better understand what they are entitled to.

Response:
The Department is currently involved in a project to upload the policy manual to the Internet so that the contents, including program entitlements, are widely available to clients and the public. Benefits to clients are also detailed on payment stubs and staff work with clients to make them aware of entitlements.

Recommendation:
The Department should ensure that there is an investigation of stale-dated cheques and direct deposit rejections.

Response:
The Department investigates stale dated cheques as the reports are sent out from the Department of Finance, Office of the Comptroller General on a periodic basis. The most recent report was received in February 2012. The Department reviews each case with priority placed on investigation of the larger and recurring items. The Department will reinforce efforts to ensure all stale dated cheques are thoroughly investigated and results communicated to the appropriate departmental staff.

With respect to direct deposit rejections, the department will ensure a note is placed on the client file indicating who was notified of the rejection and the time of notification. Finance Division staff will ensure the relevant Client Service Manager is notified of the rejection and subsequent follow-up action is completed.

3. Other Findings

Recommendation:
The Department should determine whether the electronic Policy and Procedure Manual should be modified to allow easier navigation by employees.

Response:
The Department is currently involved in a project to update and standardize the Policy Manual as well as making it web friendly. OCIO is providing support to the Department in this endeavor and also to make the manual available to the public via the Departmental website. Once the updating is complete, the manual will be available to the public, will have a numerical system for easy reference and will also have search capabilities.

Recommendation:
The Department should consider the incompatibility between CAPS and the PCS and determine whether there is an alternative solution.

Response:
The Department is aware of this incompatibility and is investigating the viability of using other collection systems including the Student Loans Corporation's collections system, LaPro.

Recommendation:
The Department should investigate whether there is the possibility of being able to set up both members of a family unit into the Federal Set-Off Program.

Response:
The Department has determined that system limitations prevent setting up both members of a family unit into the Federal Set-Off Program. The incompatibility is caused by the case-based PCS that is only able to communicate one family member at a time to the Set-Off Program to the exclusion of the other family member. The Department has at times switched the family member being set up as a means to improve the likelihood of collection.

The findings and recommendations from this report will be shared with managers to ensure future compliance.

Income Support and Accounts Receivable

PART 3.4

DEPARTMENT OF ENVIRONMENT AND CONSERVATION

PESTICIDES CONTROL

Executive Summary

The Pesticides Control Section (the Section) of the Department of Environment and Conservation (the Department) is responsible for regulating the sale, use and handling of pesticides throughout Newfoundland and Labrador.

The Section monitors activities involving the use of pesticides for compliance with legislation, analyzes the annual purchase and usage summaries of pesticide operators and analyzes the annual sale summaries of domestic pesticide vendors. Investigations are conducted when there is a suspicion of non-compliance with either the *Environmental Protection Act* or the *Pesticides Control Regulations, 2012*. The Section performs pesticide inspections throughout Newfoundland and Labrador.

The *Pesticides Control Regulations, 2012* were updated effective May 1, 2012. In instances where the *Pesticides Control Regulations, 2003,* and the *Pesticides Control Regulations, 2012,* have consistent provisions, we have made reference to "*Regulations,*" indicating a reference to both the current and former pieces of legislation.

There are three categories of pesticides licences: applicator, operator, and vendor. An applicator licence certifies the holder to apply pesticides. An operator licence allows the holder to engage an applicator to perform pesticides operations to control a pest and allows the holder to purchase, transport, store or dispose of a pesticide. A vendor licence allows the sale or distribution of a pesticide.

The *Regulations* outline the requirements around when each of the three types of licences are required, along with the requirements for handling, storage, transportation and application of pesticides.

Our review identified concerns with:

- the inspection and monitoring of licensees;
- monitoring of violations and complaints;
- information management;
- policies and procedures; and
- performance measurement and monitoring.

Inspection and Monitoring of Licensees

The *Regulations* prescribe requirements regarding each type of pesticide licence.

Department policy requires inspections of pesticide licensees to be performed to ensure the *Regulations* are being followed. Department policy also requires the monitoring and analysis of annual purchase and usage summaries of pesticide operators and annual sale summaries of domestic pesticide vendors.

Our review of inspection information indicated that:

- storage inspections of operators and commercial vendors did not occur with the frequency required by Department policy;
- domestic vendor inspections had not been completed within timeframes established by Department policy;
- inspection forms were not being filled out completely or consistently; and
- domestic inspections were not being documented.

Our review of the annual reporting requirements of domestic vendor licensees regarding the sale of pesticides indicated that they were not being adequately monitored.

Monitoring of Violations and Complaints

A violation can be identified as a result of an inspection or an investigation of a complaint. During our review, it was unclear whether violations noted on the field inspection forms we reviewed had been addressed in accordance with Department policy. It was also determined that follow up inspections were not completed prior to a licensee obtaining a new licence in instances where violations for which warnings or summary offence tickets were issued.

Our review also identified that information related to complaints in the Pesticides Information Management System (the System) was not complete.

Information Management

Our review identified concerns with the management of both paper and electronic information by the Department. Completed inspection documentation was not always being entered in the System. Also, the completed inspection documents were not kept in the licensee files. Instead,

they were held by the inspector, and in the case of storage and field inspections, they were kept in inspection books that were with the inspector in the field. Therefore, there is no central record of inspection results.

During our review, we also identified that the information presented on the Department's website was not up-to-date. In addition, the Department was unable to provide accurate information from the System.

We also found that inspection information in the System was not complete.

Policies and Procedures

The Department does not have written policies for the Section. Procedures for operator licensing and compliance monitoring and enforcement have been in draft form since 2010 and 2008, respectively. The Department does not have written procedures related to vendor licensing.

Performance Measurement and Monitoring

While monthly reporting to the Manager of Pesticides Control is required of all Section staff, there was no standard template for the reporting. The information contained in staff reports varied amongst staff. Also, it was noted that reporting by one staff member was not being completed on a timely basis.

Background

Overview

The Department of Environment and Conservation (the Department) is responsible for the protection, enhancement and conservation of the quality of the natural environment, including water, air, and soil quality. The vision of the Department is a clean, sustainable environment and healthy resilient ecosystems in perpetuity for the social, physical, cultural, biological and economic well-being of the Province.

The Pollution Prevention Division (the Division) within the Environment Branch of the Department is responsible for the development of plans, programs, standards and activities concerning environmental emergencies, waste management, petroleum storage, industry, pollution prevention, air emissions, environmental science, pesticides and contaminated sites.

The Division is responsible for five sections, including the Pesticides Control Section (the Section).

Expenditures

For the year ended March 31, 2012, the Department had a total staff of 433. Total expenditures for the Division in fiscal 2012 were $4.6 million ($6.9 million in fiscal 2011). Table 1 shows expenditures for the Division for the fiscal years 2010, 2011, and 2012.

Table 1

Department of Environment and Conservation
Pollution Prevention Division
Expenditures
For the Years Ended March 31
($000's)

Expenditure	2010	2011	2012
Salaries and Benefits	$2,309	$2,441	$2,511
Transportation & Communications	113	106	102
Supplies	48	41	35
Professional Services	1,337	798	755
Purchased Services	55	3,480	1,159
Property Furnishings and Equipment	10	4	18
Total Expenditure	**$3,872**	**$6,870**	**$4,580**

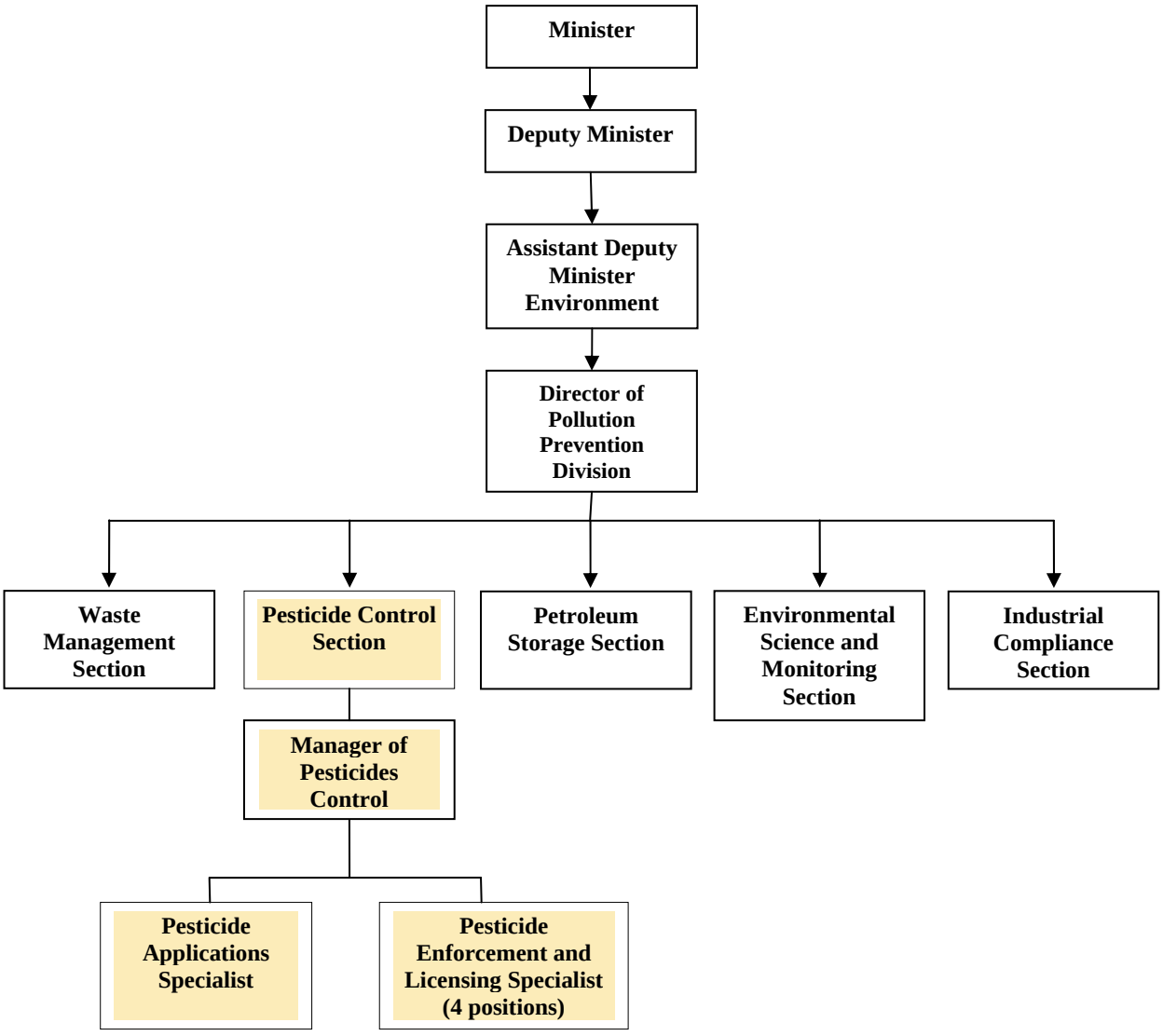
Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund

Organization

The Section has a staff of 6 and reports to the Director of Pollution Prevention. It also utilizes an environmental scientist from the Environmental Science and Monitoring Section on a part time basis. Figure 1 shows the organizational structure of the Section.

Figure 1

Department of Environment and Conservation
Pollution Prevention Division
Organization Chart



Source: Department of Environment and Conservation

Pesticides Control Legislation

The sale, use and handling of pesticides are regulated by the *Environmental Protection Act* (the *Act*) and the *Pesticides Control Regulations, 2012*.

A pesticide, as defined in Section 2(z) of the *Act*, includes:

(i) an insecticide, avicide, rodenticide and fungicide, that is, a substance or mixture of substances used for the destruction or control of insects, birds, rodents, fungi or other pests and micro-organisms,

(ii) an herbicide, that is, a substance or mixture of substances used for the destruction or control of vegetation, a defoliant, plant growth regulator, plant desiccant or substance used for soil sterilization, and

(iii) *a substance or mixture of substances intended for use as a pest control product under the* Pest Control Products Act *(Canada).*

Section 33 of the *Act* outlines the licensing requirements for the supply, distribution, storage, use and application of pesticides as follows:

(1) A person shall not supply, sell, distribute or keep for distribution a pesticide unless

(a) the person has a valid licence of a class prescribed by regulation for that purpose; or

(b) the pesticide or the person is exempted under the regulations from the requirement for the pesticide to be sold by a licensed person.

(2) A person shall not store, use or apply a pesticide unless

(a) the person has a valid licence of a class prescribed by regulation for that purpose and except under the conditions for storing, use or application prescribed for the pesticide; or

(b) *unless the pesticide or the person is exempted under the regulations.*

The *Pesticides Control Regulations, 2003*, were in effect until May 1, 2012, at which time they were replaced by the *Pesticides Control Regulations, 2012*. Changes in the updated *Pesticides Control Regulations, 2012*, primarily relate to a restriction on the sale, and use on lawns, of pesticide products that contain certain specified chemicals and an additional provision that the Minister of Environment and Conservation (the Minister), or a person designated by the Minister, may require an applicant for an operator's licence to undergo a pesticide storage inspection.

Pesticide Licences

There are three categories of pesticide licences outlined in the *Pesticides Control Regulations, 2012*:

- Applicator - an applicator is a person who is licensed to apply pesticides;
- Operator - an operator licence shall entitle the holder to engage an applicator to perform pesticides operations to control a pest; or purchase, transport, store or dispose of a pesticide in accordance with legislation; and
- Vendor - a vendor licence is required to sell or distribute pesticides.

  The Department classifies the vendor licences as follows:

  - Domestic - the pesticide being sold or distributed is classified and labelled as "domestic" in legislation;
  - Commercial - the pesticide being sold or distributed is classified and labelled as "commercial" or "restricted" in legislation.

The *Pesticides Control Regulations, 2003* had categories and descriptions that are consistent with these three categories. The *Pesticides Control Regulations, 2012* outline the requirements around when each of the three types of licences are required, along with the requirements for handling, storage, transportation and application of pesticides.

Applicator licences are issued for a term of five years. Operator, domestic vendor, and commercial vendor licences are issued for a term of one year.

The Department issues licences with a set of terms and conditions. Upon effect of the *Pesticides Control Regulations, 2012*, existing licences were re-issued with updated terms and conditions to reflect the changes to legislation.

Pesticides Control Section responsibilities

The Section is responsible for regulating the sale, use and handling of pesticides throughout Newfoundland and Labrador.

The Section monitors activities involving the use of pesticides for compliance with legislation, analyzes the annual purchase and usage summaries of pesticide operators and analyzes the annual sale summaries of pesticide vendors. Investigations are conducted when there is a suspicion of non-compliance with legislation.

The Section performs inspections throughout Newfoundland and Labrador. It has four pesticide enforcement and licensing specialist positions. Three of the positions are in the Avalon region. At the time of our review, two of the Avalon region positions were vacant. The fourth position is in the Central region. The Labrador region is covered by the pesticide enforcement and licensing specialists in the other regions, as time and resources permit. The Section also utilizes an environmental scientist, located in Corner Brook, on a part-time basis to perform inspection duties in the Western region of the Province.

Objectives and Scope

Objectives

The objectives of our review were to determine whether:

- the Department was performing inspection and monitoring activities to determine whether pesticide applicator, operator and vendor licensees were complying with legislation;
- the Department was following up to ensure that non-compliance concerns identified during inspection activity and complaints investigation were appropriately addressed; and
- adequate information systems were in place for the tracking of the approval and processing of licences and the inspection and monitoring of licensees.

Scope

Our review was completed in November 2012 and covered the period January 1, 2010 to October 31, 2012. Our review included interviews with personnel within the Department, an examination of relevant legislation and compliance testing in various areas.

For the period of our review, January 1, 2010 to April 30, 2012, the *Pesticides Control Regulations, 2003* were in effect. For the period May 1, 2012 to October 31, 2012, the *Pesticides Control Regulations, 2012* were in effect. Our analysis and review of sampling results was based on the legislation in effect during the relevant time periods of the sample items tested.

Within our detailed observation sections, in instances where the *Pesticides Control Regulations, 2003,* and the *Pesticides Control Regulations, 2012,* have consistent provisions, we have made reference to "*Regulations,*" indicating a reference to both the current and former pieces of legislation.

Detailed Observations

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

1. Inspection and Monitoring of Licensees
2. Monitoring of Violations and Complaints
3. Information Management
4. Policies and Procedures
5. Performance Measurement and Monitoring

1. Inspection and Monitoring of Licensees

Overview

Once a pesticide licence has been granted, the licensee is permitted to begin using, storing, handling, or selling pesticides. The *Regulations* have a number of requirements regarding each type of pesticide licence issued which require monitoring by the Department to ensure that the *Regulations* are being followed.

Department policy requires inspections of licensees to be performed to ensure the *Regulations* are being followed. Department policy also requires the monitoring and analysis of annual purchase and usage summaries of pesticide operators and sale summaries of domestic pesticide vendors.

During our review we identified issues in the following areas related to the inspection and monitoring of licensees:

A. Inspection Occurrence and Frequency
B. Inspection Documentation
C. Monitoring Reports

1A. Inspection Occurrence and Frequency

Introduction

Department policy requires that a storage inspection be completed at least once during the one year period of an operator licence and a commercial vendor licence.

Department policy requires that a checklist be completed for each domestic vendor a minimum of once per calendar year. Requirements covered by the domestic vendor inspection checklist include: storage, licence display, drainage and protective equipment.

Additional follow up inspections are to be completed based on the outcome of the original visit.

The Department periodically conducts field inspections, however, the Department does not have a policy regarding the requirement or frequency of field inspections. Field inspections are designed to assist the Department in ensuring the terms and conditions of a licence are met. Terms and conditions of a license include:

Section 8: "*The operator shall provide and ensure that all personnel involved in the mixing, loading, and application of pesticides wear appropriate protective equipment in accordance with the pesticide manufacturer's product label and/or Material Safety Data Sheet*."

Section 10(1): "*All exterior spraying activities, except foliar applications of insecticides to trees taller than three (3) meters, are permitted only when:*

(a) wind speeds are between 2 and 15 km/h,
(b) air temperatures are below 25^{o}C,
(c) the relative humidity is above 50% and
(d) it is not raining nor is rain anticipated over the next 2 hour period.

Storage inspections not completed

During our review, we determined that storage inspections are not being completed at least once during the one year period of an operator licence and a commercial vendor licence:

- a sample of 26 operators indicated that:
  - 3 operators had not been inspected during 2010;
  - 2 operators had not been inspected during 2011; and
  - 7 operators had not been inspected during 2012;
- a sample of 3 commercial pesticide vendors revealed that:
  - 2 vendors had not been inspected in 2010;
  - 1 had not been inspected in 2011; and
  - none had yet been inspected in 2012.

Field inspections not completed

During our review, we identified that 24 out of our sample of 26 operators did not have a field inspection completed in either 2010, 2011, or 2012.

There were a total of 68 active operators during the years 2010, 2011, and 2012. The Department completed a total of 43 field inspections during the period 2010 to 2012. Of these 43 field inspections, 20 were specific to road-side spraying performed by one operator on behalf of the Provincial Government. There were only 23 field inspections performed on the remaining 67 operators that had operated during all or a portion of these three years.

Domestic vendor inspections not completed

During our review, we determined that domestic inspections were not always being completed at least once during the one year period that a domestic vendor licence is issued.

We reviewed a sample of 21 domestic vendors. In 5 of the 21 domestic vendors reviewed, there was no evidence to indicate that a domestic inspection had been completed in 2012.

1B. Inspection Documentation

Introduction

The Department requires inspections to be documented. The Department utilizes inspection booklets for both pesticide storage and pesticide field inspections. The forms are to be fully completed by the inspector and signed and dated by both the inspector and licensee representative.

Inspection forms were not fully completed

During our review of inspection booklets completed during 2010, 2011 and 2012, we noted that some inspection forms were not fully completed. For example, of the 146 storage inspection forms reviewed, there were 54 forms that had checklist points, such as acceptable signage and acceptable ventilation, left blank with no indication of whether there were any concerns.

When forms are not fully completed, there is an increased risk an issue of non-compliance will go undetected.

Inspection forms referencing

Department policy requires each inspection form to have a reference number comprised of the inspector's initials and the next number within the sequence of inspections performed by the inspector.

Our review indicated that reference numbers are not being assigned and documented correctly on the inspection forms:

- We identified instances where reference numbers assigned to inspection forms by an inspector were not sequential; and
- We identified instances where the licence number was used as the reference number.

As a result, the Department does not have a consistent method of tracking the inspections completed by an inspector and there is an increased risk that inspection results will not be appropriately monitored.

Domestic inspections not properly documented

Department officials indicated that domestic vendor inspection checklists are required to be completed. However, two inspectors, one in the Avalon region and one in the Western region, had not completed any domestic vendor inspection checklists during the period of our review. The inspectors indicated they were not aware that inspection checklists were required.

1C. Monitoring Reports

Introduction

The terms and conditions of an operator pesticide licence requires annual reporting by an operator to the Department regarding the purchase and use of pesticides. The terms and conditions of a domestic pesticide vendor licence requires annual reporting by a domestic pesticide vendor regarding the sale of pesticides.

Department policy requires the monitoring and analysis of the annual purchase and usage summaries of pesticide operators and the annual sale summaries of domestic pesticide vendors.

Vendor sale reports not submitted

The *Regulations* provide that a pesticide vendor shall keep a record of the purchase and sale of a pesticide.

The terms and conditions of a domestic pesticide vendor licence state: "*The vendor shall provide the annual (calendar year) sales figures of all pesticides sold from each location to the Pesticides Control Section by February 28th of the following year*".

During our review, we determined that 3 of the 21 domestic vendors we sampled had not submitted annual sales figures for the 2011 season by the deadline of February 28, 2012. Upon further review, it was determined that all 3 of these domestic vendors had obtained licences for the 2012 year while the required sales information remained outstanding. The 2011 annual sales figures for all 3 of these domestic vendors had still not been received by October 31, 2012.

Recommendations

The Department should ensure that:

- inspections are completed at a frequency that is in accordance with Department policy, and that documentation is complete and accurate; and
- required annual reports regarding the sale of pesticides are received from licensees within the established deadlines.

2. Monitoring of Violations and Complaints

Overview

A violation can be identified as a result of an inspection or an investigation of a complaint.

Department policy requires that if a violation of the legislation has occurred, the inspector will act to achieve compliance. As a result of assessing the circumstances around the violation, the inspector may choose to undertake an education action with the client, issue a formal warning, issue a summary offence ticket, or prepare information for legal proceedings.

Department policy requires that all actions are to be documented and also entered into the Department's Pesticides Information Management System (the System).

Violations of Regulations not actioned

Our review of all 43 field inspection forms completed by the Department during 2010, 2011 and 2012 indicated that 12 had violations noted. Of these 12 with violations noted, 2 had warnings issued. There was no notation on the remaining 10 inspection forms to indicate what action, if any, had been taken regarding the violations. Examples of violations for which warnings were not issued include: "no licence or signage onsite" and "no operator licence and no contingency plan."

Violations with warnings did not receive timely follow up inspection

Department officials advise that Department policy does not require follow up inspections on pesticide licensees that have had warnings issued during previous inspections.

The two warnings noted were issued to the same operator. In a 2010 inspection, from which the first warning resulted, the inspector had noted violations pertaining to the lack of a contingency plan, no vehicle signage and no spill kit. In a 2011 inspection, from which the second warning resulted, the inspector again noted violations pertaining to the lack of a contingency plan and no vehicle signage and, also, no operator licence on site.

A review of 2011 licensing dates indicated that the operator licence had expired and was re-issued subsequent to the first warning. There was no follow up inspection prior to the reissuance of the licence. Furthermore, violations noted in the first inspection recurred in the second inspection, yet the same action, a warning, was taken.

A policy requiring a follow up inspection of a licensee subsequent to a warning issuance would allow the Department to ensure that any issues of non-compliance noted in the warnings have been corrected.

Violations with summary offence tickets did not receive timely follow up inspections

Department officials advise that Department policy does not require a follow up inspection on pesticide licensees that have had a summary offence ticket (ticket) issued during a previous inspection.

Our review of 9 tickets issued during 2010, 2011 and 2012, indicated that 3 licensees that had received tickets were reissued a new licence without a follow up inspection being completed. We also identified a licensee that was issued 2 tickets for the same offence. This licensee was also issued a new licence without a follow up inspection completed to confirm that they were in compliance with legislation.

A policy requiring a follow up inspection of a licensee subsequent to the issuance of a summary offence ticket would allow the Department to ensure that any issues of non-compliance noted in the tickets have been corrected.

Complaints not being documented

Department policy requires that all complaints be entered into the System. By entering complaints received into the System, the Department will have a record of all complaints received, be able to identify recurring complaints against a licensee and be able to determine and take the necessary steps to address the complaints.

During our review we identified that complaint information in the System was not complete. Department officials advise that there had been complaints received during 2010, 2011, and 2012. However, the System did not contain complaints information for any of these years.

Department staff have been provided with a "Complaint Details Form" to assist in documenting the details of complaints received. We requested copies of complaint details forms completed during the period January 1, 2010 to October 31, 2012 and were given just two that had been completed during 2011. During our review of operator files, we found a copy of a completed complaint details form that had not been provided to us.

While Department officials do not require these forms to be filled out, the presence of these forms allowed us to conclude that there have been at least three complaints received that have not been entered into the System. Department officials advise that there have been more than three complaints received during the three years we reviewed. However, there is no record of additional complaints in either the System or on completed complaint details forms.

As a result, the Department does not have complete information about complaints that have been received. The Department is, therefore, unable to track the complaints received and monitor inspection activities to ensure that any issues have been addressed.

Recommendations

The Department should ensure that:

- violations of the *Regulations* are properly actioned and documented as such;
- follow up inspections are completed in a timely manner to ensure that violations have been corrected; and
- complaints received in the Department are entered into the System and appropriately addressed.

3. Information Management

Overview

The Department utilizes both paper and electronic documentation relating to the licensing and monitoring of pesticides use.

Paper-based documentation for each licensee is filed by calendar year, and includes:

- licence application;
- copy of licence;
- copy of terms and conditions;

- lists of pesticides intended for purchase, sale and/or use; and
- required purchase, usage and sale reports required from operators and domestic vendors.

The Department's duplicate copy of completed field and storage inspection forms for operators and commercial vendors are kept in the inspection books used and held by the regional inspectors. Inspections of domestic pesticide vendors are documented in printed checklists and are also held by the regional inspectors.

Electronic information pertaining to the licensing and monitoring of pesticides use is recorded in the System. The System tracks licences issued by assigning reference numbers to them. The System is set up to track licensing information about each licensee, such as:

- contact information;
- inspection results;
- type and quantity of pesticide used, stored, purchased or sold;
- complaints received about the licensee by the Department;
- insurance information; and
- licensing fees received.

The Department provides information to the public on their website. The website contains information on legislation, licensing and fees, as well as, a listing of all licensed operators and vendors active in the Province.

Completeness and accuracy of database

During our review, we requested the Department provide licensing and monitoring information from their System.

The Department made a number of attempts to provide complete and accurate information for our review. However, in each attempt, the Department was not confident in the completeness of the details of applicator and domestic vendor licences. We were, therefore, unable to place reliance on the information pertaining to these licences.

As a result, we question whether the Department is able to determine, with confidence, the details of licences that have been issued and to ensure the effective monitoring of these licences.

Completed inspection documents are not filed or entered in the System

During our review, Department officials advise that the inspection documents completed on licensees were not kept in the licensee file. Rather, they remain with the inspector that had completed them. Department officials advise that policy requires that information collected on inspection forms is entered in the System.

Our review indicated that inspection information in the System was incomplete. Specifically:

- a cross-reference of 59 storage inspections indicated that 28 had not been entered into the System;
- a cross-reference of 21 field inspections, indicated that 12 had not been entered into the System; and
- domestic vendor inspection results had not be entered into the System.

If information is not being entered in the System, there is no central record of inspection results as only the inspectors have access to the documented results.

Violation warnings not entered in the System

Department policy requires that all warnings are to be entered in the System.

Department officials provided us with copies of 73 warnings that had been issued during 2010, 2011, and 2012. These warnings were written on triplicate forms, with one copy kept by the inspector and the other by the Manager of Pesticides Control. A copy was not filed in the licensee folders to which it related.

Of the 73 warnings issued, 29 warnings had not been entered in the System. As a result, the Department was not able to track whether a licensee was a repeat offender on a particular issue.

Website information not current

A review of the Department's website indicated that listings of active licensed pesticide operators and vendors included on the website had not been updated. Specifically:

- the licensed pesticide operators listing had not been updated since January 8, 2010; and

- the licensed pesticide vendor listing had not been updated since August 7, 2009.

As a result, the reporting of active licensed pesticide operators and vendors on the Department's website was not current and was not providing up-to-date information to the public.

Recommendations

The Department should ensure that:

- inspection information is entered into the System and the paper copies of inspection forms are kept in the licensee files;

- warnings are entered into the System; and

- information on the Department's website is current.

4. Policies and Procedures

Overview

A policy is a guiding principle used to set direction in an organization. A procedure is a series of steps to be followed as a consistent and repetitive approach to accomplish an end result. We expected to see policies and procedures in place to guide the Department's processes around:

- the issuance of licences;

- field, storage and vendor inspections; and

- violations and complaints investigation.

Policies and procedures would help ensure compliance with the *Act* and *Regulations*. Policies and procedures are a useful training tool for new employees and a good reference tool for existing staff. Without policies and procedures, Department reporting may be inconsistent or incomplete.

Policies and Procedures in draft form or not developed

The Department does not have written policies for the Section. Policies are currently informal communications within the Section. During our review, Department officials advised us verbally of its policies within our areas of review.

During our review, Department officials provided us with a copy of a procedures document for licensing of applicators. They also provided us with a copy of a draft procedures document for the licensing of operators. This document has been in draft form since 2010. The Department does not have a procedures document for the licensing of vendors.

The Department provided us with a copy of a draft procedures document for compliance monitoring and enforcement. This document has been in draft form since 2008.

Our review indicated that inspectors are not aware of all inspection policies. For example, two inspectors had not completed any domestic vendor inspection checklists during the period of our review. Department officials indicated that domestic vendor inspection checklists are required to be completed.

Recommendation

The Department should develop and communicate well defined policies and procedures for the administration of pesticides control.

5. Performance Measurement and Monitoring

Overview

Performance measurement and monitoring are important in evaluating the effectiveness of programs and taking corrective action when necessary. We expected that the Department would measure and report on the effectiveness of its monitoring of pesticide licensees. We also expected to find well defined performance measures relating to pesticide licensees. For example, performance measures may include: licence application processing time, inspections completed, complaints received and time to follow up, and frequency and content of management reports.

Performance reporting inconsistency

Department officials advise that monthly reports from all Section staff are to be submitted to the Manager of Pesticides Control. There is no standard template for the reports. The information contained in each report varied among staff members. For example, some staff documented their work location for each day of the month, while others gave summaries of work completed throughout the month.

Our review also revealed that some staff did not provide exact numbers for the inspections completed. For example, staff used estimates such as "10+" and "20+" to document the number of inspections they had completed. These estimates impair the Department's ability to accurately track the number of inspections that have been completed.

During our review, we noted that one staff member was not submitting these reports on a timely basis.

Recommendation

The Department should standardize its performance reporting requirements.

Department's Response

1A. Inspection Occurrence and Frequency

- *1A. Introduction:*
  "Department policy requires that a checklist be completed for each domestic vendor a minimum of once per calendar year."
  - *There is currently no official Department policy or guidance document that sets out a requirement for the use of a checklist during domestic vendor inspections.*
  - *All domestic vendor locations will be inspected a minimum once per year, as time and resources permit.*
  - *While an inspection checklist has been made available for inspectors to use, initially as a training tool to assist them with inspections, how they recorded the compliance for vendors was left to each inspector to determine. The checklist has been revised numerous times since it was originally developed, and once a formal procedure on how domestic vendor inspections is set, staff will be instructed in the use of the checklist during each inspection.*

- *1A. Storage inspections not completed:*
  - *There is no department policy for inspection frequency for storage inspections. Annual inspections are given as guidance to inspectors however inspectors can adjust that frequency based on various factors including, compliance history and other priority work.*
  - *Upon reviewing the list of operators selected by your Office, we note that some of the operators listed as not having received storage inspections in given years, had been inspected in either the year previous to the one reported, or in the year following the year reported, or both in the year before and after the one reported. In some instances, where a pesticide storage inspection does not indicate problems with the storage, an inspector may decide to forgo an annual inspection if there are other demands on his/her time that may be considered of a more urgent nature.*
  - *Of the operators whose storages had not been inspected in the years noted (3 in 2010, 2 in 2011, and 7 in 2012), all of these operators had received a pesticide storage inspection in the years preceding the review, and all storages had been found to be compliant with the regulations.*

- *1A. Field inspections not completed:*

- *There are three broad categories of operators in this situation:*

  1. *Operators who do not use pesticides and hence do not require inspections (crown department or agencies that contract out pesticides use)*
  2. *Properties that inspectors do not have authority to enter (private properties including farms, federal lands)*
  3. *Operators that use pesticides so infrequently that the chances of an inspector being on site during use is exceedingly remote (golf courses, aerial, tree nurseries).*

- *1A. Domestic vendor inspections not completed:*
  - *While your Office identified 5 domestic vendors that had not been documented to have received an inspection in 2012, it has since been confirmed that inspections for these 5 vendors had been completed, and our records have been updated to reflect this action. Inspections will be continued with an intent to document the work in the database in a more timely fashion.*
  - *Annual inspections for domestic vendors is also a target, not a policy. In 2012 the department met that target.*

1B. Inspection Documentation

- *1B. Inspection forms were not fully completed:*

  "During our review of inspection booklets completed during 2010, 2011 and 2012, we noted that some inspection forms were not fully completed."

  - *While inspectors conduct thorough inspections, some of the interaction between themselves and their clients may be verbal, which is not being included on some inspection forms that have been completed. The Department will review and revise the inspection forms, as necessary, to ensure that they are meaningful documents and can fully document the inspection being conducted.*

- *1B. Inspection forms referencing:*

  "Our review indicated that reference numbers are not being assigned and documented correctly on the inspection forms…"

  - *Once the inspection forms have been reviewed/revised, new booklets will be ordered, that are pre-numbered. This will remove any potential for discrepancies in the numbering of inspection forms.*

- *1B. Domestic inspections not properly documented:*

  "Department officials indicated that domestic vendor inspection checklists are required to be completed. However, two inspectors, one in the Avalon region and one in the Western region, had not completed any domestic vendor inspection checklists during the period of our review. The inspectors indicated they were not aware that inspection checklists were required."

  - *A guidance document will be developed, which will outline the procedure for completing a domestic vendor inspection, including whether an inspection form/checklist will be required to be completed during each inspection.*
  - *If it is determined that an inspection form/checklist is necessary for completion during a domestic vendor inspection, the inspection checklist will be reviewed and revised as necessary, and will be presented in pre-numbered, booklet format, similar to other forms already in use.*

1C. Monitoring Reports

- *1C. Vendor sale reports not submitted:*
  "During our review, we determined that 3 of the 21 domestic vendors we sampled had not submitted annual sales figures for the 2011 season by the deadline of February 28, 2012. Upon further review, it was determined that all 3 of these domestic vendors had obtained licences for the 2012 year while the required sales information remained outstanding. The 2011 annual sales figures for all 3 of these domestic vendors had still not been received by October 31, 2012."
  - *The submission of annual sales data is a requirement under the terms and conditions of the domestic pesticide vendor licence, and is not a prerequisite of the licence renewal process for domestic vendors. Any violation of a term or condition of a licence may be subject to the issuance of a formal warning, a summary offence ticket, or the laying of an information.*
  - *The Department is continuing to seek compliance with the requirement for the domestic vendor to submit sales data, and should these 3 domestic vendors not submit these records, the Department is within its rights to issue a summary offence ticket or lay an information for each alleged violation, to address the matter.*

Recommendations

"The Department should ensure that:

- inspections are completed at a frequency that is in accordance with Department policy, and that documentation is complete and accurate; and
- required annual reports regarding the sale of pesticides are received from licensees within the established deadlines."

The Department accepts the recommendations of your Office, and acknowledges that while it has almost attained its procedural inspection frequency, it will work to improve the manner in which these inspections are documented on a go-forward basis. This includes ensuring that all required annual reports are received from licensees within the established deadlines.

2. Monitoring of Violations and Complaints

- *2. Violations of Regulations not actioned:*
  "…that 12 had violations noted. Of these 12 with violations noted, 2 had warnings issued. There was no notation on the remaining 10 inspection forms to indicate what action, if any, had been taken regarding the violations."

- *There has been follow up of the violations noted during inspections, and/or resulting from investigations. Inspectors follow up on each alleged violation, and while the documentation of the follow up is not currently being stored within the database, each inspector has a record of how follow up actions were conducted to ensure compliance. Follow up visits or checks are made on a timely basis, and if compliance is determined to have occurred, the inspector notes this in his/her activity results. However, no central bank of data is currently maintained with respect to follow up action on alleged violations of the* Act *or* Regulations.
- *The Department acknowledges that documentation of these follow up actions is needed, and a procedure will be developed to guide inspectors in this aspect of their work.*

- *2. Violations with warnings did not receive timely follow up inspection:*
  "Department officials advise that Department policy does not require follow up inspections on pesticide licensees that have had warnings issued during previous inspections."
  - *The Department notes that while no policy has been developed to address this matter, inspectors are advised that once they recognize a violation has occurred, they are to determine the most effective response for that violation – be it an education, formal warning, summary offence ticket, or laying of an information. Once they have determined their action, they have been instructed that they are to follow up on a timely basis to determine whether the licensee is now compliant with all legislation.*
  - *The Department acknowledges that a formal procedure for follow up of any type of violation of pesticide legislation is needed, and will be developed.*
- *2. Violations with summary offence tickets did not receive timely follow up inspections:*
  "Our review of 9 summary offence tickets issued during 2010, 2011 and 2012, indicated that 3 licensees that had received tickets were reissued a new licence without a follow up inspection being completed. We also identified a licensee that was issued 2 tickets for the same offence. This licensee was also issued a new licence without a follow up inspection completed to confirm that they were in compliance with legislation."
  - *It should be noted that each of the violations for which a summary offence ticket was issued was because of a violation of the terms and conditions of either a pesticide operator licence or a domestic pesticide vendor licence. None of the offences for which the summary offence tickets were issued are prerequisites for a licence renewal.*

- *Should a follow up inspection of a client against whom a summary offence ticket has been issued show that a violation is continuing to occur, then the inspector will issue another ticket against the client. If the violation is deemed to be of a serious nature, then the option for the Department is to proceed to the laying of an information.*
- *Section 33(5) of the* Environmental Protection Act *states that:*

  The Minister may

  (a) suspend or cancel a licence; or

  (b) refuse to renew a licence

  Where the holder of it or an applicant for it has contravened this Part or the regulations.
- *Two of the three licensees have received follow up actions from inspectors, by way of visits, and/or telephone calls and discussions. They were compliant with all legislation at the time of the follow up action. The third licensee, against whom a summary offence ticket was issued in May, 2012, has not yet been visited due to time constraints on the part of that region's inspector.*
- *The offence for which one licensee was ticketed twice was for non-notification of a neighbor of a property being treated with a pesticide, as per the operator terms and conditions. When the first ticket was delivered to the licensee, an education was also provided regarding the matter. The second complaint was received and investigated shortly after the first one had been received, and the decision was made to issue the second ticket against this licensee. A second education was provided, this time to the owner of the business.*
  - *The inspector decided that, since no new complaints were received, and the owner had assured him that there would be compliance, that no further follow up action would be necessary.*
- *The inspector decided that, since no new complaints were received, and the owner has assured him that there would be compliance, that no further follow up action would be necessary.*
- *The inspector would be able to follow up for compliance of these neighbor notification terms and conditions in a number of ways. He could:*
  - *monitor the situation to determine whether new complaints were received about non-notification;*
  - *accept that with no further complaints, and the assurance of the owner of the business that there would be no further violations of these terms and conditions, compliance had been attained; or*
  - It should also be noted that this particular stipulation of a pesticide operator licence is no longer in effect.

Recommendations

"The Department should ensure that:

- violations of the *Regulations* are properly actioned and documented as such;
- follow up inspections are completed in a timely manner to ensure that violations have been corrected; and
- complaints received in the Department are entered into the System and appropriately addressed."

The Department accepts the recommendations, and acknowledges that while it currently ensures that violations of the Act *or* Regulations *are already being actioned to determine compliance with the applicable legislation in a timely manner, it will work to improve the manner in which these follow up actions are documented on a go-forward basis. This includes maintaining a central inventory of complaints and how they are actioned by Department staff.*

3. Information Management

Recommendations

"The Department should ensure that:

- inspection information is entered into the System and the paper copies of inspection forms are kept in the licensee files;
- warnings are entered into the System; and
- information on the Department's website is current."

The Department accepts the recommendations, and will work to enter all data into the system on a more timely basis. The recommendation that paper copies of inspection forms be placed in the licensee files, while different from current practice, will be integrated into Department procedures for this action on a go-forward basis.

4. Policies and Procedures

- *4. Policies and Procedures in draft form or not developed:*

  "The Department does not have written policies for the Section…. During our review, Department officials provided us with a copy of a procedures document for licensing of applicators. They also provided us with a copy of a draft procedures document for the licensing of operators. This document has been in draft form since 2010....

  The Department provided us with a copy of a draft procedures document for compliance monitoring and enforcement. This document has been in draft form since 2008."

- *The Department notes that while guidance documents may have been in draft format, they were being used operationally as working guidance documents, and were pending final review for official approval. Staff had been advised to follow the procedures contained within these documents while conducting field and storage inspections.*
- *During its review, Department officials provided your Office with a copy of a draft user manual for the Pesticide Information Management System (PIMS) database. The manual was first drafted in late 2010, and is a detailed description of the steps required for all licensing activities. No licence can be processed without entering the data into the system. Staff had been advised to follow the steps outlined in the PIMS user manual to complete the licensing process for any applicant for a licence, or for the renewal of a licence.*

"Our review indicated that inspectors are not aware of all inspection policies. For example, two inspectors had not completed any domestic vendor inspection checklists during the period of our review. Department officials indicated that domestic vendor inspection checklists are required to be completed."

- *Domestic vendor inspections are a relatively new task for inspectors. To assist with this inspection, a checklist was developed, and inspectors were asked to use it while they completed these inspections.*
- *The requirement to complete the domestic vendor inspection checklist while conducting domestic vendor inspections has been implemented.*

Recommendation

"The Department should develop and communicate well defined policies and procedures for the administration of pesticides control."

The Department accepts the recommendation. It should be noted that this work has already begun, and a draft procedure for inspection of vendors has been incorporated into the draft guidance document for compliance monitoring and enforcement. If it is determined that an inspection form/checklist is necessary for completion during a domestic vendor inspection, the inspection checklist will be reviewed and revised as necessary, and will be presented for use to inspectors in pre-numbered, booklet format, similar to other forms already in use.

All guidance documents currently in draft format will be reviewed and prepared for final approval, and established as the formal procedure for these activities.

All procedures will be communicated, verbally and in written format, to all inspectors, so that there is no ambiguity in understanding the required procedures of the Department for the administration of Pesticides Control.

5. Performance Measurement and Monitoring
Recommendation
"The Department should standardize its performance reporting requirements."

The Department accepts the recommendation.

PART 3.5

DEPARTMENT OF FINANCE

NEWFOUNDLAND AND LABRADOR LIQUOR CORPORATION - REGULATORY SERVICES

Executive Summary

The Newfoundland and Labrador Liquor Corporation (the Corporation) through its Regulatory Services Division (the Division) is responsible for administering the *Liquor Control Act* and the *Smoke-Free Environment Act* (the *Acts*) and the *Liquor Licensing Regulations* (the *Regulations*). This includes issuing licences to premises where liquor is to be sold and carrying out inspections at licensed premises to ensure compliance with the *Acts* and *Regulations*. There were 2,831 licensed premises in the Province as at December 31, 2011. The Division carried out an average of 3,365 inspections per year during the five year period ended December 31, 2011. The Division may refer licensees to a Tribunal of the Board of Directors (Tribunal) for enforcement when they do not comply with the *Acts* and *Regulations*.

Our review identified issues in the following areas:

- Legislation not enforced;
- No documented policies and procedures;
- No inspection plan or schedule;
- Inspection reports inadequate and database inaccurate;
- *Smoke Free Environment Act* not adequately enforced;
- Enforcement not consistent; and
- Enforcement not timely.

Legislation Not Enforced

The *Liquor Control Act* and *Regulations* contain sections which were outdated and were not being enforced, as the Corporation was in the process of proposing amendments to them.

No Documented Policies and Procedures

The Corporation had not documented the policies and procedures required to support and guide its licensing, inspection and enforcement activities. We had difficulty determining how the enforcement process was supposed to work and the rationale for Tribunal ordered penalties.

No Inspection Plan or Schedule

The Corporation could not adequately plan and schedule inspection activity because it had not identified, assessed and documented the risk associated with licensed premises that were to be inspected. Risk assessments are necessary to determine inspection frequency.

Inspection Reports Inadequate and Database Inaccurate

During the five year period ended December 31, 2011, the Inspection Report used by inspectors was outdated, vague and did not reference the related legislation. In May 2012, while the Corporation improved the Inspection Report to include all key areas of inspection and related legislation, a copy of the Inspection Report was no longer provided to licensees.

The Corporation did not know how many of the 2,831 active licensees listed in the database as at December 31, 2011 were actually operating. Furthermore, some inspections recorded in the database were not inspections, rather the inspector was carrying out administrative duties such as delivering educational material, letters and notices to the licensee. This inflates the number of inspections in the database.

***Smoke Free Environment Act* Not Adequately Enforced**

The Corporation had not adequately enforced the *Smoke-Free Environment Act* (*SFEA*) since 2005 and had not developed administrative procedures or provided inspectors with the necessary tools that would allow them to write Summary Offence Tickets when they identified a *SFEA* violation on licensed premises.

Enforcement Not Consistent

We reviewed documentation in connection with 80 hearings held by the Tribunal during the three year period ended December 31, 2011. We found that the Tribunal:

- Issued a letter of reprimand in 14 of the 80 (17.5%) hearings in connection with 25 serious violation(s) identified by inspectors. We found that these same serious violation(s) resulted in suspensions for other licensees.

- Ordered a licence suspension of 7 days or less in 50 of the 80 (62.5%) hearings in connection with 91 serious violations identified by inspectors. We found that the majority of these were served during weekdays when licensee operations would have been significantly slower and the suspension would, therefore, have less impact on the licensee. In addition, we were unable to determine why first time offenders were receiving the same or similar suspensions as repeat offenders.

Enforcement not Timely

During the three year period ended December 31, 2011, we found that it had taken an average of 268 days, or approximately 9 months, before disciplinary action (a letter of reprimand, licence suspension or licence cancellation) was carried out after inspectors had identified serious violation(s) during an inspection.

Section 46 of the *Liquor Control Act* provides the Board with authority to immediately suspend any licence when, in their opinion, the licensed premises is not being operated in accordance with the *Act* or the R*egulations*. However, it is the position of the Board that licensees should be given the opportunity to defend themselves when serious violation(s) identified by inspectors could result in a suspension of their licence. As a result, in only one instance during the five year period ended December 31, 2011 had the Board suspended a licensee using Section 46 of *Act*.

Background

The *Liquor Control Act* provides authority to the Board of Directors (the Board) of the Newfoundland and Labrador Liquor Corporation (the Corporation) to:

- control the possession, sale and delivery of liquor;
- issue, refuse, cancel or suspend licences to sell liquor; and
- appoint or authorize inspectors to enforce the *Liquor Control Act* and the *Liquor Licensing Regulations*.

The Regulatory Services Division (the Division) is responsible for administering the *Liquor Control Act* and the *Smoke-Free Environment Act* (the *Acts*) and the *Liquor Licensing Regulations (*the *Regulations),* including:

- Issuing licences to premises where liquor is to be sold. The Division has four staff located in St. John's that are responsible for licensing administration. The Division issued an average of 628 licences per year during the five year period ended December 31, 2011. Approximately 68% of the licences issued each year were for special events.

- Inspecting licensed premises to ensure compliance with the *Acts* and *Regulations*. The Division has 7 inspectors located throughout the Province in St. John's (2), Carbonear (1), Gander (1), Grand Falls (1), Deer Lake (1) and Corner Brook (1). The Division carried out an average of 3,365 inspections per year during the five year period ended December 31, 2011.

The Division may refer licensees to a Tribunal of the Board (consisting of the Board Chairperson and two other Board Members) for enforcement when they do not comply with the *Acts* and *Regulations*.

Special event licences are date specific. Licences issued to all other premises have no expiry date and are considered active until they are cancelled at the request of the licensee or suspended/cancelled by the Board. Table 1 shows, the number, type and percentage of licensed premises as at December 31, 2011.

Table 1

Liquor Licensing, Inspections and Enforcement
Number, Type and Percentage of Licensed Premises
As at December 31, 2011

Licence Type	Number of Licensed Premises	Percentage of Licensed Premises
Brewer's Agent	1,140	40.3
Lounge	633	22.4
Club	369	13.0
Restaurant	362	12.8
Hotel or Motel	112	3.9
Recreational Facility	68	2.4
Other	147	5.2
Total	**2,831**	**100**

Source: Newfoundland and Labrador Liquor Corporation, Liquor Control Database

As Table 1 indicates, as at December 31, 2011 the majority of the 2,831 licences were held by Brewer's Agents and Lounge establishments.

Objective and Scope

Objective

The objective of our review was to determine whether the Corporation carried out licence, inspection and enforcement activity in a manner that ensured licensed premises were complying with the *Acts* and *Regulations*.

Scope

Our review covered the period January 1, 2007 to November 23, 2012 and included an analysis of licence, inspection and enforcement data at the Corporation. We reviewed a sample of licence/inspection files to determine the level of compliance with the legislation. In addition, we reviewed internal reports of the Corporation and held discussions with officials of the Corporation.

We completed our review in November 2012.

Detailed Observations

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

1. Legislation, Policies and Procedures
2. Inspections
3. Enforcement

1. Legislation, Policies and Procedures

Overview

The *Liquor Control Act* and *Liquor Licensing Regulations* govern the manner in which the Corporation may issue liquor licences, carry out inspections and enforce the *Act* and *Regulations*. The Corporation's policies and procedures provide support and guidance as to how the Corporation should:

- process, review and approve licences;
- plan, schedule and carry out inspections of licensed premises; and
- enforce the *Acts* and *Regulations* when violations are identified at licensed premises.

Our review indicated the following:

Legislation outdated

The *Liquor Control Act* and *Regulations* are outdated and there are inconsistencies within various sections. For example, Section 43 of the *Act* and Section 56 of the *Regulations* refer to the renewal of licences even though Section 30 of the *Act* was amended in 2006 to remove the requirement that licences be renewed.

Legislation not enforced

There were sections of the *Liquor Control Act* and *Regulations* that were not being enforced, as the Corporation was in the process of proposing amendments to them, for example:

- Section 37 of the *Regulations* requires that all glasses be cleaned and sterilized in a particular manner, however, the Corporation does not enforce the cleaning and sterilizing of glasses in such a manner.
- Section 38(3) of the *Regulations* requires that a person shall not consume liquor in a lavatory on a licensed premises, however, the Corporation does not enforce the non-consumption of liquor in lavatories on licensed premises.
- Section 40 of the *Regulations* requires that a person employed on a licensed premises who engages in the serving of liquor shall be dressed in a particular manner and shall hold a waiters licence. The Corporation does not enforce these provisions.

Officials of the Corporation indicated that a review of the legislation has been ongoing since 2009 and that proposed revisions are currently with the Department of Finance for their review.

No documented policies and procedures

The Corporation had not documented policies and procedures to support and guide employees and Tribunal members in the carrying out of licensing, inspection and enforcement activities that they are responsible for. We found the following:

- Corporation officials indicated that there is a draft policy and procedures manual, however that manual no longer reflects the manner in which the Corporation carries out licensing, inspection and enforcement activity.

- While the Corporation's website provides clients with standardized application forms, completion instructions and documentation requirements (floor plans, municipal approval, etc.), there was no documentation or instructions to support staff carrying out licence application verification, review and approval functions. For example:

    - there was no checklist which staff could use to indicate that applicants provided all the required documentation and that the documentation was satisfactory;

    - there were no guidelines to help staff determine whether the documentation provided was satisfactory; and

    - there were no procedures or documentation to support management review and approval.

    As a result, we found that Divisional clerical staff were issuing licences to premises without any review and approval by management.

- We had difficulty determining how the enforcement process was supposed to work and the rationale for Tribunal ordered penalties.

The Corporation cannot effectively carry out its regulatory responsibilities (ensuring compliance with the *Acts* and *Regulations*) without clearly documented policies and procedures to support and guide licensing, inspection and enforcement activity.

The Division has completed a strategic map for the period 2011-14 and there is a plan to develop policies and procedures to support and guide licensing and inspection activities in 2012-13.

Recommendations

The Corporation should:

- continue to work with the Department of Finance to ensure the *Liquor Control Act* and the *Liquor Licensing Regulations* are amended; and
- document policies and procedures to support and guide licensing, inspection and enforcement activity.

2. Inspections

Overview

Inspectors in the Division are responsible for carrying out inspections to determine whether licensed premises are complying with the *Acts* and *Regulations* that they administer. Inspectors are responsible for planning and scheduling their own inspection activity based on their knowledge of the licensed premises that are located within the geographical area of the Province that are assigned to them. Inspections usually occur during weekdays (8:30am to 4:30pm) Monday to Friday and weeknights (7:00pm to 4:00am) Thursday to Sunday.

Inspectors are required to document the results of their inspections in an Inspection Report. Identified violations are required to be corrected immediately when possible. When immediate correction is not possible the inspector is required to provide a date by which correction is required and carry out another inspection by the date provided to ensure compliance. An inspection is considered unsatisfactory when a violation of the *Acts* and *Regulations* is identified.

Inspectors may immediately suspend the licence of any licensed premises when the violation identified threatens the health and safety of the public. Inspectors must immediately refer serious violation(s) (such as the serving of alcohol to minors) to management for enforcement.

We reviewed inspection data and a sample of Inspection Reports in the Liquor Control Database. We also reviewed reports that the Corporation had prepared following internal reviews of its inspection activities. We held discussions with Corporation officials. We identified the following issues:

A. No Inspection Plan or Schedule
B. Inspection Reports Inadequate and Database Inaccurate

2A. No Inspection Plan or Schedule

Introduction

In order for the Corporation's inspection program to be effective, we would expect there to be an annual plan that identifies:

- the licensed premises to be inspected;
- the risk associated with each licensed premises; and
- the timing and/or frequency of inspections required to reduce the identified risk.

Inspections should be scheduled so that licensed premises are inspected in accordance with the established timing and/or frequency.

Our review indicated the following:

No systematic risk assessment or inspection schedule

The Corporation had no system in place to identify, assess and document risk (risk assessment) at licensed premises. Risk assessments are necessary to determine inspection frequency and should include criteria such as:

- the nature of the licensed premises;
- whether the licensed premises are known to be problematic (known to the police, complaints from the public, etc); and
- the inspection history associated with the licensed premises.

For example, it would be expected that a licensed premises such as a lounge that serves a high volume and full range of liquor, is open to the public during extended hours, is known to the police or has a poor inspection history with the Corporation, would be inspected more frequently. Conversely, it would be expected that a licensed premises such as a Brewer's Agent that only sells unopened cases of beer, is not open to the public during extended hours, is not known to the police or has a good inspection history with the Corporation, would be inspected less frequently.

Table 2 shows the number and type of licensed premises, the number and frequency of inspections carried out and the number and percentage of unsatisfactory inspections for the year ended December 31, 2011.

Table 2

Liquor Licensing, Inspections and Enforcement
Frequency of Inspections and Unsatisfactory Inspections of Licensed Premises
For the Year Ended December 31, 2011

Licence Type	Number of Licences	Inspections Carried Out		Unsatisfactory Inspections	
		Number	Frequency	Number	Percentage
Brewer's Agent	1,140	2,217	1.95	95	4.3%
Lounge	633	1,100	1.74	129	11.7%
Club	369	290	.79	38	13.1%
Restaurant	362	382	1.06	31	8.1%
Hotel or Motel	112	97	.87	10	10.3%
Recreational Facility	68	55	.81	6	10.9%
Other	147	38	.26	7	18.4%
Total	**2,831**	**4,179**	**1.48**	**316**	**7.6%**
Special Events (Note)	392	92	.24	8	8.7%
Total	**3,223**	**4,271**	**1.33**	**324**	**7.6%**

Source: Newfoundland and Labrador Liquor Corporation, Liquor Control Database
Note: The 392 licences issued for special events had expired on or before year end

As Table 2 indicates, 2,217 of the 4,179 (53.1%) inspections carried out at licensed premises during 2011 were carried out at Brewer's Agents. Brewer's Agents were inspected the most frequently of all licensed premises during 2011 (1.95 inspections per Brewer's Agent) even though these licensed premises:

- had the lowest percentage of unsatisfactory inspections during the year (only 4.3% of inspections were unsatisfactory); and
- do not sell a full range of liquor and are not open to the public during extended hours.

The Corporation could not adequately plan and schedule inspection activity when it had not identified, assessed and documented the risk associated with licensed premises that were to be inspected.

The Division has completed a strategic map for the period 2011-14 and there is a plan to implement a risk-based approach to inspections in 2012-13.

Excessive number of inspections carried out at some licensed premises

Inspectors are carrying out an excessive number of inspections at some licensed premises. During the calendar year 2011, our review indicated that inspectors carried out six or more inspections at 56 different licensed premises and issued no unsatisfactory Inspection Reports. We found the following:

- The majority of the 56 licensed premises were lower risk Brewer's Agents.
- Only 2 of the 56 licensed premises had received an unsatisfactory Inspection Report in the previous two calendar years.
- In 1 of the 56 licensed premises (Brewer's Agent), three different inspectors carried out 10 satisfactory inspections during the year even though there were no unsatisfactory inspections at the lounge in the previous two years.

The Corporation can more effectively utilize inspection resources when inspection activity is planned and scheduled in a systematic manner.

No inspections carried out at many licensed premises

Table 3 shows the number and type of premises that were licensed, the number of licensed premises inspected each year and the average number and percentage of licensed premises inspected each year during the five year period ended December 31, 2011.

Table 3

Liquor Licensing, Inspections and Enforcement
Licensed Premises Inspected
For the Five Year Period Ended December 31, 2011

Licence Type	Number of Premises Licensed During All Five Years	Number of Licensed Premises Inspected						
		2011	2010	2009	2008	2007	Average Number	Average Percentage
Brewer's Agent	769	585	576	451	383	498	499	64.9%
Lounge	440	306	251	253	223	273	261	59.3%
Club	338	153	93	86	67	59	91	26.9%
Restaurant	218	126	78	83	63	116	93	42.7%
Hotel or Motel	86	48	41	33	20	31	34	39.5%
Recreational Facility	49	21	11	19	13	15	16	32.7%
Other	106	19	17	13	9	16	15	14.2%
Total	**2,006**	**1,258**	**1,067**	**938**	**778**	**1,008**	**1,009**	**50.3%**

Source: Newfoundland and Labrador Liquor Corporation, Liquor Control Database

As Table 3 indicates, the Corporation only inspected an average of 1,009 of the 2,006 (50.3%) premises that were licensed each year during the five year period ended December 31, 2011. Table 3 also indicates that the number of licensed premises that the Corporation inspected annually had improved from 938 in 2009 to 1,258 in 2011. This is attributable to action that was taken by the Corporation to improve the number and frequency of inspections it carries out annually.

We also found that 358 of the 2,006 (17.8%) licensed premises were never inspected during the five year period ended December 31, 2011 and an additional 297 of the 2,006 (14.8%) licensed premises were only inspected once during the five year period. We asked officials from the Corporation why inspectors did not carry out any inspections at the 358 licensed premises during the five year period ended December 31, 2011. They indicated that:

- for 237 of the 358 (66.2%) licensed premises not inspected, there was no explanation as to why there were no inspections in the five year period;
- for 54 of the 358 (15.1%) licensed premises not inspected, there were no inspections because the premises were closed;
- for 43 of the 358 (12%) licensed premises not inspected, inspectors indicated that there was an inspection, however, no Inspection Report was completed; and
- for 24 of the 358 (6.7%) licensed premises not inspected, the premises were seasonal and/or in a remote location.

The Corporation can ensure that all licensed premises are complying with the *Acts* and *Regulations* when inspection activity is planned and scheduled in a systematic manner.

2B. Inspection Reports Inadequate and Database Inaccurate

Introduction

During the five year period ended December 31, 2011, inspectors recorded the results of inspections on a pre-numbered Inspection Report. The Inspection Report provided an area for the inspector to identify the licensed premises and included a list of key inspection areas that were required to be checked as either satisfactory or unsatisfactory. Inspection Reports were signed by the inspector and the licensee/representative of the licensee immediately following the inspection and a copy of the Inspection Report was provided to the licensee.

Inspectors must also complete an Adverse Report when serious violation(s) are identified (ie: sale of alcohol to minors or intoxicated persons, sale or consumption of alcohol after hours). An Adverse Report is descriptive in nature and provides context to the circumstances surrounding the violation(s) identified in the Inspection Report.

Our review indicated the following:

Inspection Reports were inadequate

For the five year period ended December 31, 2011 our review indicated that Inspection Reports were inadequate as follows:

- The checklist used by inspectors to guide them through key areas of the inspection was outdated, vague and did not reference the related legislation. Furthermore, the checklist referenced none of the most serious legislative violations.

- There was no place on the Inspection Report for the inspector to provide a comprehensive narrative with respect to the circumstances surrounding violations identified during the inspection. Rather, this information was only provided by inspectors when they completed an Adverse Report in connection with serious violation(s) that were identified.

- The Inspection Report did not contain a section where inspectors could issue orders and direct licensed premises to take action to correct identified violation(s). Written orders are an effective means of enforcement as they clearly identify the legislation that was violated and provide instructions as to the corrective action that must be taken by the licensee.

Inspection Report requires improvement

In May 2012, the Corporation replaced the old Inspection Report by implementing a new Licensing and Compliance Enforcement System (LACES) where inspectors input inspection results into LACES software installed on their laptop computers and upload the information to the Corporation's computer network within a week of completing an inspection.

Unsatisfactory inspections (where the inspector identified a violation) are reviewed by management and a Notice of Unsatisfactory Inspection is then mailed to the licensee. While the Inspection Report has improved to include all key areas of inspection and related legislation, the Inspection Report is no longer provided to licensees. Our review indicated the following:

- The Corporation did not ensure that licensees with unsatisfactory inspections received and acknowledged the Notice of Unsatisfactory Inspection that was mailed to them. This may become an issue for the Corporation when dealing with offenders who may not have received or who may deny ever receiving a Notice of Unsatisfactory Inspection from the Corporation.

- The Corporation did not issue orders directing the licensee to take corrective action in connection with the violation(s) identified in the Notice of Unsatisfactory Inspection.

- Inspectors continued to write separate Adverse Reports when these reports can be consolidated into the Inspection Report in LACES. This would effectively streamline inspectors' administrative duties and ensure that Adverse Reports are readily available in the database.

Database is inaccurate

Prior to 2006, licensed premises were required to pay a fee and submit business operating information to the Corporation in order to have their licence renewed each year. The Corporation was therefore able to determine which establishments were operating and to what extent they were operating (a report setting out the total purchases of spirits, wine and beer during the preceding year was also required). During 2006, the *Liquor Control Act* was amended and the requirement that licences be renewed annually was eliminated. Licences are now considered active until they are cancelled at the request of the establishment or suspended/cancelled by the Board.

Our review indicated that since 2006, the Corporation had not been monitoring the business operations of licensed premises and did not know how many of the 2,831 active licensees listed in the database as at December 31, 2011 were actually operating. Corporation officials indicated that while the business information previously obtained during the renewal process was no longer reported by licensed premises, it is available to the Corporation through its Point of Sale System (POS). However, Corporation officials indicated that the POS information was not regularly reviewed in a comprehensive manner.

We also reviewed 149 Inspection Reports in connection with 10 licensed premises that had received a significant number of unsatisfactory inspections during the three year period ended December 31, 2011. We found that 36 of the 149 (24.2%) Inspection Reports were categorized as inspections when there was no evidence that an inspection took place. Rather, the inspector was carrying out administrative duties such as delivering educational material, letters and notices to the licensee. This inflates the number of inspections recorded in the database.

The Corporation cannot effectively plan and schedule inspection activity when its licence and inspection database is inaccurate.

Recommendations

The Department should:

- identify and systematically assess the risk associated with licensed premises that are to be inspected and schedule and carry out inspections of licensed premises based on the assessed risk;
- continue to improve the Inspection Report and ensure that licensees are provided with a copy of the report following inspection; and
- ensure that the licence and inspection database is accurate.

3. Enforcement

Overview

The Corporation utilizes a three step process to enforce violations of the *Acts* and *Regulations*, as follows:

Step one - licensees are issued an unsatisfactory Inspection Report (Notice of Unsatisfactory Inspection beginning May 2012) by an inspector when violation(s) are identified during an inspection.

Step two - licensees may be issued a letter of warning by the Corporation when violation(s) are identified by an inspector in a subsequent unsatisfactory inspection, and in the judgment of the Corporation, the violation(s) may develop into a pattern of non-compliance.

Step three - licensees are referred to a Tribunal of the Board (Tribunal) for a quasi-judicial proceeding (hearing) when violation(s) are identified by an inspector in three unsatisfactory inspections within a period of time that in the judgment of the Corporation, indicates a pattern of non-compliance.

Serious violations of the *Act*s and *Regulations* are not subject to the three step enforcement process but are instead immediately referred to the Tribunal for a hearing. Such violations include:

- selling alcohol to or allowing minors on the premises;
- selling alcohol or allowing the consumption of alcohol after hours;
- serving alcohol to intoxicated persons; and
- having contraband on the premises.

Disciplinary action imposed by the Tribunal after considering information and evidence presented during the hearing may include, issuing a letter of reprimand or suspending or canceling a licence.

Table 4 shows the number of Tribunal hearings, the number and type of violations that were referred to the Tribunal and the number of letters of reprimand issued, licence suspensions and licence cancellations ordered by the Tribunal for the three year period ended December 31, 2011.

Table 4

Liquor Licensing, Inspections and Enforcement
Violations and Disciplinary Action Ordered by the Tribunal
For the Three year period ended December 31, 2011

Year	Number of Tribunal Hearings	Number and Type of Violations					Disciplinary Action		
		Sale to or Minors on Premises	Sale and/or Consumption After Hours	Sale to or Intoxicated Persons on Premises	Other	Total	Letter of Reprimand	Licence Suspended	Licence Cancelled
2009	31	26	44	7	11	88	5	25	1
2010	29	30	18	5	15	68	5	24	0
2011	20	15	4	4	14	37	4	16	0
Total	**80**	**71**	**66**	**16**	**40**	**193**	**14**	**65**	**1**

Source: Newfoundland and Labrador Liquor Corporation
Note 1: One of the 29 hearings in 2010 was a meeting of the Tribunal to suspend a licence under Section 46 of the *Liquor Control Act*.

As Table 4 indicates, the Tribunal issued 14 letters of reprimand, suspended 65 licences and cancelled 1 licence in connection with 193 violations related to 80 hearings during the three year period ended December 31, 2011.

We reviewed data and documentation supporting the results of Tribunal hearings. We also reviewed Inspection and Adverse Reports in the Liquor Control Database and we held discussions with Corporation officials. We identified the following issues:

A. Enforcement Process Not Always Followed
B. Enforcement Not Consistent or Timely

3A. Enforcement Process Not Always Followed

Introduction

Inspectors are required to complete an Adverse Report in addition to an Inspection Report when the identified violation(s) are serious or when the identified violation(s) fall under Step two or three of the enforcement process. Adverse Reports are forwarded to management who determine whether the licensee should be issued a letter of warning or referred to the Tribunal for a hearing.

We reviewed 149 Inspection Reports and associated Adverse Reports in connection with 10 licensed premises that received a significant number of unsatisfactory inspections during the three year period ended December 31, 2011. We also held discussions with Corporation officials.

Inspection and Adverse Reports not completed as required

Our review indicated that inspectors did not always complete Inspection and Adverse Reports as required. We found the following:

- Inspectors issued satisfactory Inspection Reports in 3 of 149 (2%) inspections even though the inspector identified violations such as smoking on licensed premises, removing alcohol from a licensed premises and consumption of alcohol on unlicensed premises.

- Inspectors did not always complete an Adverse Report when required. For example, in one case (lounge) an inspector issued an unsatisfactory Inspection Report on June 30, 2009 because there was a fan blocking the exit door. On July 18, 2009 another inspector issued an unsatisfactory Inspection Report for numerous violations including a fan blocking the exit door.

In these cases, management may not have received sufficient information to determine whether the licensed premises should have been issued a letter of warning or referred to the Tribunal for a hearing.

Inspections not always carried out in a timely or appropriate manner

Inspectors did not always carry out inspections of high risk establishments in a timely or appropriate manner. We found the following:

- In 1 of the 10 licensed premises (lounge), inspectors and police identified 14 violations in 7 inspections/investigations covering a six month period ended July 17, 2010. Violations included smoking on the premises, serving alcohol to minors and the selling/consuming of alcohol after hours. The licensee was referred to the Tribunal, a hearing was scheduled and the Tribunal suspended the lounge licence for a period of four months beginning January 2, 2011. However, during the period July 17, 2010 to January 2, 2011, a period of almost six months, inspectors did not carry out any inspections at the licensed premises to monitor compliance.

- In 1 of the 10 licensed premises (lounge), the inspector carried out 16 inspections during a 30 month period following a suspension that had been imposed on the licensee by the Tribunal. Our review indicated that the inspector carried out 15 of the 16 (93.8%) inspections during non-peak daytime business hours and issued satisfactory Inspection Reports in all cases. The inspector carried out the remaining inspection during peak evening business hours and issued an unsatisfactory Inspection Report in that instance.

The Corporation cannot effectively enforce legislation when inspectors do not carry out inspections at high risk establishments in a timely or appropriate manner.

Enforcement process not always followed by management

We found that management did not always issue a Letter of Warning to licensed premises in connection with step two of the enforcement process. Furthermore, management did not refer 3 of 9 (33.3%) licensed premises to the Tribunal for a hearing under step three of the enforcement process. In all 3 cases, the referral to the Tribunal was necessary to enforce repeated violations under the *Smoke Free Environment Act*.

In 1 of the 3 cases, an inspector identified that there was smoking in the licensed premises in 5 of the 11 (45.5%) inspections carried out during a 17 month period ended April 9, 2011. The inspector issued an unsatisfactory Inspection Report and verbal warning to the licensee when smoking was

identified during the first inspection, however, management did not issue a letter of warning to the licensee under step two of the enforcement process when smoking was identified during a second inspection. Furthermore, management did not refer the licensee to the Tribunal for a hearing under step three of the enforcement process when smoking was identified during a third inspection. Management did issue a letter of warning to the licensee when smoking was identified by the inspector during a fifth inspection.

The Corporation cannot effectively enforce legislation when Letters of Warning are not issued and violations are not referred to the Tribunal.

***Smoke Free Environment Act* not adequately enforced**

The Corporation is responsible for enforcing the *Smoke Free Environment Act* (*SFEA*) which states that a person shall not smoke in any premises licensed under the *Liquor Control Act*. In 2005, the Minister of Health and Community Services appointed Environmental Health Officers of the former Department of Government Services (now Service NL) and Liquor Establishment Inspectors of the Corporation as inspectors for purposes of ensuring compliance with *SFEA*. These inspectors may enter licensed premises and issue Summary Offense Tickets (SOTs) under the *Provincial Offences Act* when S*FEA* violations are identified.

Our review indicated that the Corporation had not adequately enforced the *Smoke Free Environment Act* (*SFEA*) since 2005. We found the following:

- The Corporation had not developed administrative procedures or provided inspectors with the necessary tools that would allow them to write SOTs when they identified a *SFEA* violation on licensed premises. Furthermore, we found that the three step enforcement process was not used to enforce *SFEA* violations.

- In 2012, a Corporation official met with officials of Service NL and the Department of Health and Community Services. The parties reached an informal agreement which allowed the Corporation to forward Inspection and Adverse Reports to Service NL so that Environmental Health inspectors could review the reports and write SOTs. An official at Service NL indicated that relatively few reports had been received from the Corporation and that one SOT was issued to a licensee as a result. The Board subsequently held a hearing with that licensee and issued a Letter of Reprimand. We found this arrangement to be cumbersome when the Corporation could provide its inspectors with the necessary tools to write SOTs instead.

3B. Enforcement Not Consistent or Timely

Introduction

The Senior Vice-President responsible for Regulatory Services reviews all violations that management recommends for referral to the Tribunal and establishes dates for the hearings. A Notice of Show Cause Hearing is then mailed to each licensee, requesting that they appear before the Tribunal and show cause as to why disciplinary action should not be taken. The licensee is provided with evidence (Inspection Reports, police reports, etc) supporting the identified violations.

Tribunal hearings generally occur twice a year and attendees may include the licensee and legal representative, legal counsel for the Corporation, inspectors, police officers and/or other witnesses that the licensee or Corporation may call. The Tribunal considers the following when determining the extent of disciplinary action, if any, to be imposed:

- the seriousness and particular circumstances of the violation(s);
- the previous history of the licensee;
- whether the licensee has taken steps to prevent a reoccurrence of the violation(s);
- public safety; and
- any other relevant information or evidence presented at the hearing.

Deliberations as to the nature and extent of penalties to be ordered are carried out by the Tribunal immediately following the hearing.

Our review indicated the following:

Enforcement not consistent

Table 5 shows the number of Tribunal hearings, the number and type of violations referred to the Tribunal and the disciplinary action taken by the Tribunal during the three year period ended December 31, 2011.

Table 5

Liquor Licensing, Inspections and Enforcement
Violations Referred to Tribunal and Disciplinary Action Taken
For the Three Year Period Ended December 31, 2011

Disciplinary Action Taken by the Tribunal	Number of Tribunal Hearings	Number and Type of Violations				
		Sale to or Minors on Premises	Sale and/or Consumption After Hours	Sale to or Intoxicated Persons on Premises	Other	Total
Reprimand	**14**	**12**	**2**	**2**	**9**	**25**
Licence Suspension						
7 days or less	50	40	26	8	17	91
More than 7 days	15	19	38	6	13	76
Total	**65**	**59**	**64**	**14**	**30**	**167**
Licence Cancellation	**1**	**0**	**0**	**0**	**1**	**1**
Total	**80**	**71**	**66**	**16**	**40**	**193**

Source: Newfoundland and Labrador Liquor Corporation
Note: One of the 15 hearings resulting in a licence suspension of more than 7 days was a meeting of the Tribunal to suspend a licence under Section 46 of the *Liquor Control Act*.

Table 5 indicates that for the three year period ended December 31, 2011, the Tribunal:

- Issued a Letter of Reprimand in 14 of the 80 (17.5%) hearings in connection with 25 of the 193 (13%) serious violation(s) identified by inspectors. Twelve of the 25 (48%) serious violations identified involved the sale of alcohol to minors or minors were found on the premises. We found that these same serious violation(s) resulted in suspensions for other licensees.

- Ordered a licence suspension for a period of 7 days or less in 50 of the 80 (62.5%) hearings in connection with 91 of the 193 (47.2%) serious violations identified by inspectors. We found that:

    - 31 of the 50 (62%) suspensions were served during weekdays (Monday to Thursday) when licensee operations would have been significantly slower and the suspension would, therefore, have less impact on the licensee.

  - 34 of the 50 (68%) suspensions ordered related to licensees that were first time offenders. The remaining 16 of the 50 (32%) suspensions ordered related to offenders that had been previously suspended by the Tribunal for the same or similar violations. We were unable to determine why first time offenders were receiving the same or similar suspensions as repeat offenders.

- Ordered a licence suspension for a period of more than 7 days in 15 of the 80 (18.8%) hearings in connection with 76 of the 193 (39.4%) serious violations identified by inspectors. We found that in the majority of cases, the suspensions were ordered for repeat offenders and/or for multiple violations over a significant period of time.

- Ordered a licence cancellation in 1 of the 80 (1.3%) hearings in connection with 1 of the 193 violations identified by inspectors.

Enforcement not timely

Key milestones in the Corporation's enforcement process are:

- a serious violation(s) is identified by an inspector;

- a notice is issued to the licensee requesting that they attend a Show Cause hearing with the Tribunal on a specified date;

- a Show Cause hearing is held; and

- disciplinary action is ordered by the Tribunal following the hearing.

Table 6 shows the number of Tribunal hearings and the average number of days taken between: the identified violation and the notice of hearing; the notice of hearing and the hearing, and; the hearing and disciplinary action.

Table 6

Liquor Licensing, Inspections and Enforcement
Timeframe Taken to Complete Enforcement Process
For the Three Year Period Ended December 31, 2011

Year	Number of Tribunal Hearings	Average Number of Days Taken Between			
		Identified Violation and Notice of Hearing	Notice of Hearing and Hearing	Hearing and Disciplinary Action	Total
2009	31	232	91	37	360
2010	29	99	87	46	232
2011	20	101	67	43	211
Three Year Average	**27**	**144**	**82**	**42**	**268**

Source: Newfoundland and Labrador Liquor Corporation
Note: One of the 29 hearings in 2010 was a meeting of the Tribunal to suspend a licence under Section 46 of the *Liquor Control Act*.

Table 6 indicates that for the three year period ended December 31, 2011, it had taken an average of:

- 268 days, or approximately 9 months, before disciplinary action (Letter of Reprimand, licence suspension or licence cancellation) was carried out after inspectors had identified serious violation(s) during an inspection.

- 144 days, or approximately 5 months, to deliver a notice of hearing to licensees after inspectors had identified serious violation(s) during an inspection. In one case (a lounge), it took the Corporation approximately three years to deliver a notice of hearing to the licensee after the inspector had identified a serious violation. During this three year period, there was no enforcement by the Tribunal even though inspectors had carried out 17 inspections and identified a total of 25 serious violations in the lounge.

- 82 days, or approximately 3 months, to carry out a hearing after the licensees were given notice of the hearing. This is a result of the Tribunal only holding approximately two hearings per year.

- 42 days, or approximately one month, after the hearing date before disciplinary action was taken against licensees.

While the Corporation has made improvements in this area since 2009, it has not established a standard timeframe by which its enforcement process should be completed and therefore we could not determine whether the average timeframes noted in Table 6 were appropriate for effective enforcement.

No Immediate Enforcement

Section 46 of the *Liquor Control Act* states:

"(*1) Where the board is of the opinion that a licensed premises is not being operated in accordance with this Act or the regulations or the conditions prescribed in or in respect of the licence relating to it, the board may suspend the licence for a period not exceeding 30 days.*

(2) An inspector generally or specially authorized by the board to do so may exercise the powers conferred on the board by subsection (1).

(3) Where an inspector suspends a licence under this section, the suspension shall be subject to ratification by the board, within 48 hours from the time that it was imposed, and if the suspension is not so ratified within that period, it shall stop having effect on the expiration of the period."

Section 46 of the *Act* provides the Board with authority to immediately suspend any licence when, in their opinion, the licensed premises is not being operated in accordance with the *Act* or the R*egulations* or the conditions prescribed in the licence. Furthermore, the licensee has no right to a notice of the suspension or to a Show Cause hearing and has no right of appeal in the event that they disagree with the suspension.

The Board has not generally authorized inspectors to suspend licences when, in the opinion of the inspector, the licensed premises is not being operated in accordance with legislation and the terms and conditions of the licence. However, the Board has specifically authorized inspectors to suspend licences when the inspector identifies an immediate health and safety hazard (ie: overcrowding) on a licensed premises. In these situations, inspectors are required to telephone management for approval prior to ordering such a suspension.

It is the position of the Board that licensees should be given the opportunity to defend themselves when serious violation(s) identified by inspectors could result in a suspension of their licence. As a result, in only one instance during the past five years had the Board suspended a licensee using Section 46 of the *Act*. This occurred when an inspector identified serious violations at a lounge shortly after the lounge had served a 30 day suspension previously ordered by the Tribunal in 2010. However, we identified a number of similar instances

during the three year period ended December 31, 2011 when the Board did not use Section 46 of the *Act* to suspend licensees who were also repeat offenders with the same or similar serious violations identified by inspectors.

For example, in one case:

- On June 29, 2010 the Tribunal issued a Letter of Reprimand to a licensee (lounge) after an inspector had identified the sale and consumption of alcohol after hours had occurred approximately three months earlier on March 28, 2010.

- On October 31, 2010, approximately four months following the Letter of Reprimand, an inspector identified the same violation at the same lounge which was again referred to the Tribunal. It took approximately seven months for the Tribunal to go through its Show Cause hearing process and suspend the lounge for three days on June 9, 2011.

- On June 29, 2011, 20 days following the suspension, an inspector identified the same violation at the same lounge which was again referred to the Board. Once again, it took approximately seven months for the Board to go through its Show Cause hearing process and suspend the lounge for five days on January 16, 2012.

The Board may more effectively enforce the legislation and the terms and conditions of licences by immediately suspending and/or authorizing inspectors to immediately suspend licences under Section 46 of the *Act* when serious violations are repeatedly identified on the same licensed premises.

Recommendations

The Corporation should:

- ensure that inspectors complete Inspection and Adverse Reports in a complete and accurate manner when required;

- issue Letters of Warning and refer identified violations to the Tribunal for enforcement when required; and

- enforce the *Smoke Free Environment Act*.

The Tribunal should ensure that the *Act* and *Regulations* are enforced in a consistent and timely manner.

Corporation's Response

Introduction

In October 2010 following a management restructuring the Regulatory Services Division developed a business plan for 2011-2014. This plan addresses the majority of the issues highlighted in this report.

From 2011 to the fall of 2012 the focus had been primarily on three areas ***staff restructuring****, implementation of* ***new technology*** *and the development of* ***key performance measures*** *for the Division. These three areas were considered a priority in order to move ahead with other initiatives such as Licensee risk assessments, policy and procedure development, and improving communication to licensees.*

Staff Restructuring

Staff restructuring occurred both at the management and staff levels. The Division was split into two distinct functional areas, Licensing and Administration and Regulatory Compliance. Licensing and Administration is responsible for issuing licenses, responding to licensee inquiries, researching issues particularly in regards to Legislation, analysis of licensee data and reporting on key performance measures. Regulatory Compliance is responsible for the inspection process and includes enforcement of the Legislation as well as licensee education. Included in this restructuring was an assessment of management skill set requirements. As a result of the changes made stemming from this assessment the management of both areas now have the necessary expertise to execute on the business plan established for 2011-2014.

Implementation of New Technology

The Information Technology System which was replaced in 2012 had been developed in house in the 1980s. It was not a system that easily supported data retrieval and reporting which is required to effectively manage the Division. In order to support the business plan objectives the replacement of this system with one that met today's requirements was the first priority and a focus for the Licensing and Administration management and staff for several months spanning the fall of 2011 to go live.

In May 2012, the Corporation successfully implemented new technology known as "LACES", Liquor Licensing and Compliance Electronic System. This system supports a key mandate of the Corporation which is to provide Licensing and Regulatory services that ensure Licensees (Bars, restaurants, Brewer's Agents etc.) adhere to applicable legislation.

LACES captures and maintains all relevant licensee data, including contact information, establishment details, and inspection results, and helps deliver timely management reports which are key to measuring the Division's success in fulfilling its objectives and ultimately its mandate. Additionally, unlike the previous system, LACES provides a user-friendly 'real-time' environment to all Division users, including inspectors. This enables inspectors to perform strategic inspections in a comprehensive, efficient manner.

Some of the key features and benefits of LACES include:

- *Risk based inspections - Strategic and Timely*
  LACES allows Regulatory Services to establish a strategic, risk based approach to inspections where licenses are associated to a risk level and inspection schedule. For example, a low risk establishment (such as a Brewer's Agent) would be visited less frequently than a medium or high risk location (such as a Lounge). The level of risk would be defined using a pre-determined checklist of applicable criteria and future inspection dates would automatically populate an inspector's 'To Do' list. The Corporation is in the process of establishing this risk ranking process which is anticipated to be fully implemented in the first quarter of 2013.

- *Workflows - Accountability and Transparency*
  The new system is workflow driven, which ensures that appropriate levels of review and approvals are obtained in the process of issuing licenses and facilitating compliance. Additionally, checklists are in place for each role and each task to promote consistency and attention to detail.

- *Report generation - Monitoring Key Performance Measures*
  As mentioned earlier, because of its robust data warehouse, LACES helps provide the Corporation with effective reports that monitor the activities and overall direction of the Division and Corporation. Although the system is in its infancy stage, the Corporation has already established some critical gauges, such as licensee coverage and inspection frequency on a monthly basis. For example, to date (December 2012), approximately 2,100 licensees have been inspected at least once since January 2012. This is a 67% increase from the same timeframe in 2011 (1,258 establishments). The original system was

incapable of delivering the same level of sophistication, in a timely manner. The system will allow the Division to develop more detailed key performance measures and conduct timely analysis in regards to ensuring appropriate licensee coverage.

Key Performance Measures

The development of key performance measures to facilitate and monitor inspection activities was also an immediate priority. The measures initially established and implemented had to be such that information would be easily retrieved. As previously mentioned the LACES implementation was a pre-requisite to more complex and in depth measures. These measures included such things as number of inspections, inspections per day, inspection types and frequency of violations.

Although the reports were manual in nature, they proved to be successful as the results provided an effective gauge of productivity. The reports were prepared on a weekly basis and reviewed with enforcement staff. The average number of inspections per day increased by 100% in less than six months. In January 2011 the average number of inspections per inspector was just over 2 per shift. In the fall of 2012 this number has exceeded 5 per shift. Additionally, the volume of inspector visits increased significantly, finishing the 2012 Fiscal Year (April 2011 – March 2012) with over 5,200 inspections.

In the fall of 2011, the Corporation's Continuous Improvement Manager conducted a comprehensive review of the regional alignment of inspectors. The report analyzed the entire footprint of licensee locations in the Province and recommended regional boundary adjustments leading to more effective and efficient routes in terms of licensee inspection coverage. The new regional alignment was implemented in April 2012.

Included in the Division's key objectives for 2013 is the completion and implementation of the risk assessment process and procedure for licensees, the development of a comprehensive set of policies and procedures and the continuation of providing research and analysis to the Department of Finance in support of updating the Liquor Control Act *and* Regulations.

The Corporation has committed to enhance service delivery in the regulatory compliance field by changing the way it does business. Significant changes have been made in leadership and direction. Methodologies and processes have been adopted that are in keeping and accepted by other law enforcement/regulatory agencies. Strategic partnerships are being developed with the provincial law enforcement and justice community including cooperating on several mutually beneficial professional development

projects. These partnership opportunities further enhance the training portfolio of the inspectors. The Division's mandate has been expanded and technological capability enhanced. The Corporation is committed to changing the face of Regulatory Services by having all inspectors wear a Corporation approved uniform and identification badge, this combined with enhanced training, detailed policies and procedures will ensure the Corporation fulfills its mandate in regards to regulatory compliance.

The Corporation has reviewed in detail the report of the Auditor General. The Corporation acknowledges and accepts the recommendations made by the Auditor General.

Response

The following response addresses the three areas addressed in the Auditor General's report:

1. *Legislation, Policies and Procedures*
2. *Inspections*
3. *Enforcement*

In particular, the Corporation has focused this response on the recommendations which have been made in the report specifically outlining what has been done and what will be done in future to ensure the recommendations are fully implemented.

1. Legislation, Policies and Procedures:

- *Recommendation:*
  Continue to work with the Department of Finance to ensure "the Liquor Control Act *and the* Liquor Licensing Regulations*" are amended.*

  The fact that the Liquor Control Act *and* Regulations *are outdated has been acknowledged by both the Corporation and the Department of Finance. While work on updating the legislation has been ongoing since 2009 it had been interrupted by the management changes in Regulatory Services in the fall of 2010. This was considered prudent to ensure the document was complete and contained all the necessary changes to correct inconsistencies and to ensure the legislation would be appropriate in today's environment.*

Considerable effort has gone into researching these legislation matters. Currently the Corporation is of the opinion that the document detailing proposed legislative amendments addresses the required changes. A copy of the document was provided to the Auditor General during the review. The Department of Finance will be bringing these changes forward and the Corporation is optimistic the majority of these proposed changes will be implemented in 2013.

- *Recommendation:*
  Document policies and procedures to support and guide licensing, inspection and enforcement activity.

  The Corporation acknowledges the need for a comprehensive document in regards to policies and procedures for activities specific to Regulatory Services. This is an objective outlined in the Division's business plan. Although there have been instructions, directives and the like provided to the regulatory services staff there is not a comprehensive document relating to the conduct of their regulatory specific day to day activities. In terms of documents, other than a specific policy and procedure document governing the conduct of their activities, there are several, including their job descriptions, the Collective Agreement, as well as Human Resource policies which govern all Corporation staff. Also, procedures have been implemented and strengthened as a result of the LACES system implementation in May 2012. For example, this system provides an electronic checklist which licensing staff now reference in regards to licensee applications. The LACES system also provide for on-line approvals through a workflow application which ensures a license cannot be issued without management approval.

  The process for the development of a Policy and Procedure manual began in the fall of 2012. Staff from the Corporation's Records Management Division is assisting in the process and ensuring the documentation is in keeping with the Corporation's policy development and documentation standards. Policies have been obtained from other Canadian Liquor Jurisdictions which will be utilized as references in the development of the Policy manual. This will be a priority for 2013 with the more significant policies anticipated to be completed in the first half of the year.

2. Inspections:

- *Recommendation:*
  Identify and systematically assess the risk associated with licensed premises that are to be inspected and schedule and carry out inspections of licensed premises based on the assessed risk.

  As previously stated, one of the initiatives identified in the Regulatory Services business plan for 2011-2014 was the development of a risk-based approach to inspections. The launch of the new system for maintaining the licensee data base, "LACES", enhances the Corporation's capability in regards to becoming intelligence led. Through careful analysis of the data we will be able to classify each licensee in an appropriate category of risk. These respective risk levels will dictate the timeliness and often the method of response in regards to inspections and subsequent investigations. It provides a holistic and comprehensive approach to solving problems. Operations plans will be formulated based on accurate intelligence and will serve as a template for future enforcement and regulatory strategies. These plans will cover all aspects such as legislative authorities, personnel requirements, fiscal considerations, social responsibility implications and investigative plans and strategies. This risk assessment and risk based inspection process is anticipated to be fully implemented in the first quarter of 2013.

- *Recommendation:*
  Continue to improve the Inspection Report and ensure that licensees are provided with a copy of the report following inspection.

  The Corporation acknowledges that previously used inspection reports were inadequate when it came to enforcing specific infractions related to Legislation. For that reason, beginning in May 2012 LACES was used to facilitate a new approach of conducting inspections and establishing new reports. The following process was created based on inspection results:

Result	Process
Satisfactory Inspection	No report provided.
Unsatisfactory Inspection	Inspector communicates the violation(s) to the licensee during the visit and an 'Unsatisfactory Notice', summarizing the inspection results (with specific violations) is forwarded to the licensee within 7 days for their records.

A challenge to this process is the timeliness of the report delivery and gaining assurance that it has been received by the appropriate individual. While LACES can help streamline processes and establish consistencies, the inspectors are currently not able to produce a document to present to the licensee immediately as was done with the manual inspection forms.

The Corporation is presently conducting a review of technology options with the view to implementing an automated inspection process that will provide the inspector the capability to provide the licensee with a written account of the results of an inspection, complete with any orders and/or recommendations regarding any noted infractions immediately upon completion of the inspection.

- *Recommendation:*
  Ensure that the license and inspection database is accurate.

  As mentioned in this report, the requirements for license renewals were eliminated from legislation in 2006. Although the intentions were good in terms of eliminating red tape for licensees, the decision has presented data integrity issues to the Division over the last number of years. There were no measures put in place to mitigate data accuracy issues once the renewal requirement was eliminated. The Corporation has recommended strengthening legislation to ensure that the licensee database can be kept accurate and current on an ongoing basis. Additionally, to coincide with legislation, an onus would be placed on inspectors to validate the information through the course of regular inspection visits. The inspectors would hold the applicable forms in their possession to facilitate the process.

Even without the legislative changes the inspectors will proceed to update the relevant information during their routine inspections. This process will be completed in 2013.

3. Enforcement:

- *Recommendation:*
  Ensure that inspectors complete Inspection and Adverse Reports in a complete and accurate manner when required.

  The launch of LACES has provided a formalized, workflow driven approach to inspections. Inspectors must complete the necessary details of an inspection (such as time, date, violation(s), etc.), as well as validate a specific process used, based on inspection type (such as pre-licensing, regular, etc.). The system does not allow an inspection to be completed until these pre-requisites are finished. Once the inspection is completed, it is added to the licensee's file. All inspections are completed in LACES. If there is no record, there was no inspection.

- *Recommendation:*
  Issue Letters of Warning and refer identified violations to the Tribunal for enforcement when required.

  The Corporation is presently reviewing the 3-Step policy. It is strongly considering the approach taken by law enforcement agencies when dealing with violations, to proceed with actions based on the principle of establishing reasonable and probable grounds first that an offense has been committed. These grounds are documented and weighed with other factors such as intent and opportunity in an effort to determine the extent of the offense and/or infraction. These principles shall be utilized with serious violations of the Acts and Regulations that proceed directly to the Tribunal Board and/or the Provincial Courts. This approach is also more widely accepted by justice prosecutors as well.

  The less severe infractions will be addressed through an inspection results slip given to the licensee outlining any and all identified shortcomings with clear instructions from the inspector as to what action the licensee needs to take and when the action is to be completed. These identified infractions may be dealt with by way of physical repairs or education for the licensee which would be supplied by the inspector. This may be perceived as a warning notice however it is best described as a progressive and shared approach to compliance.

The Corporation is also implementing a new case management philosophy and process in conducting investigations regardless of their respective complexity, simplicity or uniqueness. Major Case Management will provide a highly professional packaging of investigative findings and details itemized in a chronological and systematic way that ensures congruencies with internal policy directives as well as any governing legislation. It also provides an efficient and effective approach to the consistent demands for disclosure.

- *Recommendation:*
  Enforce the "Smoke Free Environment Act"

  Liquor Inspectors have full authority to enforce the Smoke Free Environment Act *as part of their regular duties as noted in Vol. 80, No. 26 of the Newfoundland Gazette.*

  In the event of a breach of any applied legislations, the charging process would start by way of the Provincial Courts. The inspectors will proceed by laying the appropriate information(s) and having the accused person(s)/entities summonsed to court.

  This practice will in turn trigger the simultaneous process of internal charges by way of the Corporation's Tribunal Board. The internal process will be held in abeyance until such time as the courts have determined the results of the official charges. Following the courts disposition, the Tribunal Board will sit and hear the evidence. All parties will be so notified that they will appear before the Tribunal on the next available date.

- *Recommendation:*
  The Tribunal should ensure that the "Act" *and* "Regulations" *are enforced in a consistent and timely manner.*

  In order to address the issue of timeliness the Tribunal Board will have scheduled time allocated per quarter to deal with any outstanding issues referred for their attention. Pre-assigned dates will ensure the timeliness of accused entities/persons would be consistent and in keeping with realistic expectations of a "reasonable time frame" for evidence to be considered and decisions rendered by the Board. These scheduled dates will address the Auditor General's reported concerns outlined in paragraph 3B "Enforcement not consistent or timely". A revised enforcement and charge laying process will be implemented providing a more consistent approach.

Once an Inspector establishes reasonable and probable grounds to support a violation identified contrary to the Liquor Control Act *and* Regulations *the following will occur:*

Step 1 - prepare case for provincial court process
Step 2 - prepare case for Tribunal dates

The internal report will exist, simultaneous with the court report. This will provide the Board with immediate notification and with the pre-determined tribunal dates it will allow the Board to schedule appearances accordingly.

The Tribunal Hearing will be postponed until the disposition of the court process and the accused person/entity will also be advised accordingly. This is a readily accepted practice in terms of parallel processes.

Should there be a conviction registered by the courts then it will proceed in the next pre-determined schedule of the Tribunal Board.

This process will allow for an expeditious response by the Board as the only evidence submitted to the Board will be documentary. In the unlikely event of a non-conviction in the courts, the Board will still proceed as per normal channels and evidence will be presented as per usual.

Section 46 of the Liquor Control Act *allows the Board to authorize generally or specifically any inspector to suspend a license. Past practice within the Corporation shows that this provision was very seldom used albeit there were past circumstances where inspectors could very well have applied same.*

In future, the Board will provide a blanket authority to the office of the Director of Regulatory Compliance along with the two Senior Liquor Establishment Inspectors. This will provide greater access to approval by the liquor inspectors and give them the opportunity to respond effectively and appropriately when circumstances warrant.

A set of criteria will be developed and approved by the Board in regards to the use of this section. This set of criteria will be used in determining whether or not the establishment license should be suspended. Actions such as this are very uncommon but would certainly prove to be a significant deterrent.

PART 3.6

DEPARTMENT OF HEALTH AND COMMUNITY SERVICES

HEALTHLINE

Executive Summary

In September 2006, the Department of Health and Community Services (the Department) introduced HealthLine, a toll-free telephone service to provide residents of the Province with improved access to health care services and to help individuals determine whether they should visit an emergency department, see their physician, see another health care provider, administer first aid, or take other steps. HealthLine services are provided by registered nurses, are accessible 24 hours a day, seven days a week, and are available to all residents of the Province.

The HealthLine has three primary objectives:

- to improve access to health information and advice;
- to encourage self-care; and
- to reduce unnecessary or inappropriate physician and emergency department visits.

Since its introduction in September 2006, the HealthLine has been operated by two different private sector companies. From September 2006 to March 2012, the Department has paid approximately $20.5 million to the service providers to operate the HealthLine.

Our review of the HealthLine identified issues with regard to:

- the lack of evaluation of the program and its effectiveness;
- the lack of initiatives to promote awareness of the HealthLine and to improve access to health information and advice; and
- the absence of independent quality assurance reviews.

Program Evaluation and Effectiveness

The Department has not yet determined if the HealthLine is an effective means of increasing access to health information and advice or reducing unnecessary visits to emergency rooms. Furthermore, the Department has not undertaken regular marketing and other public awareness campaigns to ensure that the residents of the Province are aware of the HealthLine and the services it offers.

The Department has not evaluated if the HealthLine service is the most cost effective alternative to increase access to health information and advice or reduce emergency room wait times, although this was the objective in setting up the program in 2006.

Awareness and Access

Actual call volumes have been considerably lower than the base threshold established in the Department's 2008 request for proposals. The Department has designated the HealthLine as a key means to increase access to health information and advice in the Province and to assist in reaching established goals and objectives in other strategies (such as the Strategy to Reduce Emergency Department Wait Times), however, the Department has not conducted regular promotional campaigns to promote usage of the service or undertaken surveys to gather information to assess awareness and usage of the service by residents of the Province.

The Department is not using the "811" number that the CRTC reserved in 2005 for telehealth services. The HealthLine is currently using a 1-888 number while some other provinces have adopted the more easily recalled "811".

Quality Assurance

No external quality control reviews have been undertaken to ensure the service provider is providing service in accordance with the contract and is responding to callers in a timely manner, using appropriate protocols including industry best practices.

The Department has not performed a review of the practices of the service provider to ensure confidentiality of caller information has been maintained.

Background

Overview

In September 2006, the Department introduced HealthLine, a toll-free telephone service to provide residents of the Province with improved access to health services and help individuals determine whether they should visit an emergency department, see their physician, see another health care provider, administer first aid, or take other steps. HealthLine is accessible 24 hours a day, seven days a week, and is available to all residents of the Province. Registered nurses, who provide service to HealthLine callers, follow standardized guidelines and nursing practices to provide health advice and guide callers to the most appropriate action based on the description of the symptoms they provided.

The HealthLine concept was first introduced as part of the Self-Care/Telecare priority identified in the Telehealth Strategic Plan issued by the Department. It was originally funded through the Primary Health Care Transition Fund. The HealthLine fell under one of the goals of the Primary Health Care framework, which was "to enhance accessibility and sustainability of primary health care services". As an alternative delivery model, the HealthLine has three primary objectives:

- to improve access to health information and advice;
- to encourage self-care; and
- to reduce unnecessary or inappropriate physician and emergency department visits.

Telehealth Strategic Plan

In April 2005 the Department, in affiliation with the Newfoundland and Labrador Centre for Health Information (NLCHI), released the "A Three-year Provincial Telehealth Strategic Plan for Newfoundland and Labrador". The objectives of the telehealth strategy included:

- To enhance access to and delivery of health care services currently not found in rural and remote communities;
- To implement appropriate new telehealth applications, based on the needs/requirements of the regions;

- To enhance current telehealth activities and to gather lessons learned from these initiatives;

- To integrate telehealth activities with other health information systems initiatives;

- To provide telehealth services in a coordinated manner, allowing the regions to be involved in setting the direction for telehealth in the future; and

- To support the role and education of health care providers in regional locations.

HealthLine operated by private service provider

Since its inception the Department has contracted a private company to perform services related to the HealthLine. The original contract was signed in March 2006, with a term expiring on December 31, 2007. Subsequent contract amendments extended the term of service to August 31, 2009.

The Department issued a Request for Proposals (RFP) in 2008 for a service provider to operate the HealthLine. As a result of the competitive process, a contract with a five year term was signed on August 28, 2009 with a new service provider commencing service as of September 1, 2009. The termination date of the contract is August 31, 2014, with a renewal option of one year at the discretion of the Department.

The HealthLine operates out of a base contact centre in St. Anthony and has satellite sites in Stephenville and Corner Brook. It has approximately 37 registered nurses on staff, who are the primary advisors, and 24 Healthcare Service Representatives, who will answer a call and assign priority when all nurses are busy with other callers.

As required by the contract, the service provider submits monthly reports to the Department. These monthly reports include information about the calls received during the month, including the number of calls received, demographic information about the callers, details of the medical reasons for the calls, user feedback, and other call quality information.

Cost of HealthLine service

Since its introduction in September 2006 the Department has spent approximately $20.5 million to provide the HealthLine service. Table 1 provides expenditure by fiscal year:

Table 1

HealthLine Cost by Fiscal Year
For the Year Ended March 31

Year	Expenditure
2007	$1,993,090
2008	4,571,538
2009	4,499,254
2010	3,927,908
2011	2,719,047
2012	2,795,614
Total	**$20,506,451**

Source: Government's Financial Management System

Objectives and Scope

Objectives

We initiated our review in response to a complaint, as well as general anecdotes, that in a significant number of cases where a HealthLine caller is referred to their local emergency department the circumstances of the visit and the nature of the symptoms reported by the patient do not warrant visiting the emergency department. Thus, the action the HealthLine recommends would constitute an "over referral" to the caller based on the description of the symptoms provided.

The objectives of our review of the Newfoundland and Labrador HealthLine were to determine if the Department has:

- Performed effective monitoring and oversight to ensure that the HealthLine has met its objectives as originally set; and
- Ensured that the HealthLine is a cost effective alternate service delivery option.

Scope

We completed our review in December 2012. We interviewed staff at the Department, reviewed reports prepared for the Department by NLCHI, as well as monthly reports prepared by the service provider.

Detailed Observations

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

1. Program Evaluation and Effectiveness
2. Awareness and Access
3. Quality Assurance

1. Program Evaluation and Effectiveness

Overview

In reviewing the monitoring and oversight activities of the Department, we identified issues in the following areas:

A. Lack of Review of Achievement of HealthLine Objectives
B. Cost per Call to HealthLine
C. Caller Compliance

1A. Lack of Review of Achievement of HealthLine Objectives

No formal review of achievement of objectives

A review has not been completed to determine whether the HealthLine has met the program objectives set at its inception in 2006. The HealthLine has three primary objectives:

- to improve access to health information and advice,
- to encourage self-care, and
- to reduce unnecessary or inappropriate physician and emergency department visits.

The "Three-year Provincial Telehealth Strategic Plan for Newfoundland and Labrador" issued in April 2005, noted that the "*The benefit of implementing telehealth will only be realized through evaluation and outcome measurements. Evaluation of the implementation process is important to determine what worked, what did not work, what could have been done more efficiently. This information will prove beneficial when implementing other services/programs. Evaluation of ongoing service delivery will be required as well.*" The Strategic Plan included a draft evaluation framework.

As of December 2012, two reviews had been completed for the Department by NLCHI. The first report related to a review of reports on Telecare in other jurisdictions, and an analysis of HealthLine call data from September 2006 to October 2008. The report concluded that overall, it appeared that HealthLine reduces the number of visits to emergency departments and promotes higher levels of self care. However, the report concluded that the actual impact on the health system could not be measured since call data does not include the actual level of compliance with the advice provided. This information would need to be ascertained by a follow-up survey of users of the service.

An intended second phase of the evaluation, which was to possibly include caller surveys, was not conducted because of a change in the service provider for the HealthLine. At the request of the Department, NLCHI updated the review of current evidence and conducted a second analysis of call data considering the change in service provider. The second report was provided to the Department in September 2011. This report again concluded that, overall, it appeared that HealthLine reduces the number of visits to emergency departments and promotes higher levels of self care. However, the report concluded that actual impact on the health system could not be measured since call data does not include the actual level of compliance with the advice provided. This information would need to be ascertained by a follow-up survey of users of the service.

In February 2012 the Department released "A Strategy to Reduce Emergency Department Wait Times in Newfoundland and Labrador". The strategy has five goals including "*To improve access to community-based health services that will support more effective use of emergency departments"*. This includes improving access to family doctors, increasing awareness and use of the provincial HealthLine and providing community-based alternatives to hospital admission for seniors.

However, the Department has not yet determined if the HealthLine is an effective means of increasing access to health information and advice or reducing unnecessary visits to emergency rooms. Furthermore the Department has not undertaken regular marketing and other public awareness campaigns to ensure that the residents of the Province are aware of the HealthLine and the service it offers.

A more comprehensive evaluation of HealthLine is required to determine the effectiveness of the service in carrying out its primary objectives. The Department indicated, at the time of our review, that they are in the process of planning a more comprehensive evaluation of the HealthLine service. The estimated completion date is March 2013.

1B. Cost per Call to HealthLine

Cost of HealthLine service per call higher than expected

The Request for Proposals issued by the Department in 2008 required that interested bidders base their proposals, including financial terms, on a call volume of 55,000 calls per year. The successful service provider is entitled to receive a minimum fee, regardless of the extent to which actual call volumes may fall below the 55,000 call threshold. If call volumes exceed 55,000 calls per year, the service provider is entitled to pre-established additional compensation for each incremental increase in call volume.

Our review of the reports provided by the service provider as well as the reports prepared by NLCHI found that the number of calls received per fiscal year has been decreasing. Furthermore, call volumes have never exceeded the 55,000 calls per year threshold established in the second contract. Table 2 summarizes the contract cost of the HealthLine services over the duration of the contracts with the current and previous service providers, at the actual call volume.

Table 2

HeathLine Cost per Call

	Total Cost at or Below 55,000 Calls per year	Actual Number of Calls	Actual Cost per Call	Expected Cost per Call at 55,000 Calls
2007	1,993,090	33,801	58.97	36.24
2008	4,571,538	48,543	94.18	83.12
2009	4,499,254	44,582	100.92	81.80
2010	3,927,908	Note 1: 45,047	87.20	71.42
2011	2,719,047	32,517	83.62	49.44
2012	2,795,614	31,752	88.05	50.83
2013	2,861,392	-	-	52.03
2014	2,975,848	-	-	54.11
Total	**$26,343,691**			

Source: Government Financial Management System and Service Provider Reports
Note 1: During this fiscal year, a higher number of calls were received due to the H1N1 pandemic.

As indicated in Table 2, the actual cost per call has been consistently higher than the expected cost per call based on the 55,000 call threshold included in the contract. As a result, a lower call threshold in the contract could result in a lower overall cost to the Department.

The Department has not evaluated if the HealthLine service is the most cost effective alternative to increase access to health information and advice or reduce emergency room wait times, although this was the objective in setting up the program in 2006.

1C. Caller Compliance

Caller compliance not determined

One of the primary functions of the HealthLine is to reduce unnecessary or inappropriate physician and emergency department visits. The service provider asks callers what they would have done (ie. original inclination) if they had not called the HealthLine for advice. In September 2011, the Newfoundland and Labrador Centre for Health Information reviewed call data for the period September 2009 to August 2010 and compiled information on the original inclination and recommended call disposition of callers to the HealthLine. Table 3 summarizes the original caller inclinations and the recommended care to callers by HealthLine staff.

Table 3

Newfoundland and Labrador HealthLine
Comparison of Original Inclination and Care Recommended
September 2009 to August 2010

	Original Inclination (%)	Care Recommended (%)
Self-care	4.6	22.3
Go to emergency department	35.1	25.5
See physician	6.8	41.5
Call 911	0.8	5.4
Call health provider	4.9	5.5

Source: Newfoundland and Labrador Centre for Health Information

While the above table suggests that the HealthLine promotes higher levels of self-care, it is not possible to ascertain the callers compliance with the advice given. Since callers are not asked to provide their Medical Care Plan (MCP) card number to the service provider, it is not possible to confirm whether the callers actually follow the advice provided by the HealthLine.

Based on the analysis of information received from the service provider and the reviews completed by the NLCHI, we did not find evidence the HealthLine was "over referring" callers to the emergency department as alleged in the complaint we received. However, as previously noted the Department has not undertaken a comprehensive evaluation of the HealthLine to determine if the HealthLine is actually reducing unnecessary or inappropriate emergency department visits.

Recommendations

The Department should:

- evaluate the effectiveness of the HealthLine and whether its program objectives are being met prior to the expiration of the contract with the current service provider in 2014;
- consider the development and implementation of a process that would allow them to assess the extent to which callers follow the advice provided by the HealthLine; and
- consider the actual and reasonably anticipated call volumes in any future request for proposals for service providers to operate the HealthLine.

2. Awareness and Access

Our review of the awareness of and access to the HealthLine service identified issues in the following areas:

A. Public Awareness
B. Use of Reserved "811" Phone Number

2A. Public Awareness

Public awareness of the HealthLine not promoted

In 2006, when the HealthLine was launched, the Department conducted a promotional campaign. The campaign included television, radio and print ads, and fridge magnets with the HealthLine phone number were distributed to each household in the Province. A subsequent campaign ran from September 2008 to March 2009 in which promotional ads were re-run and wallet cards with the HealthLine phone number were distributed to each household.

There has not been any subsequent marketing or promotional activities completed from March 2009 to December 2012, nor has the Department undertaken any type of work (ie. public surveys) to determine overall public awareness of the HealthLine service. The lack of subsequent marketing and promotional activities should not be ignored in assessing the reason for declining call volumes in recent years. As indicated in Table 2, there were 48,543 callers in 2008 to the HealthLine, while in 2012 there were approximately 31,752 callers, a reduction in call volume of 35%. It would be expected that call volumes would increase over the years that the service is offered to the residents of the Province.

A review of reports provided by the HealthLine service provider to the Department indicated that the just over half of calls received by the HealthLine were from repeat callers.

2B. Use of Reserved "811" Phone Number

No plan to use the reserved "811" number

In July 2005, the Canadian Radio-television and Telecommunications Commission ("CRTC") set aside the phone number "811" for provinces to use for non-urgent teletriage/telehealth services. The Province is currently using a 1-888 number for the HealthLine. At the time of our review, British Columbia, Quebec, and Nova Scotia had adopted "811" as the phone number for their teletriage/telehealth services.

It was reported that the Province of Quebec experienced a 15% increase in call volume following the implementation of the "811" phone number. The shorter "811" number is more readily recalled and given the adoption of this number by other provinces it could lead to enhanced knowledge and usage of the number if the Department were to adopt the reserved "811" number.

At the time of our review, the Department indicated that there were no plans to adopt the "811" phone number for HealthLine services.

Recommendations

The Department should:

- conduct surveys to determine the overall public awareness of the HealthLine service. Furthermore, based on the results of the public survey the Department should consider what measures can be taken to increase utilization of the HealthLine service by underrepresented demographic groups or regions identified in the survey; and

- consider the use of the easily recallable "811" number that has been specifically reserved by the CRTC for theletriage/telehealth services.

3. Quality Assurance

Overview

In reviewing the monitoring and oversight activities of the Department, we identified issues in the following areas:

A. External Quality Assurance Reviews
B. Review of Confidentiality Safeguards

3A. External Quality Assurance Reviews

No external quality assurance review

A quality assurance review is designed to ensure that the service provider is providing service in accordance with its contract and is responding to callers in a timely manner and using appropriate protocols and industry best practices.

A quality assurance review could also determine if the nurses hired to respond to callers have the necessary experience and receive sufficient appropriate continuing professional development.

Although the contract with the service provider permits the Department to perform audits to ensure compliance with the terms and conditions of the contract, the Department has not directly reviewed the quality of service provided by the company contracted to operate the HealthLine service.

3B. Review of Confidentiality Safeguards

No review of confidentiality practices

The Department's contract with the service provider requires the service provider to protect the security and integrity of caller information and to keep that information in a physically secure location. In addition, the contract states that the service provider should restrict access to personal information to those who need access in order to provide the service.

Medical information obtained by the HealthLine would be considered highly confidential and any breaches of confidentiality would be a very serious breach of privacy. If a breach were to occur, this could undermine the credibility of the service and result in the public being hesitant to use the HealthLine.

Although the contract with the service provider permits the Department to perform audits and security reviews, the Department has not performed a review of the service provider's practices for ensuring confidentiality of caller information.

Recommendations

The Department should consider undertaking its own:

- quality assurance reviews; and
- review of the service provider's confidentiality practices.

Department's Response

1. Program Evaluation and Effectiveness

Recommendation:
The Department should:

- *Evaluate the effectiveness of the HealthLine and whether its program objectives are being met prior to the expiration of the contract with the current service provider in 2014.*

Department's Response:
The Department agrees with this recommendation to ensure that the service provider's objectives are met. In 2009 and again in 2012 DHCS contracted the services of the NL Centre for Health Information (NLCHI) to develop an evaluation framework and to conduct an external evaluation of the HealthLine. In 2009, Phase I (literature review and historical analysis of data) concluded that the HealthLine appeared to reduce the number of emergency department visits and promoted higher levels of self-care. Phase II (surveying previous callers of the HealthLine to assess access, satisfaction, and compliance) was postponed in 2009 due to a change in service provider. In 2012, NLCHI completed Phase I and Phase II and a final report is expected by end of March 2013. DHCS recognizes the value in conducting external evaluations and will continue to do so periodically.

Recommendation:
The Department should:

- *Consider the development and implementation of a process that would allow them to assess the extent to which callers follow the advice provided by the HealthLine.*

Department's Response:
The service provider submits monthly reports to DHCS which are reviewed and monitored by Department staff. Included in these monthly reports are the results of the monthly satisfaction surveys on an average of 275 previous callers. The following information is collected during the surveys:

- *Satisfaction with the call in the following areas: how the nurse worked through the details of the medical issues, how clear the nurse was in giving his/her recommendations, the length of call, and overall satisfaction with the call;*
- *The recommendations provided by the RN and if the caller followed the RN's advice;*
- *If the RN's advice was not followed, what the caller's reason was for taking a different action.*

The external evaluation by NLCHI will complement this data to ascertain the extent to which callers follow advice.

Recommendation:
The Department should:
- *Consider the actual and reasonably anticipated call volume in any future request for proposals for service provider to operate the HealthLine.*

Department's Response:
DHCS will consider the actual/reasonable anticipated call volumes for future RFPs and is currently exploring additional services and promotional methods for the HealthLine with the objective of increasing call volume and maximizing value.

2. Awareness and Access

Recommendation:
The Department should:
- *Conduct surveys to determine the overall public awareness of the HealthLine service. Furthermore, based on the results of the public survey the Department should consider what measures can be taken to increase utilization of the HealthLine service by underrepresented demographic groups or regions identified in the survey.*

Department's Response:
DHCS has conducted two major marketing campaigns promoting the HealthLine over the last several years. The HealthLine number is widely published in various Government and community publications throughout the province and on various websites. The Department is currently considering a promotional campaign to be implemented at an appropriate time.

Recommendation:
The Department should:

- *Consider the use of the easily recallable "811" number that has been reserved by the CRTC for the teletriage/telehealth services.*

Department's Response:
The easily recallable 811 number is only operational in major centres across the province and will be considered for use when the number is available in every community.

3. Quality Assurance

Recommendation:
The Department should consider undertaking its own:

- *Quality assurance reviews*
- *Review of the service provider's confidentiality practices*

Department's Response:
The Department agrees with this recommendation and does engage in reviews of performance levels on a monthly basis to ensure they are being met and reviews the monthly reports to monitor call trends, satisfaction reports, complaints reports, and other quality measures. The Department monitors confidentiality and privacy and has been assured by the service provider that there has been no breach of security or confidentiality.

PART 3.7

DEPARTMENT OF HEALTH AND COMMUNITY SERVICES

NEWFOUNDLAND AND LABRADOR CENTRE FOR HEALTH INFORMATION

Executive Summary

The Newfoundland and Labrador Centre for Health Information (the Centre) is a Crown agency reporting to the Department of Health and Community Services (the Department). The Centre is responsible to the Minister of Health and Community Services through its Board of Directors (the Board). Board members are appointed by the Lieutenant-Governor in Council. The Centre is governed by the *Centre for Health Information Act* (the *Act)*.

The Centre has a mandate to assist individuals, communities, health service providers and policy makers at federal, provincial and regional levels in making informed decisions that enhance the health and well-being of persons in the Province.

The Centre is responsible for the development of a confidential and secure health information network, which will serve as the foundation for the Province's Electronic Health Record (EHR). There are five components to the EHR: client registry; provider registry; pharmacy network; picture archiving and communication system; and interoperable EHR/laboratories project.

Our review identified concerns with:

- compensation and recruitment practices; and
- governance.

Compensation and Recruitment Practices

The Centre uses public money to compensate employees. Government is, effectively, the ultimate employer of all public employees whether they work for a Government department or a Crown agency. Treasury Board has recently directed that, as an agency, the Centre is to ensure that certain of their compensation policies are consistent with Government policies. Our review of compensation and recruitment practices indicated concerns with:

- job competitions;
- upscale hiring;
- the Centre's pay structure;

- step increases;
- reclassifications;
- pay in lieu of notice;
- the Chief Executive Officer Contract of Employment;
- salary increases; and
- hiring of external consultants to fill employee vacancies.

Governance

The members of the Board are appointed by the Lieutenant-Governor in Council under the *Act*. This appointment directs that the Board shall exercise all of the powers and discharge all of the duties of the Corporation and administer and manage its business.

Our review of Board governance identified that:

- there was no current representative from the Department;
- the Lieutenant-Governor in Council had not appointed a new chairperson since September 2011; and
- the Centre has not established selection criteria for appointment to the Board.

Background

Overview

The Newfoundland and Labrador Centre for Health Information (the Centre) is a Crown agency reporting to the Department of Health and Community Services (the Department). The Centre was established in October 1996 and became a Crown agency of the Province with the proclamation of the *Centre For Health Information Act* (the *Act*) on April 27, 2007. As a Crown agency, the Centre has enhanced access to federal funding and revenue through private partnerships enabling it to attract and obtain additional investment to further develop and implement the provincial health information infrastructure.

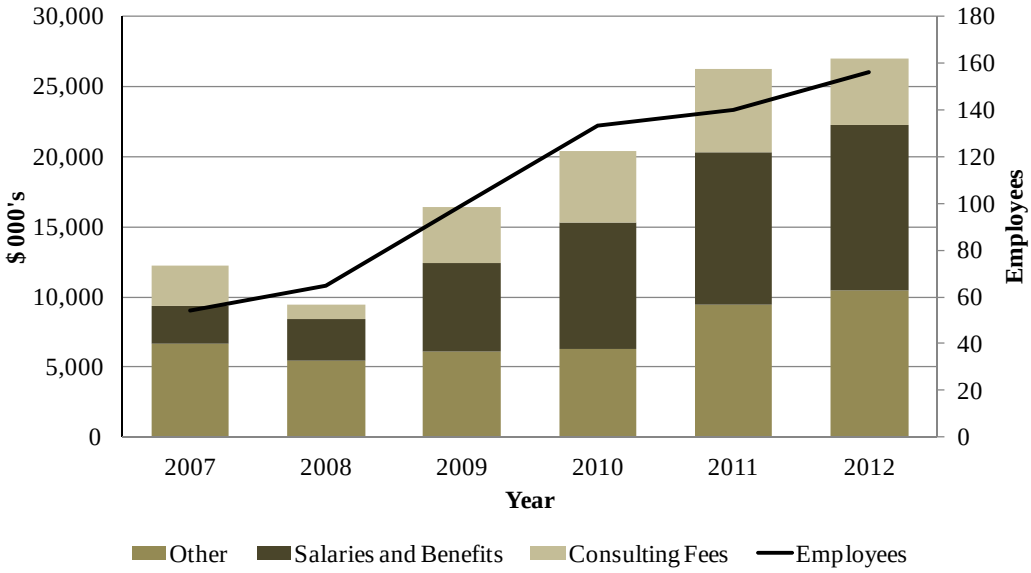
The Centre is responsible to the Minister of Health and Community Services (the Minister) through its Board of Directors (the Board), members of which are appointed by the Lieutenant-Governor in Council. The Centre has a mandate to assist individuals, communities, health service providers and policy makers at federal, provincial and regional levels in making informed decisions that enhance the health and well-being of persons in the Province by providing a comprehensive Province-wide information system that:

- protects the confidentiality and security of personal and health information that is collected, used, disclosed, stored or disposed by the Centre;
- provides accurate and current information to users of the health and community services system;
- integrates data from all components of the health and community services system;
- is efficient and cost-effective; and
- is flexible and responsive to the changing requirements of users of the system.

Chart 1 shows the expenses and the number of employees at the Centre for the fiscal years ended March 31, 2007 through to March 31, 2012.

Chart 1

Newfoundland and Labrador Centre for Health Information
Expenses and Employees
Fiscal Years Ended March 31



Source: Audited Financial Statements and Annual Reports
Note: Financial statements for the years ended March 31, 2007 through 2010 were prepared in accordance with Canadian Generally Accepted Accounting Principles. Financial statements for the years ended March 31, 2011 and 2012 were prepared in accordance with Canadian Public Sector Accounting Standards.

As indicated in Chart 1, total expenses of the Centre have increased from $12.2 million for the year ended March 31, 2007 to $27.0 million for the year ended March 31, 2012, a 121% increase. During this period, salaries and benefits have increased from $2.6 million to $11.8 million (354%), while the number of employees has increased from 54 to 156 (189%). In addition, consulting fees have increased from $2.9 million to $4.8 million (66%).

The development and implementation of the Province's Electronic Health Record (EHR) has contributed to the significant growth in employees and expenses over the past several years.

Electronic Health Record

An EHR is a secure and private lifetime record of select components of an individual's health and care history, available electronically to authorized health providers. It facilitates the sharing of data across the continuum of care, across healthcare delivery organizations and across geographies.

The Centre is responsible for the development of a confidential and secure health information network, which will serve as the foundation for the Province's EHR. There are five components to the EHR: client registry, provider registry, pharmacy network, picture archiving and communications system (PACS), and interoperable EHR/laboratories project (iEHR/Labs project).

According to Centre officials, as at October 2012, the client registry, provider registry, and PACS are complete. Approximately 43% of community pharmacies have connected to the pharmacy network. Connection to the network by community pharmacies is not compulsory. The iEHR/Labs project is estimated to be completed by September 2014.

As at October 2012, the Federal and Provincial Governments have made commitments totaling approximately $57.8 million and $32.0 million, respectively, for a total of $89.8 million toward the development of the Province's EHR.

Operating results

Table 1 shows the revenue and expenses of the Centre for the fiscal years ended March 31, 2011 and March 31, 2012. Revenue was comprised primarily of funding from the Province and the Federal Government. Salaries and benefits and consulting fees were the largest expenses in both 2011 and 2012, comprising 61.2% of total expenses in 2012.

Table 1

Newfoundland and Labrador Centre for Health Information
Revenue and Expenses
Fiscal Years Ended March 31
(000's)

	2011	2012
Revenue		
Provincial Grants	$ 18,697	$ 19,833
Federal Grants	4,679	2,123
Amortization of deferred capital	960	1,669
Research	656	678
Interest	30	117
Other	2,593	2,014
Total Revenue	27,615	26,434
Expenses		
Salaries and Benefits	10,854	11,754
Consulting Fees	5,952	4,783
Depreciation	2,707	3,321
Software Maintenance	2,847	3,183
Rent	980	933
Data communication charges	867	893
License Fees	280	542
Minor Equipment	99	110
Other	1,626	1,498
Total Expenses	26,212	27,017
Surplus(Deficit)	**$ 1,403**	**$ (583)**

Source: Audited Financial Statements

The Centre operates at two locations, its head office in St. John's and its Registry Integrity Unit in Bay Roberts. Figure 1 shows the Centre's head office in St. John's.

Figure 1

Newfoundland and Labrador Centre For Health Information
Head Office, St. John's

Source: Newfoundland and Labrador Centre For Health Information

Objectives and Scope

Objectives

The objectives of our review were to:

- determine whether compensation and recruitment practices were in accordance with Government and Centre policy;
- determine whether purchases of goods and services were in accordance with Government and Centre policy; and
- examine Board Governance.

Scope

Our review was completed in November 2012 and covered the period April 2007 to November 2012. Our review included an examination of the Centre's policies and procedures, Board and committee minutes, financial information and file documentation and interviews with Centre officials.

Detailed Observations

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

1. Compensation and Recruitment Practices
2. Governance

1. Compensation and Recruitment Practices

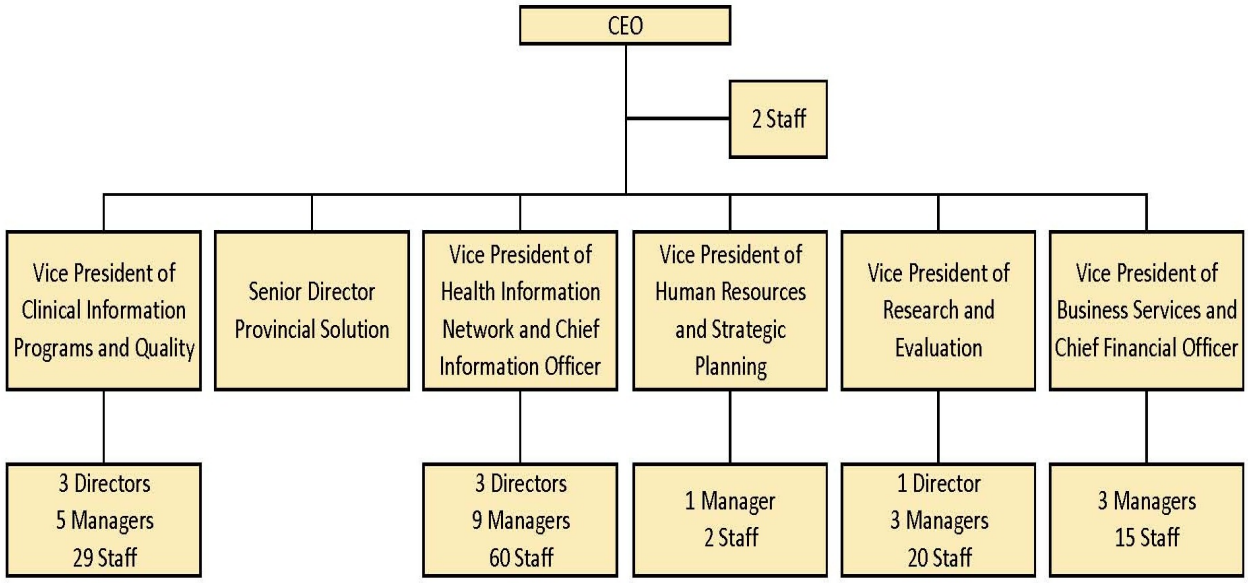
Overview

For the year ended March 31, 2012, the Centre employed approximately 156 staff with total salaries and benefits of approximately $11.8 million. Salaries and benefits comprised 43.5% of the total expenditures of the Centre for the year ended March 31, 2012.

Figure 2 shows the organizational structure of the Centre as at November 2012, which includes 163 staff.

Figure 2

Newfoundland and Labrador Centre for Health Information
Organizational Structure



Source: Newfoundland and Labrador Centre For Health Information

Section 12 of the *Act* provides the Centre with the power to employ or engage the services of those persons it considers necessary to attain the mandate of the Centre and to determine their respective duties and powers, their conditions of employment or engagement and their remuneration.

The Centre uses public money to compensate employees. Government is, effectively, the ultimate employer of all public employees whether they work for a Government department or a Crown agency. Instances of higher pay for similar work occur as a result of different compensation standards. Higher pay also results in higher pension, severance, and accrued paid leave payouts on retirement or termination of positions.

Direction from Treasury Board on consistency of compensation policies

On June 5, 2012, the Centre was advised by the Minister that Treasury Board has directed that, as an agency, the Centre is to ensure that certain of their compensation policies are consistent with Government policies. It was also advised that if the Centre was not currently compliant, it was to submit an implementation plan which ensures compliance or obtain support from the Minister to seek Treasury Board approval for an exemption to the policy.

The Centre advised the Minister in a response letter that *"the Centre has undertaken a review of the Treasury Board policies as outlined in the correspondence. Whereas, the Centre is in compliance with the spirit of all revised policies, some discrepancies exist in specific application"*. The Centre indicated that it would *"be submitting a request for exemption from policies the Board determines will negatively impact operations. That submission will be made by September 30, 2012"*. The Minister acknowledged receipt of this letter.

The Centre did not submit the request for exemption to the Minister by September 30, 2012. Further, in early October, the Centre recommended that the CEO meet with the Deputy Minister of the Department to determine a course of action to address the Treasury Board direction.

This indicates Government's intention that the Centre should be following Government policy with respect to compensation policies.

In reviewing the Centre's compensation and recruitment practices we identified issues in the following areas:

A. Job Competitions
B. Upscale Hiring
C. Centre Pay Structure
D. Step Increases
E. Reclassifications
F. Pay in Lieu of Notice
G. Chief Executive Officer Contract of Employment
H. Salary Increases
I. External Consultants Hired

1A. Job Competitions

Introduction

The Human Resources and Strategic Planning Department of the Centre manages recruitment for internal and external hiring, including both temporary and full-time positions.

The Public Service Commission is responsible for the protection of the merit principles in appointment and promotion to permanent positions within the public service. While the Centre does not fall under the jurisdiction of the Public Service Commission, it would be expected that policies and procedures followed by the Human Resources and Strategic Planning Department of the Centre would be consistent with Government policies and procedures because the Centre uses public money to compensate employees.

The Public Service Commission recommends a competition file contain documentation such as screening criteria and details of why applicants were screened out, applicant assessment details outlining the suitability assessment of each applicant interviewed, and a selection referral that outlines the candidate(s) referred to the Chief Executive Officer (CEO)/Deputy Minister for final selection.

The Public Service Commission Staffing Policy Manual states that "*the Selection Board shall recommend a maximum of 3 candidates per position to the Chief Executive Officer/Deputy Minister for final selection. The Board may recommend less than 3 candidates if they feel that fewer than 3 candidates are qualified.*"

Centre policy requires only the top candidate for referral to the CEO.

No Job Competitions

In 2 of 13 personnel files reviewed, there was no documentation to indicate that a competition had been held for two Director positions.

In one instance, the Manager of Financial Operations position was reclassified to the position of Director of Finance and Project Management Office (PMO) and a new Manager of Finance was subsequently hired.

In the other instance, the Manager of Human Resources and Strategic Planning was reclassified to the position of Director of Human Resources and Strategic Planning and a new Manager of Human Resources was subsequently hired.

In these two instances, managers were transferred to higher-rated positions without conducting job competitions. Government policy requires competitions be conducted for positions filled longer than six months for management and non-bargaining unit positions

Insufficient support in job competition files

Our review of 10 job competition files identified issues with the completeness of the documentation to support the competition process. Specifically:

- screening assessments were not documented in any of the 10 files. As a result, the Centre could not demonstrate that the most suitable candidates were interviewed; and

- applicant assessments resulting from the interview process were not documented in any of the 10 files. As a result, the Centre could not demonstrate that the most suitable applicant interviewed was selected.

Selection referrals do not recommend more than one qualified candidate

Government policy requires the recommendation of qualified candidates up to a maximum of 3 candidates per position. Centre policy requires the recommendation of only the top candidate for referral to the CEO. As a result, the Centre policy was inconsistent with Government policy.

1B. Upscale Hiring

Introduction

When a person is hired from outside the organization, Government policy states that the individual start at step 1 of the pay scale. Centre policy requires that the appointment of an external candidate shall be within the salary range determined for the position. During salary negotiations, an effort to hire at step 1 is required. An upscale hire occurs when an external candidate is hired at a step above step 1 on the pay scale of a position.

Each salary scale at the Centre consists of 33 steps, however employees can advance only to step 25. Government policy reserves steps 26 to 33 to accommodate employees who receive involuntary demotions. However, the Centre's governance policy gives authority to the CEO to upscale hire up to step 33.

Government policy permits upscale hiring where a job competition has yielded only one qualified candidate or no other qualified candidate is willing to accept the position at a lower rate. In situations where upscale appointments are required beyond step 25 of the pay scale, the approval of Treasury Board is required.

Centre policy states: "*In the event that a decision is made to upscale hire, a representative of the Human Resources and Strategic Planning Department normally will summarize the relevant information in a memo to the CEO…The CEO will review the information, make a decision and sign off on the Upscale Hire Memo, which is to be placed in the employee's personnel file.*"

Our review of 16 upscale hire memos identified issues with the upscale hire process, as follows:

No effort to hire at step 1

An effort to hire at step 1 was not documented in any of the upscale hire memos. The CEO was provided with only the name of the top candidate, and was not advised of any other qualified candidates. Centre officials advised that in an instance where the top candidate attempted to negotiate a salary beyond step 1, no effort was made to determine whether another qualified candidate would accept the position at step 1. This is inconsistent with Centre policy and Government policy.

Human resources firm paid referral fee

A Project Manager that was hired had been referred by a human resources consulting firm. While interviews had been completed with 13 applicants, the Project Manager was upscale hired at step 16 and the human resources consulting firm was paid $17,056 as a result of referring the successful candidate. There was no documented effort to determine whether another qualified candidate would accept the position at the same or a lower step and thus avoid the referral fee. This is inconsistent with Government policy.

Upscale hire salary beyond candidate's request

A Systems Administrator was upscale hired at step 21. Documentation in an upscale hire memo indicated that the candidate was willing to accept an annual salary offer of approximately $5,000 less than the salary that was offered and accepted.

Appointment beyond step 25

In 2 of the 16 upscale hire instances we reviewed, the CEO had approved upscale hires beyond step 25. A Systems Analyst was hired at step 31, while a Technical Applications Analyst was hired at step 33. These upscale hires are in line with Centre policy, but are inconsistent with Government policy.

1C. Centre Pay Structure

Introduction

Prior to the proclamation of the *Act*, employees of the Centre occupied positions that already had been evaluated and classified by Government. Centre employees occupied positions that were classified as GS (General Service), HL (Management), and HS (Hospital Support Staff).

In March 2008, the Centre officially notified its employees that they had evaluated all positions at the Centre using the Hay Evaluation methodology, and that a new pay structure had been approved by the Board. The adjustments to salaries were retroactive to the date of proclamation of the *Act*, April 27, 2007 or from the date of hire, whichever was more recent.

Legal advice obtained by the Centre prior to approval of the new pay structure by the Board made reference to the Centre being an agent of the Crown. It suggested that the Centre "*may be expected to adopt certain compensation models or standards under the direction of the Government of Newfoundland and Labrador. Such directive or expectation would not, however, amount to a legal restriction on the rights of CHI to independently establish compensation levels for its employees*."

Approval by the Board despite concerns raised by Board members

At a Board meeting on January 16, 2008, the Board considered the new classification and salary scales proposed by the Centre's management, retroactive to the date of the proclamation of the *Act*, April 27, 2007.

Minutes of the meeting documented that the Board representative designated by the Department felt "*the Board should wait for a response from the Minister before proceeding, and therefore would not be able to support a motion to proceed*." Also documented in the minutes was the CEO's comment that "*this is similar to the pharmacy market differential which was not supported by Government. However, if we proceed with implementation and it is taken in the wrong context by Government, there is a fair amount of risk for the CEO."* He agreed with the Board representative from the Department, that the Board should wait for a response from Government. It is also on record that the Board representative from the Department voted against the motion.

Despite the concerns raised by the Board representative from the Department and the CEO, the Board approved the new salary structure.

No formal written response from the Minister regarding new pay structure

In a letter dated March 4, 2008, the Chair of the Centre informed the Minister that a special meeting of the Board was called that morning, and that the Board reviewed its decision of January 16, 2008. The meeting resulted in the affirmation by the majority of Board members to proceed with implementation of the new salary scales.

Centre officials indicated that the Minister had not responded to their letter regarding the implementation of the new pay structure.

New pay structure resulted in $203,089 salaries increase

The creation of the Centre's new pay structure resulted in a $203,089 increase in total annual salaries as at the date of implementation, March 20, 2008, for the 58 employees of the Centre at that time. These increases were retroactive to April 27, 2007. As is shown in Table 2, six positions accounted for $93,048 (45.8%) of the total increase. All six positions were placed on steps within their new salary scales that allowed more room for salary increases as compared to their previous salary scales. For instance, the Director of Finance and PMO was previously at step 24, 1 step from the top of the pay scale. As a result of the pay structure changes this position received a salary increase of $25,050 and was placed at step 6, near the bottom of the new pay scale. Table 2 provides details of positions for which the annual salary increased by more than $10,000 as a result of the new pay structure.

Table 2

Newfoundland and Labrador Centre for Health Information
Salary Increases
Salary Increases Greater than $10,000

Employee	Old Pay Structure			New Pay Structure			Salary Increase
	Scale	Step	Current Salary	CHI Pay Scale	Step	New Salary	
Director of Finance and PMO	HL-23	24	$73,465	CHI-17	6	$98,515	$25,050
Chief Privacy Officer	HL-22	25	70,596	CHI-16	6	89,205	18,609
Director of Research and Evaluation	HL-27	22	80,625	CHI-17	6	98,515	17,890
Manager of Human Resources and Strategic Planning	HL-19	19	57,406	CHI-13	6	68,170	10,764
Manager of Communications	HL-17	4	44,330	CHI-11	1	54,920	10,590
Manager of Research and Evaluation	HL-22	9	59,735	CHI-14	1	69,880	10,145
Totals							**$ 93,048**

Source: Newfoundland and Labrador Centre For Health Information

These six positions received an average increase in salary of approximately $15,500 each, while the remaining 52 employees received an average increase in salary of approximately $2,100 each.

Centre salaries higher than Government for same Hay point totals

The Hay Evaluation methodology is a points based job evaluation methodology developed by the Hay Group. The number of points assigned to a position reflects the know how, problem solving and accountability requirements of the job.

We reviewed the salaries assigned to the Hay point totals of the Centre's positions and compared them to Government salaries with the same point totals. Table 3 provides a comparison, as at October 2012, of the Centre salary scales to Government salary scales for Hay point totals allocated to certain Centre positions. Table 3 shows, in particular, those Hay point totals for which Centre position salaries had the largest variances as compared to Government.

As an example, Table 3 shows that a position with a Hay point total of 1,168, which was a CHI-18 on the Centre's scale and a HL-32 on Government's scale, had a difference of $27,185 at step 1, while step 25 had a difference of $35,340.

We would expect that positions with exactly the same Hay points would have exactly the same salary range.

Table 3

Newfoundland and Labrador Centre for Health Information
Comparison between Centre Salary Scales and Government Salary Scales
As at October 2012

Hay Point Total	Salary Scales		Pay at Step 1			Pay at Step 25		
	Centre	Gov't	Centre	Gov't	Difference	Centre	Gov't	Difference
1,168	CHI-18	HL-32	$114,885	$87,700	$27,185	$149,350	$114,010	$35,340
1,166	CHI-18	HL-32	114,885	87,700	27,185	149,350	114,010	35,340
980	CHI-17	HL-30	103,782	83,235	20,547	134,916	108,206	26,710
978	CHI-17	HL-30	103,782	83,235	20,547	134,916	108,206	26,710
824	CHI-16	HL-27	93,976	77,563	16,413	122,169	100,832	21,337
801	CHI-16	HL-27	93,976	77,563	16,413	122,169	100,832	21,337
799	CHI-16	HL-27	93,976	77,563	16,413	122,169	100,832	21,337
797	CHI-16	HL-27	93,976	77,563	16,413	122,169	100,832	21,337

Source: Newfoundland and Labrador Centre For Health Information, and Government of Newfoundland and Labrador

Annual Centre salaries $1.3M to $1.6M higher than similarly rated Government positions

In total, positions filled at the Centre were being paid in the range of $1.3 million to $1.6 million higher annually than the salaries that would result if the Centre used pay rates that were consistent with Government pay rates for the same Hay point totals.

1D. Step Increases

Introduction

Centre policy provides employees with salary step increases annually. Employees receive an annual increment of three steps in their salary ranges. Step 25 of a salary range is the maximum step for annual step increases. This is consistent with Government policy.

Centre policy provides that, in extraordinary circumstances, the Centre may adjust salary steps for retention purposes. The CEO has the discretion to adjust salaries within a level by moving an incumbent up the scale in the following circumstance:

- if the performance of the incumbent is significantly higher than would be expected with the experience in the role or where the qualifications and work experience have grown through working with the Centre and the value provided by the incumbent is higher than normally expected; and

- where market pressures are resulting in the incumbent pursuing opportunities elsewhere for remuneration purposes.

In such cases, Centre procedures require that a request for salary adjustment must be made by the individual or their director, and the Human Resources and Strategic Planning Department prepare a memo to the CEO that is to be approved by the CEO prior to the adjustment being made. The documentation may include a performance evaluation of the individual that demonstrates their abilities, additional qualifications and documentation of work experience that is out of the ordinary, and/or market information on offers received from other employers.

Government policy does not allow for step progression for retention or performance purposes.

Salary adjustments made for retention purposes

The Centre provided a list of salary adjustments made for retention purposes from the date of proclamation of the Centre's *Act* on April 27, 2007 to November 2012. This information is listed in Table 4.

Table 4

Newfoundland and Labrador Centre for Health Information
Salary Adjustments for Retention Purposes

	Scale	Step	Earnings at Step	New Step	Earnings at new Step	Earnings Increase
Approved April 17, 2008. Retroactive to April 27, 2007.						
Director of Finance and PMO	CHI-17	1	$92,720	6	$98,515	$5,795
Director of Research and Evaluation	CHI-17	1	92,720	6	98,515	5,795
Executive Assistant	CHI-8	1	43,360	6	46,070	2,710
Chief Privacy Officer	CHI-16	1	83,960	6	89,205	5,245
Manager of Human Resources and Strategic Planning	CHI-13	1	64,160	6	68,170	4,010
Technical Manager	CHI-12	17	71,080	20	73,300	2,220
Approved December 15, 2009. Retroactive to August 3, 2009.						
Director of Finance and PMO	CHI-17	12	110,743	18	118,044	7,301
Director of Research and Evaluation	CHI-17	12	110,743	18	118,044	7,301
Approved June 30, 2011. Retroactive to May 1, 2011.						
VP of Health Information Network and Chief Information Officer	CHI-18	9	123,291	12	127,495	4,204
VP of Clinical Information Programs and Quality	CHI-17	14	117,703	22	127,828	10,125
VP of Human Resources and Strategic Planning	CHI-17	7	108,844	15	118,969	10,125

Source: Newfoundland and Labrador Centre For Health Information

Our review of this information identified the following:

- in the April 3, 2008 Policy and Governance Committee Meeting, the CEO "*informed the Committee of a decision to implement the new salary scale at step 6 for four senior management staff and the manager of human resources. The decision was made based on expertise and retention issues*." These salary adjustments were approved on April 17, 2008, and were retroactive to April 27, 2007. Centre officials were unable to provide documentation required by Centre policy to support these salary adjustments.

- A Technical Manager's personnel file contained no request for salary adjustment. However, there was documentation on file from the CEO giving the employee a 3 step increase on the pay scale because "*this is a retention issue and based on their 20 years experience as a provincial leader in health information technology*." This salary adjustment was approved on April 17, 2008 and was retroactive to April 27, 2007. Centre officials were unable to provide documentation required by Centre policy to support this salary adjustment.

- On December 15, 2009, the CEO informed the Payroll Department of salary increases for the Director of Finance and PMO and the Director of Research and Evaluation retroactive to August 3, 2009. He advised in an email, that the adjustment for the Director of Finance and PMO reflects their "*additional responsibilities (facilities and risk management) and acknowledgement of their 2IC status*," and that the adjustment for the Director of Research and Evaluation reflects their "*successful completion of their PhD and to ensure we retain them as Director of Research and Evaluation given the demand for their skills in the academic and private research environment.*" Both of these adjustments were effective less than 1.5 years after the approval of the new pay structure, which had resulted in a $25,050 raise for the Director of Finance and PMO, and a $17,890 raise for the Director of Research and Evaluation.

- On June 30, 2011, the CEO informed the Chair of the Board that he "*recommend we move three of our executives up the current scale to more accurately reflect their relative experience and responsibilities as per the Hay Classification system, This is not a reclassification but an upward move on the current Hay Level salary classification.*" These three salary increases were retroactive to May 1, 2011. Centre officials were unable to provide documentation required by Centre policy to support these salary adjustments.

Salary increase negotiated beyond annual increment allowed in policy

Our review of 13 personnel files identified an instance in which an employee was successful in a job competition that resulted in a lateral move on the pay scale. However, the employee negotiated an increase of 3 steps on the pay scale for this lateral move. Centre policy does not address a step increase for a lateral move resulting from a job competition.

This salary increase was inconsistent with Government policy.

1E. Reclassifications

Introduction

Centre policy requires a Job Fact Sheet to exist for each position within the organization.

Positions may be reclassified as a result of an employee request for reclassification of their position. A position may also be reclassified as a result of an organizational review resulting from findings identified in an audit completed by the Hay Group.

Government policy also allows an employee to request a reclassification of their position. The evaluation of reclassification requests within Government is the responsibility of the Human Resource Secretariat.

Centre employees requesting a reclassification shall first submit a request to the Job Evaluation Committee, which is an internal committee set up by the CEO for the express purpose of evaluating and rating jobs within the Centre. That request shall include a revised Job Fact Sheet and a covering letter stating the reasons why the rating review is requested. Reclassification requests within the Centre are coordinated by the Human Resources and Strategic Planning Department.

A reclassification submission is evaluated to determine whether the hay point total associated with that position should change. The hay point total would then possibly result in the position moving to a new scale.

For the creation of a new position, a Job Fact Sheet must be completed by the manager/director. The position will normally be submitted to the Job Evaluation Committee for rating prior to staffing the position. If the rating cannot be completed prior to staffing, the position will be temporarily benchmarked by the Manager of Human Resources and one member of the Evaluation Committee.

High reclassification approval rate

The Centre provided a list of reclassifications that had occurred from March 20, 2008, the date of the implementation of the new pay structure, to October 2012. Our review of this information identified that, of 43 employee requests for reclassification submitted to the Centre's Job Evaluation Committee, 38 (88.4%) resulted in reclassification.

We were informed by the Human Resource Secretariat that, of 564 requests for reclassification that had been received and reviewed by Government during the 2011 calendar year, only 116 (20.6%) requests had resulted in reclassification.

As a result, the reclassification success rate of the Centre was significantly higher than Government's reclassification success rate. This is despite the fact that all positions were evaluated in 2008 as part of the new classification system.

Incomplete documentation to support reclassification process

Our review of 10 reclassification requests identified issues with incomplete documentation to support the reclassification process. Specifically, 2 of 10 requests for reclassification did not contain cover letters stating why the rating review was requested, which was required by Centre policy. Both of these requests for reclassification were successful.

- On May 8, 2009, the CEO informed an employee that an evaluation review of their role as Manager of Human Resources and Strategic Planning had been completed. A new Job Fact Sheet entitled Director of Human Resources and Strategic Planning was used as documentation for the new position. This salary adjustment was retroactive to December 1, 2008.

- On August 30, 2012 the Acting Board Chair informed the CEO that the Board had formally approved the reclassification of the Vice President of Business Services and Chief Financial Officer. This salary adjustment was retroactive to April 1, 2012.

1F. Pay in Lieu of Notice

Introduction

The Centre's policy provides for employees who are dismissed without cause to be provided with an appropriate notice or pay in lieu of notice. The period of notice shall depend upon the employee's age and complete years of continuous service. This is consistent with Government policy.

Terminated employees received amounts higher than which they were entitled

Our review of the files of two dismissed employees identified the following:

- In January 2008, a former temporary full-time employee was terminated and given:
  - a lump sum payment of $7,500;
  - forgiveness from the repayment of $2,330 in relocation expenses that the Centre paid in connection with their return of service agreement; and
  - 4 weeks outplacement pay.

  This employee was still within a six-month probationary period. As a result, and as stated in the employee's termination letter, there was no requirement for the Centre to pay any amount in lieu of notice.

- In March 2010, a former employee was terminated and paid $120,336 for 60 weeks pay in lieu of notice. A calculation based on Centre policy would have resulted in a payment of $78,218 or 39 weeks in lieu of notice.

As a result, terminated employees received amounts higher than which they were entitled based on Centre policy.

1G. Chief Executive Officer Contract of Employment

Introduction

The CEO was appointed in August of 2006, and entered into a five year contract of employment with Government and the Centre.

Terms of the contract called for payment to begin at $110,000 annually and increase by $3,750 in years 2, 3, and 4. Any salary increases in subsequent years were to be determined by the Minister in consultation with the Chair of the Board.

Subject to the approval of the Minister, the CEO was to be paid, on an annual basis, a performance bonus in addition to the base salary. The manner and criteria for determining performance bonuses was to be communicated by the Minister to the Chair of the Board.

If, at any time during the term of the agreement, the parties deem it necessary or expedient to make any alteration or addition to the agreement, they were to do so by means of a written agreement between the Government, the Centre, and the CEO, which was to be supplemental to and form part of the original agreement.

No formal written response from the Minister regarding CEO contract

In a letter dated January 20, 2009 to the Minister, the Board Chair requested "*an amendment to the NLCHI CEO current Employment Contract*." The Chair also informed the Minister that "*The current Employment Contract explicitly allows for alterations to existing terms with the recommendation of the Board Chair and approval of the Minister*."

The Centre was unable to provide a copy of a response to this letter from the Minister. We were informed by the Centre that they had not received a formal response from the Minister.

CEO entered new employment contract with the Centre

In June 2009, less than three years into the CEO's contract, and without written agreement from the Minister, the CEO entered into a contract of employment directly with the Centre. The contract was effective January 1, 2009 for an unlimited time period. Terms of the Contract called for payment to begin at $150,766 annually, which was step 2 on the CEO pay scale. The terms of the contract allowed three steps per year and an annual performance bonus of up to 5% of the base salary. Based on this new contract entered into with the Centre, at the time of our review the CEO was being paid $178,574. In addition, at the top of the scale, the CEO would earn $206,352.

1H. Salary Increases

Employee received 119% increase in salary within 5 years

Table 5 shows the salary increases of members of the Centre's current senior management team, that have been employed with the Centre since before the transition to the new pay structure. These pay increases are the result of employees being transferred to higher positions, the new salary scales, step increases, reclassifications, and the CEO's new contract of employment.

Table 5

Newfoundland and Labrador Centre for Health Information
Salary Increases
March 2008 to November 2012

Employee	Salary before new pay structure	Current Salary			Salary At the Top of the Scale		
		Salary	Salary Increase	% Increase	Salary	Salary Increase	% Increase
VP of Human Resources and Strategic Planning	$57,406	$125,835	$68,429	119%	$134,916	$77,510	135%
VP of Business Services and Chief Financial Officer	73,465	149,350	75,885	103%	149,350	75,885	103%
Chief Executive Officer	113,750	178,574	64,824	57%	206,352	92,602	81%
VP of Research and Evaluation	80,625	134,916	54,291	67%	134,916	54,291	67%

As Table 5 shows, the VP of Human Resources and Strategic Planning was being paid $57,406 as the Manager of Human Resources and Strategic Planning before the implementation of the new pay structure. As a result of a reclassification, this employee became the Director of Human Resources and Strategic Planning, and subsequently had an executive title change making them a Vice President, with a resultant salary, as at November 2012, of $125,835.

The VP of Business Services and Chief Financial Officer was being paid $73,465 as the Manager of Financial Operations before the implementation of the new pay structure. As a result of a reclassification, this employee became the Director of Finance and PMO, and subsequently had an executive title change making them a Vice President, with a resultant salary, as at November 2012, of $149,350.

The VP of Research and Evaluation was being paid $80,625 as the Director of Research and Evaluation before the implementation of the new pay structure. This employee subsequently had an executive title change making them a Vice President, with a resultant salary, as at November 2012, of $134,916.

We would expect to see an increase in salaries as a result of the increased number of employees and the additional responsibilities of Centre employees since the proclamation of the *Act* in 2007. However, the amount salaries have increased and the percentage increase in salaries appears excessive.

1I. External Consultants Hired

Introduction

For the year ended March 31, 2012, the Centre engaged consultants at a cost of approximately $4.8 million. Consulting Fees comprised 17.7% of total expenditures for the year then ended.

Our review of a sample of 21 requests for proposals, and contracts resulting from these proposals, identified the following:

Consultants hired to fill position vacancies

There were 10 instances in which consultants were hired for significant time periods at daily rates ranging from $550 - $1,360. For examples;

- a Security Architect resigned on March 6, 2010. Security Architect positions are classified as CHI-14 and were paid between $293 and $382 per day. The Centre hired a consultant at a rate of $980 per day for 124 days to perform the duties of the resigned employee. The Centre waited approximately 4 months before posting a position to attempt to backfill the vacant position. The cost of the consultant during this 4 month period was approximately $78,400.

- On March 27, 2012 the Centre hired a consultant at a rate of $662 per day for up to 1 year (approximately $172,000 annually) to perform the duties of a Business Analyst. Business Analyst positions are classified as CHI-10 and are paid between $57,308 and $74,501 annually. The reason for hire was due to "*recent resignation and transfer of two experienced business analysts*."

- On September 4, 2012 the Centre hired a consultant at a rate of $1,067 per day for up to 1 year (approximately $277,500 annually) to perform the duties of an EHR-Test Lead/Analyst. The reason for hire was that "*the project schedule has an immediate need for an experienced EHR Test Lead to begin defining work and processes for Labs testing and therefore the request to engage an external resource. There is an expectation that this contract will transition to a permanent position if viable candidates can be identified*." At the date of our review, the Centre has not yet classified the position of EHR-Test Lead/Analyst.

As a result, the Centre was not cost-effective in decisions to outsource work to consultants rather than filling position vacancies with permanent or temporary salaried hires.

Recommendations

The Centre should:

- conduct and document job competitions for all job postings;
- ensure compensation policies are consistent with those of Government;
- ensure Centre policy is followed regarding: an effort to hire at step 1 prior to upscale hiring, reclassification documentation required, and amounts paid to terminated employees; and
- consider whether a position vacancy can be filled with a permanent or temporary salaried hire prior to a decision to outsource work to a consultant.

2. Governance

Overview

The members of the Board are appointed by the Lieutenant-Governor in Council under the *Act*. This appointment directs that the Board shall exercise all of the powers and discharge all of the duties of the Corporation and administer and manage its business.

The *Act* states that "*a director shall hold office for 3 years from the date his or her appointment becomes effective. Where the term of a director expires, he or she continues to be a director until reappointed or replaced. A director whose term of office has expired is eligible for reappointment.*"

We reviewed all Board meeting minutes from April 2007, the inception of the Centre as a Crown agency, to September 2012 and found the following:

No current representative from the Department

The *Act* states that "*one of the directors shall be an employee of the department who shall be designated by the minister*." There had been no representative from the Department on the Board since July 31, 2012.

Lieutenant-Governor in Council had not appointed a chairperson

The *Act* states that "*The Lieutenant-Governor in Council shall appoint one of the directors as chairperson and one as vice-chairperson.*" The vice-chairperson had been acting chairperson since September 2011 when the previous chairperson resigned.

Selection criteria for appointment to the Board

As at October 2012, the Centre had not established selection criteria that could be considered by the Lieutenant-Governor in Council when making appointments to the Board.

The former Chief Information Officer (CIO) for Government had been a member of the Board since the first Board meeting as a Crown agency on May 16, 2007. The CIO resigned from the Board in November 2009. There had not been a representative from the Office of the Chief Information Officer since this resignation.

The establishment of selection criteria could assist the Lieutenant-Governor in Council in ensuring that Board members possess an appropriate range of skills and expertise to discharge their duties.

Framework for Effective Governance

In frameworks for effective governance, it is advised that a CEO should not be a voting member of the Board of Directors. These frameworks provide that an effective Board/CEO relationship is built on clear, well-defined roles and responsibilities. The Board of Directors creates the vision, direction and policies for the Centre. The CEO, as a hired employee, implements those policies according to Board directives.

The CEO of the Centre is a voting member of the Board.

Recommendations

The Department should:

- provide a designate to be the departmental representative on the Board;
- ensure that a chairperson is appointed by the Lieutenant-Governor in Council to fill the vacancy that has existed since September 2011; and
- consider current frameworks for effective governance and whether the CEO of the Centre should be a voting member of the Board.

The Centre should recommend selection criteria that could be considered by the Lieutenant-Governor in Council when making appointments to the Board.

Corporation's Response

Overview

The Newfoundland and Labrador Centre for Health Information (the Centre) is pleased to have the opportunity to respond to the Auditor General's findings and recommendations presented in this report.

The Centre for Health Information Act *(the* Act*) was proclaimed in April 2007 and provides the Centre with the legal authority to operate as a freestanding Crown Agency. The* Act *enables the Centre to conduct business as a freestanding agent of the Crown in accordance with Centre-established policies and practices. In fact, on June 20, 2007, the day the* Act *was proclaimed, the official press release from Government stated, in part,* "The evolution of the Centre's unique mandate to provide health information and develop the electronic health record warrants the centre having its own legal structure and arms-length status. As an arms-length organization, the centre will have enhanced access to federal funding and revenue through private partnerships. This will enable it to attract and obtain additional investment dollars to further develop and implement the provincial health information infrastructure." *Since June 2007 and now in its sixth year, the Centre has established itself among the leading health informatics entities in Canada. The Centre's project execution and operations delivery models were/are based upon industry best practices, including recruitment and compensation policies designed to attract and retain the best possible people to deliver execution certainty and operations integrity.*

As part of the Centre's due diligence and governance process after proclamation of the Act*, the Centre sought and obtained an external legal opinion confirming its legislative authority to determine its own policies and procedures. More recently, a second and separate external legal opinion has again confirmed the Centre's legal authority to determine its own policies and procedures. Of particular relevance to the Auditor General's report is the fact that the* Act *provides the Centre with the legal authority to engage employees according to its needs in order to achieve its legislated mandate, including recruitment and compensation. Specifically, Section 12 of the* Act *states* "The centre may employ or engage the services of those persons it considers necessary to attain the object in section 4 and determine their respective duties and powers, their conditions of employment or engagement and their remuneration." *In short, the Centre is the employer.*

The Centre has established sound organizational practices and policies, including those related to recruitment and compensation, and has abided by those throughout the period of the Auditor General's review. The Centre's practices and policies were developed based on industry best practices as well as on Treasury Board and Eastern Health policies. These policies were modified where necessary to support achievement of the Centre's strategic objectives and to meet the unique and challenging requirements of the Centre. The Centre's compensation levels were developed using Nalcor (NL Hydro) job rates and a pay policy developed with external consulting support and comparative Atlantic Canada benchmarks provided by the Hay Group. The internationally recognized Hay System for position classification was used to establish equity.

Subsequent to direction from the Minister of Health and Community Services, the Centre has been engaged in ongoing dialogue regarding alignment of the Centre's compensation policies with those of government. The majority of Centre policies already align with those of government and the Centre will, in consultation with the Department of Health and Community Services, develop a road map by March 31, 2013 to address alignment and consistency of Centre compensation policies and practices with those of government.

It is also important to note that the Centre's employee base has expanded significantly in recent years as a result of expanding responsibilities for the organization. During the time period covered by this report, the Centre was undergoing rapid growth in a highly competitive health information management and technology (IMT) environment while in the middle of delivering highly complex provincial health information system initiatives.

1. Compensation and Recruitment Practices

With the above in mind, the Centre offers the following in response to the Auditor General's four recommendations related to compensation and recruitment practices:

a. The Centre should conduct and document job competitions for all job postings.

The Centre conducts and documents job competitions for all job postings in accordance with industry best practice. The two positions identified in this report as having no job competitions were, in fact, originally hired using the appropriate job competition process. Both positions subsequently evolved in scope and responsibility as a result of the organization's rapid growth.

Regarding other items identified in this report related to the job competition process (competition process files and selection referral), the Auditor General has examined the Centre's activities according to the provincial government Public Service Commission (PSC) policies rather than the Centre's own policies. The Centre is committed to maintaining its sound recruitment practices in accordance with Centre policy and will work to address alignment of its compensation policies with those of government.

b. The Centre should ensure compensation policies are consistent with those of government.

As noted previously, the Act *provides the Centre with the legal authority to establish its own compensation policies. Specifically, section 12 of the* Act *states that* "The Centre may employ or engage the services of those persons it considers necessary to attain the object in section 4 and determine their respective duties and powers, their conditions of employment or engagement and their remuneration."

In accordance with this legislation and as the employer, the Centre has established its own compensation policies aligned with industry best practices and reflective of the spirit of government policy. Any adjustments to those compensation practices were based upon external consultations and advice, founded in industry best practice research, and designed to enable effective recruitment and retention of qualified personnel. The Centre also regularly engages in compensation reviews using independent industry expertise to maintain integrity of its system. The Centre has acted consistently in this practice since proclamation as a freestanding Crown Agency. The Centre's work requires specific skill sets that are in high demand, therefore maintaining competitiveness and flexibility in remuneration is essential.

The majority of the Centre's policies are aligned with government's. As stated previously, consultations are currently underway between the Centre and the Department of Health and Community Services to develop a road map by March 31, 2013 that will address alignment of the Centre's compensation policies and practices with those of government.

Regarding the reference for approval despite concerns of some board members, the Board acted reasonably and within legal authority, balancing government consultation while acting to address the risk to staffing by making the adjustments noted.

c. Ensure Centre policy is followed regarding: an effort to hire at step 1 prior to upscale hiring, reclassification documentation required, and amounts paid to terminated employees.

The Centre focuses on hiring qualified and suitable candidates for available positions and endeavours to hire at Step 1 prior to any upscale hiring. However, given the complex environment and unique skill sets required within the Centre, there are circumstances where upscale hiring is required. For example, hiring above step 1 can allow the Centre to hire a specific expertise or skill set in-house and mitigate the need for external consultants that step 1 would otherwise prevent. With any upscale hire, the CEO is provided with appropriate and thorough documentation for review.

With regard to the candidate willing to accept lower salary than ultimately offered, that is a matter of documentation. The candidate originally expressed willingness to accept a lower salary amount; however the candidate subsequently requested a higher amount during the negotiation process following review of the complete benefits package. The subsequent request was not formally documented. The Centre will improve its documentation of such as part of the hiring process. In the same vein, the Centre acknowledges the Auditor General's recommendation related to reclassification documentation and will work to improve its reclassification documentation and step adjustment documentation processes accordingly.

With regard to other items noted related to upscale hiring, including appointments beyond step 25 and referral fees, the Centre acted appropriately in accordance with Centre policy, pursuant to the Act.

In addition, the reclassification approval rate resulted from organization's evolving structure and growth rate, which required re-evaluation of numerous positions and reflected a recommendation from the Hay Audit.

With respect to amounts paid to terminated employees, in both cases noted within the report extenuating circumstances applied and the Centre sought and followed legal advice.

d. Consider whether a position vacancy can be filled with a permanent or temporary salaried hire prior to a decision to outsource work to a consultant.

The Centre treats the hiring of external consultants seriously and provides due consideration whenever outsourcing work. The Centre operates in an intensive health IMT project environment that requires unique skill sets that are in high demand in most jurisdictions across Canada, as well as globally. As such, qualified resources may not always be available for temporary or permanent hire. Furthermore, the Centre assesses the feasibility of engaging a consultant versus hiring an employee by balancing cost factors with other critical considerations including the assumption of risk for the organization, project delivery timelines, and the value of contracted consultants having access to additional team members with similar expertise if/when required. The Centre will continue to provide due consideration to appropriateness and availability of salaried hires prior to engaging consultants.

Regarding the Security Architect position referenced in the report, the consultant hired was not a direct replacement for the resigned Security Architect. The subsequent delay in posting was due to internal departmental restructuring happening at that time and the new position posted and filled reflected the new requirements of the department/organization, rather than being a direct replacement for either the original position or the consultant referenced.

Regarding the two other consultants referenced in the report (Business Analyst and EHR-Test Lead/Analyst), both were experienced individuals hired to meet project timelines and mitigate immediate risks for the organization. Furthermore, the Centre strives to obtain knowledge transfer as part of any consultant engagement in order to minimize future reliance on external resources.

Additional Compensation & Recruitment Considerations

Direction from Treasury Board on Consistency of Compensation Policies. *As noted previously, the Centre is a freestanding Crown Agency with the legal authority to establish and abide by its own policies. It is also important to note that the majority of the Centre's current policies align with and/or reflect government policies. The Centre has previously responded to government on this matter as it relates to compliance with Treasury Board policies. Regarding the June 5, 2012, correspondence referenced by the Auditor General, the Centre originally expressed intention to request exemption. However, subsequent to direction received from the Minister of Health and Community Services and pursuant to its most recent legal*

opinion, the Centre has been engaged in ongoing dialogue regarding alignment of the Centre's compensation policies with those of government. The Centre will, in consultation with the Department of Health and Community Services, develop a road map by March 31, 2013 to address alignment and consistency of Centre compensation policies and practices with those of government.

CEO Entered New Employment Contract with the Centre. *The creation of a new employment contract was not done in isolation of the provincial government, rather involved considerable discussion with the Department of Health and Community Services. Again, the Board acted reasonably and within legal authority, balancing government consultations with acting to ensure the longer-term stability of the organization.*

Salary Increases. *Regarding the salary increases for members of the senior executive team, executive salaries are based on and in line with industry benchmarks and market reviews are conducted annually that incorporate third-party information.*

2. Recommendations: Governance

a. The Centre should recommend selection criteria that could be considered by the Lieutenant-Governor in Council when making appointments to the Board.

The Centre acknowledges the recommendation by the Auditor General and will formally set out the selection criteria for the Lieutenant-Governor in Council's consideration when making appointments to the Board in the future.

Conclusion

The Centre has the legal authority to determine its own policies and procedures. Practically, the unique mandate of the Centre requires that policies and procedures take account of industry best practices provincially, regionally, and nationally in order to attract and retain the right people to deliver execution certainty and operations integrity.

The Centre is confident in its organizational policies and procedures, including those related to recruitment, compensation, and governance. The Centre has endeavoured to adhere to industry best practices, seek appropriate legal opinion, and follow the provincial government's lead where appropriate. The Centre is committed to improving its operations where acknowledged above and looks forward to continuing operations as a freestanding Crown Agency. As noted previously, the Centre has been engaged in ongoing dialogue with the Department of Health and Community Services regarding alignment of the Centre's compensation policies with those of government. The Centre will, in consultation with the Department of Health and Community Services, develop a road map by March 31, 2013 to address alignment and consistency of the Centre's compensation policies and practices with those of government. The Centre will remain focused on the important goal of improving health through quality health information and ensuring it has the ability to deliver upon its mandate.

Department's Response

Appointments to the Board for the departmental representative and chairperson are currently under review and are expected to be finalized shortly. As well, the Department will consider current frameworks for effective governance and determine whether the CEO of the Centre should continue to be a voting member of the Board.

PART 3.8

DEPARTMENT OF HEALTH AND COMMUNITY SERVICES

WESTERN REGIONAL HEALTH AUTHORITY

Executive Summary

The Western Regional Health Authority (the Authority) is responsible for the management and control of the operations of acute and long term care facilities as well as community health services in the western region of the Province of Newfoundland and Labrador. The Authority's geographical boundaries are from Port aux Basques southeast to Francois, northwest to Bartlett's Harbour, and on the eastern boundary north to Jackson's Arm. Within this geographical region, the Authority serves approximately 79,460 residents.

Our review identified issues relating to:

- human resource practices including recruitment, compensation, and monitoring and control of leave and overtime;
- the management and control of expenditures relating to travel, relocation and cell phones;
- non-compliance with the *Public Tender Act*; and
- the monitoring and control of capital assets and vehicle fuel credit cards.

Human Resources

The Authority's human resource practices were not always consistent with those established by Government, hiring and compensation practices were sometimes either inconsistent or in excess of those approved by Government. In addition, we identified inadequate documentation in some competition and personnel files and compensation errors. For example:

Recruitment

Our review of job competitions identified instances where employees were hired without an interview or ranking of candidates, and where there was incomplete documentation on file.

Employee Compensation

Our review identified instances where:

- The required personnel documentation was not always on file;
- The Authority did not always comply with Government's and/or its own classification of position policies;
- The Authority did not always place employees on the correct step of the applicable pay scale or give employees the proper step progression;
- There were errors related to the determination of particular employees' compensation;
- The Authority made payments related to in-charge pay, car allowances, and education allowances that were not consistent with Government policy; and
- Severance pay was overpaid in both the 2011 and 2012 fiscal years.

Employment Contracts

The Authority did not have the current employment contract of the Chief Executive Officer approved by the Department of Health and Community Services and provided benefits to some physicians in excess of Government policy.

Other Human Resources Issues

Government policy states that preference should be given to hiring staff that are not in receipt of a Provincial pension. For the calendar year 2011 there were 47 employees being paid a pension and a salary from the Authority.

The Authority provided redundancy benefits in excess of Government policy.

Leave and overtime

Employee leave was not always approved, documented and recorded correctly. In addition, in some regions the Authority incurred high overtime costs.

Expenditures and Tendering

Travel and relocation

Reimbursement by the Authority for relocation expenses was not always consistent with Government's relocation policy and the required return-in-service agreements were not always prepared accurately, signed, and approved.

Cell phones

The Authority was not adequately monitoring the usage and costs of its 519 cell phones and was not maintaining an inventory listing of cell phones or an up-to-date policy.

Public Tender Act

The Authority did not always comply with the requirements of the *Public Tender Act* and *Regulations*.

Capital Assets

Controls over the Authority's capital assets were not adequate which could result in missing assets not being detected.

The Authority did not adequately monitor the usage and associated costs of its 41 vehicles.

The Authority did not comply with its Residential Property guidelines on rental rates and signed lease agreements or regularly monitor its residential occupancy. As well, the Authority did not monitor non-owned and owned residential and non-residential lease agreements.

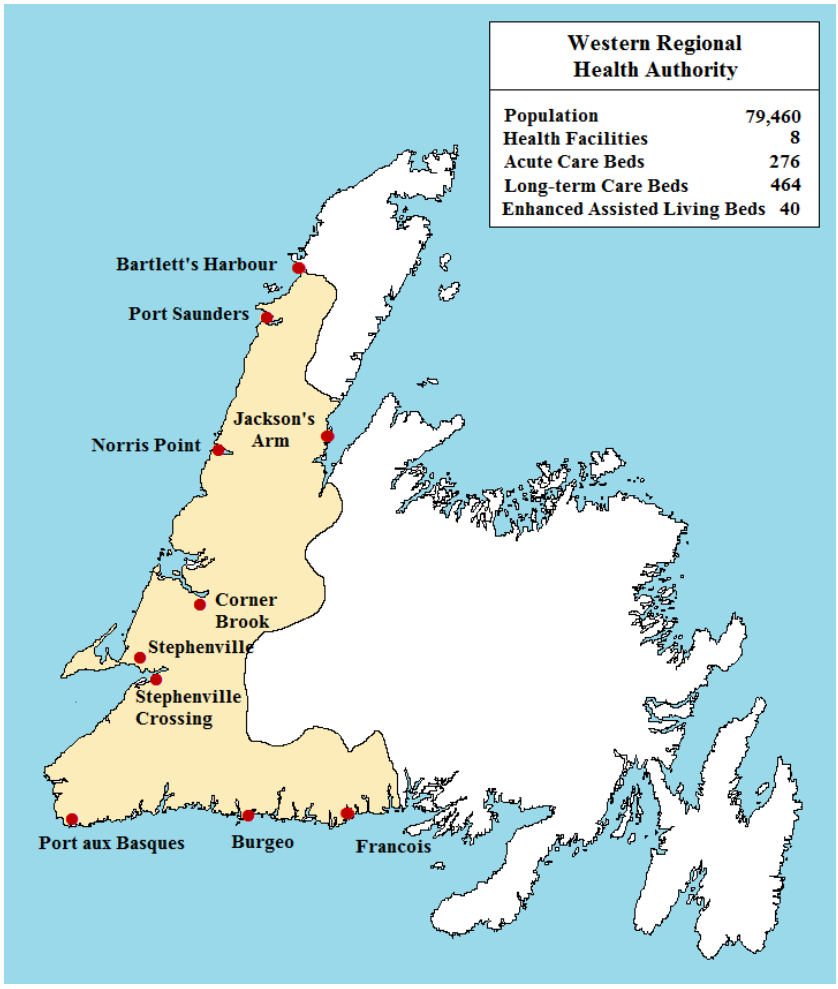
Background

Overview

The Western Regional Health Authority (the Authority) is established under the *Regional Health Authorities Act*. The Authority's geographical boundaries are from Port aux Basques southeast to Francois, northwest to Bartlett's Harbour, and on the eastern boundary north to Jackson's Arm. Within this geographical region, the Authority serves approximately 79,460 residents.

Figure 1

Western Regional Health Authority
Geographical Boundary



The Authority provides a broad range of programs and services based in community and facility settings. The Authority provides community based services from 26 office sites, community based medical services from 26 medical clinic sites (including traveling clinic sites) and 8 health facilities. The health facilities include:

- Sir Thomas Roddick Hospital in Stephenville;
- Western Memorial Regional Hospital in Corner Brook;
- Dr. Charles L. LeGrow Health Centre in Port aux Basques;
- Bonne Bay Health Centre in Norris Point;
- Calder Health Centre in Burgeo;
- Rufus Guinchard Health Centre in Port Saunders;
- Corner Brook Long Term Care Centre in Corner Brook; and
- Bay St. George Long Term Care Centre in Stephenville Crossing.

Within its facilities, the Authority operates 276 acute care beds, 464 long term care beds, as well as, 40 enhanced assisted living beds for individuals with mild to moderate dementia.

Mandate

The Authority is responsible for the management and control of the operations of acute and long term care facilities as well as community health services in the western region of the Province of Newfoundland and Labrador. The Authority accomplishes their mandate through six lines of business:

- promoting health and well-being;
- preventing illness and injury;
- providing supportive care;
- treating illness and injury;
- providing rehabilitative services; and
- administering distinctive provincial programs.

The Authority is also responsible for the Western Regional School of Nursing, the provincial Cervical Screening Initiatives Program and the provincial Inpatient Addictions Treatment Program.

Financial Position

As at March 31, 2012, the Authority reported a net debt of $92.8 million. Table 1 shows the financial position of the Authority at March 31, 2011 and March 31, 2012.

Table 1

Western Regional Health Authority
Financial Position
As at March 31
($000's)

	2011	2012
Financial Assets		
Cash	$ 621	$ 1,778
Receivables	22,063	13,562
Trust funds	604	625
Replacement reserve fund	182	139
Restricted cash	136	135
Total assets	23,606	16,239
Liabilities		
Bank indebtedness	8,737	0
Payables	25,012	30,948
Severance, vacation and sick leave accruals	50,607	55,103
Deferred contributions	20,400	14,175
Long term debt	9,666	8,143
Trust funds	604	625
Total liabilities	115,026	108,994
Net Debt	**(91,420)**	**(92,755)**
Non-financial assets		
Capital assets	78,028	78,691
Inventory	5,820	5,840
Prepaid expenses	7,510	6,898
Accumulated deficit	**$ (62)**	**$ (1,326)**

Source: Western Regional Health Authority's Audited Financial Statements

Operating Results

The Provincial government provided operating grants of $279.9 million and $284.9 million for the fiscal years ended March 31, 2011 and March 31, 2012, respectively. Table 2 provides a breakdown of the Authority's revenue and expenditures for the years ended March 31, 2011 and March 31, 2012.

Table 2

Western Regional Health Authority
Revenue and Expenditures
For the Years Ended March 31
($000's)

	2011		2012	
	Amount	**Percent**	**Amount**	**Percent**
Revenue				
Provincial plan	$ 279,871	81.5%	$ 284,929	83.6%
Other	63,532	18.5%	55,886	16.4%
Total revenue	343,403	100%	340,815	100%
Expenditures				
Administration	23,943	7.0%	27,238	8.0%
Support services	59,191	17.2%	59,250	17.5%
Nursing inpatient services	80,745	23.5%	82,150	24.3%
Medical services	19,998	5.8%	21,281	6.3%
Ambulatory care services	23,106	6.7%	24,752	7.3%
Diagnostic and therapeutic	30,757	9.0%	32,166	9.5%
Community and social services	85,336	24.9%	74,360	22.0%
Educational services	5,320	1.5%	5,570	1.6%
Other	2,102	0.6%	2,091	1.0%
Capital grant	12,024	3.5%	8,537	2.5%
Amortization	881	0.3%	542	0.0%
Total expenditures	343,403	100%	337,937	100%
Surplus before non-shareable items	0		2,880	
Non-shareable items	1,097		(4,144)	
Surplus (Deficit) after non-shareable items	**$ 1,097**		**$ (1,264)**	

Source: Western Regional Health Authority's Audited Financial Statements

Objectives and Scope

Objectives

Our review was designed to assess whether:

- compensation and recruitment practices were in accordance with Government policy;
- leave and overtime were properly monitored and recorded;
- expenditures for goods and services were approved, monitored and controlled;
- purchases complied with the *Public Tender Act* and *Regulations*; and
- capital assets were monitored and controlled.

Scope

Our review commenced in February 2012 and covered the period from April 1, 2010 to December 31, 2011. Our review included an examination of the Authority's financial records and supporting documentation, human resource processes and file documentation and interviews with senior officials. Our review was completed in November 2012.

Detailed Observations

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

1. Compensation and Recruitment
2. Leave and Overtime
3. Expenditures
4. Tendering of Goods and Services
5. Capital Assets

1. Compensation and Recruitment

Overview

During the 2012 fiscal year, the Authority employed approximately 3,200 employees on a full or part-time basis. For the 2012 fiscal year, the Authority spent $205.2 million on salaries and employee benefits.

In reviewing the Authority's compensation and recruitment practices we identified issues in the following areas:

A. Recruitment
B. Employee Compensation
C. Employment Contracts
D. Other Human Resources Issues

1A. Recruitment

Introduction

The Authority completed approximately 720 permanent, full-time, job competitions from April 1, 2010 to December 31, 2011. We reviewed a sample of 19 job competition files to determine if files were complete and included the required information and whether hiring practices were in compliance with Government policy. We identified the following:

Documentation not adequate

- 1 external competition file did not have the required hiring checklist completed and filed in the successful candidates' personnel file. A hiring checklist is important to ensure all required documentation is obtained from the applicant.

- In 2 instances employees were hired, however, there was no documentation to indicate that interviews or ranking of candidates had occurred. In the first instance, there were 36 applicants for a position and the Authority indicated that the employee was hired based on their skills and experience in their previous position with the Authority. In the second instance, in which there were 7 applicants for a position, the Authority indicated that the most senior person got the job and had been in a similar position on a temporary basis. Without interviews and ranking of candidates, the Authority cannot demonstrate that the hiring process was objective and fair.

- In 1 instance there was no documentation on file to explain why the Authority accepted an application for a position a week after the submission deadline. Although there were other applicants for this position, the applicant who submitted the late application was successful in obtaining the position.

1B. Employee Compensation

Introduction

We reviewed a sample of 28 employee personnel files and other payroll documentation to determine if files contained all required information and whether compensation was in compliance with Government policy. Our review identified the following:

Documentation not adequate in personnel files

- 3 of 28 files did not contain a confidentiality form;
- 6 of 28 files did not contain a recent employee performance development form;
- 3 of 28 files did not contain up-to-date documentation related to the employees' qualifications as required in the appointment letters. For example, documentation of membership with Dietitians of Canada was missing in one file and documentation of registration with the Association of Registered Nurses of Newfoundland and Labrador was missing in 2 files; and
- 3 of 28 files had information related to another employee filed in that employee's personnel file. This information included a performance appraisal dated December 2011, payroll information dated 2008 and a confidentiality form.

Non-compliance with the Government Classification Policy

Our review identified a number instances of non-compliance with Government's position classification policies as follows:

- The Authority's compensation policy for employees affected by the amalgamation of health boards which occurred in 2005, indicated that affected employees would retain their current salary for the same number of weeks as contained in Government's termination policy (maximum of 62 weeks). However, in one instance, a former Director was placed into a newly created Manager position. The Authority paid the employee at their former Director salary level of HL 25 for 144 weeks, or 82 weeks above the maximum permitted by the Authority's policy. The new Manager position was created on September 28, 2005 but was not classified by Treasury Board until May 2008 at the HL 22 level. Treasury Board approval indicated that the effective date was the appointment date to the position (September 28, 2005), however, the employee was paid at the higher level until May 2008. The Authority should have recognized that a Manager position would be classified at a lower rate than a Director position and, accordingly, should have reduced the employee's salary after the 62 week period.

- On June 4, 2010, Treasury Board approved the temporary reclassification of 4 management positions to a higher pay scale to accommodate extra duties performed during a vacancy at the Director level.

  One of the employees who had their classification rating temporarily increased was awarded the Director position through a job competition. The promotion policy was applied using the higher rating of HL 23 which had been used for the temporary reclassification instead of the actual rating of the current position of HL 21, resulting in the employee being paid a higher step on the new pay scale. The promotion policy can be applied to a temporary assignment when an employee performs the full scope of the duties and responsibilities of another position which has a higher maximum salary than the employee's regular position. However, in this instance, the employee was in their regular position and was given more duties. There was no other temporary position created.

Step progression not applied correctly

Government policy requires that the initial rate of pay for an employee be at the minimum rate of the pay range assigned to the classification for the position, except where the promotion, demotion and transfer provisions apply. The step progression policy requires, for unionized employees, that employees advance one step on their pay scale after each year of completed service until reaching the maximum of their salary ranges. Non-unionized employees advance 3 steps on their pay scale after each year of completed service until reaching step 25 of the salary scale. We found issues relating to step increments as follows:

- The Authority did not always provide employee pay scale step increments in accordance with Government policy. In 5 instances, from our sample of 28, the Authority gave step increments on the anniversary date the employees were hired in a management position instead of basing it on the years of service. This may have resulted in underpayments and overpayments to the employees. In addition, the Authority applied 2 step increments instead of the required 3 for a non-unionized employee in December 2009 resulting in an underpayment of $560.

- 1 employee was not provided with their step progression on a timely basis. The step progression was provided 2.5 months after the employee was entitled.

- Authority and Government policy permits upscale hiring (placing a new employee on a step higher than step 1) if there is only one qualified applicant and they refuse to accept lower pay or if other qualified recommended applicants refuse to accept lower pay. 2 employee files did not contain sufficient documentation to support the upscale hiring of the employees. These 2 new employees were placed on step 13 and step 21 respectively, and although there were other applicants interviewed, there was no documentation to support why they were not qualified or would not accept the position at a lower step.

Compensation calculated incorrectly

We identified compensation errors as follows:

- An employee was promoted to a new position with the Authority on September 19, 2011; however, their salary was not increased to that of the new position until October 23, 2011 and, as a result, the employee was underpaid $594.

- An employee was overpaid $3,000 in housing allowances in 2011 which was discovered by Authority officials in January 2012. This overpayment was subsequently repaid in April 2012.

- Although locums (contractual doctors) are not considered employees of the Authority, in 2011 the Authority deducted income tax, Canada Pension Plan premiums (CPP) and employment insurance premiums (EI) from the locum pay and, as a result unnecessarily contributed the employer's portion of CPP and EI, totaling $665.

- The Authority's deferred salary policy permits employees to set aside a portion of their salary which would then be paid to the employee during a leave of absence. Authority policy requires interest to be accrued annually on the deferred amount and to report this as employment income for the employee. In one instance, the Authority accrued interest on the deferred amount from 2004 to 2009 but did not report this as employment income until it was paid to the employee in 2012. In addition, the employee was paid the deferred salary in 2009; however, the Authority did not pay the accrued interest of $6,676 to the employee until January 2012.

- The Authority's policy for worker's compensation claimants is to pay the employee as soon as they submit a claim to the Workplace Health, Safety and Compensation Commission (WHSCC). If the claim is denied, the Authority recovers any overpayment from future payroll deductions. In June 2010, an employee's application for worker's compensation benefits was denied and, as a result, the Authority had to recover salary payments from the employee since December 2009. However, as at March 30, 2012, the Authority had over deducted $1,844 from the employee and had intended to deduct another $845 in error if we had not pointed out the error to them.

- From October 26, 2011 to March 31, 2012, the Authority invoiced the Department of Health and Community Services for reimbursement for a seconded employee's salary. However, the employee was on step 25 of their pay scale while the Authority invoiced based on step 24 of the pay scale. This resulted in an underpayment to the Authority of $557.

Payments not consistent with Government policy

Our review identified other payments that were not in compliance with Government policy as follows:

- The payment of in-charge pay in accordance with the Nurses' collective agreement is payable to a nurse on a unit when there is no manager on shift. However, it has been the practice of the Authority to pay this benefit to employees who are in other unions even though this benefit is not covered by their collective agreements. For the year ended March 31, 2011, the Authority paid 124 employees amounts totaling $28,756, for in-charge pay, even though it was not provided for in their collective agreements.

- In 2005, Government eliminated the payment of car allowances to employees; however, the Authority continued to pay one physician a car allowance of $1,200 per year.

- Education allowances were being paid to certain executive and management employees although the education requirements were part of the position requirements and therefore would have already been included in the pay scales for the particular position under the HAY rating system which was implemented in the late 1980s. The Authority paid allowances to these executive and management employees totaling $91,548 for the 2011 and 2012 fiscal years. These allowances included Bachelor of Nursing allowance, Masters of Nursing allowance, and the Post-Graduate Clinical Preparation allowance.

Severance not calculated correctly

Employees who have completed 9 or more years of continuous service shall be paid, on resignation or retirement, severance pay equal to the amount obtained by multiplying the number of years of continuous service by the employees' weekly salary, to a maximum of 20 weeks of pay. Where employees work less than full time or where they have had periods of employment that were less than full time, severance pay will be calculated by multiplying the number of complete years of accumulated service by the employee's weekly salary to a maximum of 20 weeks pay. Our review identified issues with severance payments and accruals as follows:

- The Authority did not always calculate severance payments accurately. For example, our review identified 5 calculation errors which resulted in overpayments totaling $21,798 for the fiscal year ended March 31, 2012 and 6 calculation errors which resulted in overpayments totaling $55,122 for the fiscal year ended March 31, 2011.

- The maximum number of weeks an employee is eligible for severance in Government is 20 weeks over their career. In 2 instances, the Authority did not accrue or pay severance for the proper number of weeks.

  - an employee who was paid 14 weeks severance in 1993 was currently recorded as having 15 weeks owing, overstating the severance accrual by 9 weeks; and

  - an employee who was paid 20.57 weeks in December 2010 was overpaid approximately 3 days.

1C. Employment Contracts

Introduction

Our review identified issues with executive and physician contracts as follows:

Chief Executive Officer contract

The Department of Health and Community Services (the Department) and the Authority are required to negotiate a contract with the Chief Executive Officer (CEO). The approved contract expired January 24, 2010, however, the Board chair amended the contract on April 22, 2010, by deleting the expiry date and replacing it with "extending the expiry date indefinitely". The amendment stated the extension would allow for further discussion and Ministerial consent to a new contract. Our review identified that as of December 2012, a new contract had not been approved by the Minister.

Physician contract issues

The Authority provided benefits to some physicians above what was required under the Department's salaried physician guidelines (2006) and the Physician's Services MOA (2009-2013). In a sample of 5 salaried physicians and 4 fee-for-service physician contracts, we found signing bonuses and other benefits were paid which were not in accordance with the guidelines and MOA, as follows:

- one salaried physician was paid a $20,000 signing bonus in September 2010 and provided 20 days special leave with pay to take part in Operation Smile each year;

- one salaried physician was paid a $110,000 signing bonus in June 2010;

- one fee-for-service physician was approved for a $25,000 signing bonus by the Department in July 2011 which was paid in September 2011; and

- one fee-for-service physician was paid $1,794 in January 2011 to cover secretarial services for 100 hours, however, this was not included in the employment contract.

In addition, the Authority paid a housing allowance of $6,000 over a 12 month period for all physicians.

1D. Other Human Resource Issues

Our review identified other human resource issues, as follows:

Double dipping

Cabinet directed that, *"as a matter of policy applicable to government departments, and all government agencies and Crown corporations, a preference be given in hiring to persons other than those in receipt of a pension under the Public Service Pension Plan, the Uniformed Services Pension Plan, the Teachers' Pension Plan, and the Members of the House of Assembly Pension Plan, unless there are no other persons qualified to fill the position, with exceptions to this policy to be subject to Cabinet approval."*

During the calendar year 2009, 43 employees were in receipt of a provincial government pension and also received a salary from the Authority. For the calendar year 2011 there were 47 employees in receipt of a provincial government pension and also received a salary from the Authority. 33 of the 43 pensioners working in 2009 were still working in 2011. We identified that over 50% of the pensioners were nurses. Cabinet approval was not obtained to authorize the hiring of these pensioners.

No approval for one temporary management position

The Authority created and filled 1 temporary management position for a period of 22 months, September 14, 2009 to July 14, 2011, without the required Treasury Board approval. Treasury Board approval is required before any new position is created.

Employee received benefits not in compliance with Government policy

Government's position elimination policy provides 2 options to employees whose positions are terminated. Option one is to receive a lump sum based on the Notice Period Table in lieu of notice. Option two is for the employee to exit the work place and to be paid an amount bi-weekly in lieu of notice based on the Notice Period Table. Once terminated, the former employee is not entitled to accumulate paid leave credits. As well, employees who are subsequently re-employed, in any capacity with the Authority before the expiry of the pay in lieu of notice period will be required to pay back that portion of the notice period and severance which overlaps with their return to work.

Government policy requires that employees who accept lower paying positions as a result of the redundancy policy be treated in accordance with the voluntary demotion policy, in which case the salary would be reduced to the maximum of the lower paying position.

We identified one employee who received benefits that was not in compliance with the position elimination policy. The employee's position (HL 28) was declared redundant on March 9, 2011 with effect from March 25, 2011 and eligible for payment of 58 weeks of salary. The employee was transferred to a temporary management position on March 28, 2011 and continued to be paid the same salary (HL 28) for 30 weeks because the temporary position was not classified. The employee was then awarded a permanent management position at a lower classification (HL 22) effective October 26, 2011 but continued to be paid at the HL 28 level until May 4, 2012 (a further 28 weeks), resulting in an overpayment of $5,471. Upon accepting the lower paying position, the employee's salary should have been reduced to the position's salary level (i.e. HL22).

In addition, as per the policy on the lieu of notice period, the employee cannot accrue any leave benefits, however, this employee accrued 2 extra paid leave days that they were not eligible for.

The Authority reimburses physicians for income tax

Physicians hired under the Residency Repayment program were provided forgivable loans and were required to sign a return-in-service agreement based on the amount provided. Each year that they worked at the Authority, they would get a portion of their loan and the 1% interest forgiven which was recorded through payroll and included on their T4. Authority officials indicated that the physicians were told that the funds were tax-free; however, when it was included on their T4, it was taxed. Therefore, the Authority decided to pay each physician the equivalent of the tax charged on the amount of the loan that was forgiven each year. Four physicians were paid income for tax relief on forgivable loans totaling $40,310 during the fiscal year ended March 31, 2011. Two physicians were also paid income for tax relief totaling $31,859 during the fiscal year ended March 31, 2012.

Recommendations

The Authority should:

- ensure compensation and recruitment practices are in accordance with Authority and Government policy;
- maintain adequate documentation in competition and personnel files;
- have all job positions approved by Human Resource Secretariat; and
- calculate employee compensation accurately.

2. Leave and Overtime

Overview

As at March 31, 2012, the Authority reported $26.7 million in accrued annual, paid and sick leave due to its employees. In addition, the Authority reported sick leave costs of $6.3 million for the 2011 fiscal year and $4.6 million for the 9 month period ended December 31, 2011.

The Authority uses a Leave Request form to document the request and approval of employee leave. Leave forms are kept at the division/site and filed by employee. Employees' leave hours are recorded on bi-weekly payroll reports or schedules and forwarded to the Payroll Division for payroll and attendance processing.

Leave not always approved, documented and recorded accurately

Our review included a sample of leave records for 25 employees to determine if leave was properly documented, approved and entered into the attendance system. Our review identified the following:

- 5 employees had periods of sick leave entered into the attendance system that was not supported by a leave form. 4 of the 5 employees' leave was supported by a doctor's note for the period of leave but for 1 employee there was no doctor's note to support the leave. Authority officials indicated that a doctor's note is sometimes used to support the leave and a leave form is not completed.

- 31 out of the 133 (23%) leave forms examined for 5 employees were not approved. Without the approval of the employee's supervisor, it is not possible to determine if the leave was authorized.

- 1 employee approved their own leave in 10 instances during the period April 2010 to December 2011.

- 3 employee annual leave requests forms that had been approved were not recorded in the attendance system. Upon further review, it was determined from the bi-weekly payroll records that the employees were actually working during the approved periods, and that the approved leave was either subsequently cancelled or denied. There was no indication on the employee's leave form that the leave was cancelled or denied.

- In one instance, 1 year and 7 months of service with a private company was counted as service with Government and, as a result, the employee received 40 paid leave days sooner than they were actually eligible. This resulted in an overstatement of 8 paid leave days.

- One employee was recorded in the leave database as taking 2 paid leave days on June 15, 2010 and August 16, 2010; however, there was no documentation to indicate that the leave was requested. As a result, the Authority decided to adjust the leave by increasing the employee's leave balance by 2 days.

Leave not adequately monitored

The Authority's human resources information system could not generate flags to indicate when employees were due an increase in their leave entitlements or when management did not take the required 10 days of paid leave each year. For example, our review identified the following:

- An analysis of payroll and leave information identified that 23 management employees appeared to be placed on the incorrect leave threshold based on their date of hire. A sample of 10 current management employees was selected from the 23 and analyzed to determine if they had been placed on their correct leave threshold. 9 of the 10 employees should have been placed on a higher leave threshold. As a result, the employees were under allocated paid leave ranging from 6.5 days to 30 days as of December 31, 2011. The Authority requires that employees request in writing to have their leave adjusted. This is not consistent with Government policy.

- In 6 instances leave increments were not provided to employees until identified by the employee themselves. For example:

    - paid leave was corrected in January 2010 retroactive to February 2006 resulting in an extra 5 days each year for the employee;

    - paid leave was corrected in March 2009 retroactive to April 2008 resulting in an extra 5 days each year for the employee;

    - paid leave was corrected in September 2010 retroactive to June 2010 resulting in an extra 5 days each year for the employee;

    - paid leave was corrected in February 2007 retroactive to September 2005 resulting in an extra 5 days each year for the employee;

    - paid leave was corrected in June 2011 retroactive to May 2009 resulting in an extra 10 days each year for the employee; and

    - annual leave was corrected in January 2012 retroactive to March 2009 resulting in an extra 5 days each year for the employee.

- An analysis of payroll and leave information identified 191 unionized employees that appeared not to have been placed on the correct leave threshold based on their date of hire. Based on the hire date, 84 employees were owed less than 5 days and 107 employees were owed more than 5 days. The Authority had not completed an analysis to determine just how many employees were not in receipt of all the leave to which they were entitled.

- Employees not using the required 10 leave days are required to request approval to carry forward unused days to the next fiscal year. There is no system in place to track whether management employees take the required 10 days of paid leave each year.

- The Authority had not invoiced a former employee for overdrawing their leave balance by 55.53 hours or $1,643. The former casual employee did not submit an official resignation letter; however, the Authority was aware the employee was not returning to work.

Non-compliance with unpaid leave policy

Employees on extended unpaid leave, although maintaining seniority, are not entitled to accrue vacation, sick leave or severance. Our review of 11 employees on unpaid leave, which extended beyond a year, identified the following:

- One employee was credited with 17 days of vacation pay and 9 days of sick leave in January 2011 while on unpaid leave from November 2010 to March 2012. As well, 20 weeks of severance was accrued at the current rate of pay instead of the employee's last day of work which was 2 years prior resulting in a higher amount payable to the employee.

- In 2008, one employee was granted unpaid education leave to attend school; however, the approval letter on file was only for the initial year of the 4 years of unpaid leave. As well, severance continued to accrue during the 4 years of unpaid leave and the employee was paid 2 days of family responsibility leave in 2011 totaling $327.

- One employee did not avail of their sick leave balance of 7 hours before going on unpaid sick leave as required by the collective agreement.

- One employee, hired in December 1999, was approved by the Authority to take unpaid leave for a 2 year period commencing in September 2006. Although the collective agreement allows an employee to accrue service for seniority purposes while on approved unpaid leave for 2 years, the Authority also accrued severance which is not provided for in the collective agreement. As a result, the Authority had recorded 12 weeks of severance for the employee totaling $13,847 even though the employee was not eligible for any severance.

- One employee was on unpaid leave for 2 years starting April 2009 and then resigned April 1, 2011. The former employee's sick leave balance of 1,255 hrs was not reduced to zero upon resignation and was still showing a balance on September 19, 2011.

- One employee was on unpaid leave for one year starting September 2008 but this was included as a year of service for purposes of the severance accrual.

- One employee was on unpaid sick leave since 2010, however, the accrued severance was based on the current rate of pay in 2012 and not the rate of pay of the last day of work. Therefore, the severance accrual was overstated.

The Authority indicated that any benefits accrued during the unpaid leave period would be adjusted upon an employee's termination or return, however, in cases of extended unpaid leave, this process could result in adjustments being overlooked.

Non-compliance with Statutory Holiday policy

The Authority allows statutory holidays to be banked for long periods of time which is contrary to Government Policy. At the employer's discretion employees may be required to work on a statutory holiday. If time off is not granted, payment must be made to the employee within a range of 2 to 4 months of the scheduled holiday. For the year ended March 31, 2011, the Authority had accrued pay for working statutory holidays, totaling $296,530. There were 44 employees who had 1 to 14 statutory holidays banked beyond the 4 month limit.

One salaried physician, who worked on statutory holidays, had accrued 18 days as of March 31, 2011 and 25 days as of March 31, 2012. As per the Physician's Agreement, physicians are to take another day off with pay in lieu of the holiday at a time mutually agreed upon between the salaried physician and the Vice-President of Medical Services.

The Authority paid one physician $693 in error for one extra statutory holiday in the fiscal year ended March 31, 2011.

Overtime

Overtime is increasing each year and should to be reviewed to determine if the collective agreements and Government policies are being applied appropriately. For the fiscal year ended March 31, 2011, the Authority paid $3.4 million and owed $1.5 million in overtime at March 31, 2011. Table 3 shows the paid overtime related to different employee groups.

Table 3

Western Regional Health Authority
Overtime
For the Fiscal Year Ended March 31,2011

General Occupation Category	2011
Nurses	$ 1,720,602
CUPE workers - LPN, PCA, Clerks	1,274,350
Technicians - Lab/X-ray	326,333
Social Workers	54,643
Management	42,404
Non-union/Non-management clerks	5,168
Total	**$ 3,423,500**

We identified 22 union employees who were paid overtime of more than $15,000 each for the fiscal year ended March 31, 2011 and 16 union employees for the year ended March 31, 2012. Five nurses were paid overtime ranging from $25,000 to $50,000 annually for the past two fiscal years in Corner Brook. In addition, 3 Laboratory/X-ray technicians in a site outside Corner Brook were paid an average of $80,000 in total for each of the past two fiscal years.

Overtime not consistent with Government Policy

The Authority did not accrue overtime for 2 management employees in accordance with the Government management policy for the year ended March 31, 2011. Government policy permits the payment of overtime for management if they accrue more than 35 hours of overtime in an 8 week period. The Authority paid overtime to the 2 management employees although there was no documentation that they had worked the 35 hours in an 8 week period.

Government overtime policy limits the payment of overtime earned for a management employee to 10% of their annual salary in any fiscal year. One management employee was paid $7,803 which was 13.6% of their annual salary for the fiscal year ended March 31, 2011, $2,078 more than allowed according to Government overtime policy.

Recommendation

The Authority should monitor and record employee leave and overtime in accordance with Government and Authority policy, and collective agreements.

3. Expenditures

Overview

From our review of expenditures we identified issues in the following areas:

A. Travel and Relocation
B. Cell Phones
C. Other

3A. Travel and Relocation

Introduction

The Authority spent approximately $4.5 million in travel expenses and $420,000 for relocation expenses from April 2010 to December 2011. The Authority is required to follow Government's travel and relocation rules and employees are required to complete an Authority travel claim to support the expenses claimed. Our review of 557 travel claims for 42 employees, 6 Board members and 1 Department employee, and relocation expenses for 17 employees and physicians identified the following issues:

Documentation not always adequate

The Authority did not always adequately review travel claims for compliance with Authority and Government policy. For example:

- The Authority reimbursed 2 management employees and one Department employee for 6 meals totaling $114 that was either already included in conference fees or paid by another employee. In addition, the Authority reimbursed 2 management employees for 2 meals totaling $36 that were not eligible for reimbursement based on the time of return from travel.

- Government policy states that employees who incur expenses when entertaining persons with whom Government conducts business will be reimbursed for entertainment expenses. In order to determine if expenses should be reimbursed under this policy, the purpose of the expense and the individuals in attendance should be documented. 2 employees claimed entertainment expenses totaling $2,473 over 8 occasions without listing the names of those in attendance and without the appropriate receipts, totaling $2,303, for 5 of the 8 occasions.

Issues with the application of the relocation policy of the Government

Government's relocation policy requires a relocated employee to enter into a 2 year return-in-service agreement with the employer in return for being reimbursed relocation expenses. Government relocation policy also states that when cost savings can be proven for transportation of household effects and dependents, a taxable lump sum payment of $10,000 can be paid. The employee agrees to waive all claims to other expenses outlined in the Government relocation policy except for those outlined in the sale and purchase/construction of principal place of residence. The Authority reimburses physicians based on this policy. Our review identified:

- 2 return-in-service agreements were not signed by the employee or CEO until we requested these documents in March 2012 even though the funds were paid out in December 2011.

- 4 return-in-service agreements dated from June 2010 to December 2011 were not approved by the CEO until we requested these documents in March 2012.

- 2 physicians were reimbursed for house hunting trips totaling $3,542; however, the cost was not included as part of their return-in-service agreements as required by Government policy. Therefore, if the employees leave before their 2 year terms, these costs would not be recoverable.

- 2 physicians were paid lump sum payments that were not in accordance with Government relocation policy. One physician was paid a lump sum of $17,000 in 2010 which was not included on a T4A and also reimbursed $3,779 for flights and the shipment of a pet which resulted in an overpayment of $10,779. Another physician was paid a lump sum of $20,000 and also reimbursed $7,382 for immigration costs which resulted in an overpayment of $17,382. As well, the immigration costs were not included on the return-in-service agreement as required and therefore would not be recoverable if the employee leaves before their 2 year term.

Issues with the application of the relocation policy of the Authority

The Authority relocation policy for difficult-to-fill positions, excluding physicians, states that the Authority will provide reimbursement of expenses to a maximum of $3,000 unless there are extenuating circumstances approved by the CEO for reimbursements above $3,000 and enter into a 2 year return-in-service agreement. If the positions were not declared difficult to fill then the employee would not receive any reimbursement for relocation costs under the Authority's policy. This is not consistent with Government relocation policy which provides relocation for all affected employees and the reimbursement is not restricted to $3,000.

In addition, one employee was required to sign a 4-year return-in-service agreement in order to be reimbursed for $9,769. As well, there was no pre-approval by the CEO for the amount above the maximum of $3,000. The employee was also reimbursed based on receipts for meals and fuel instead of per diem allowances as per policy.

3B. Cell Phones

Introduction

The Authority spent approximately $277,000 during the fiscal year 2011 and $138,200 during the period April 1, 2011 through to December 31, 2011 on cell phones. As of December 2011, the Authority had 519 cell phones.

Authority officials indicated that in November 2010, the Authority reviewed its cell phone arrangement with its provider, and as a result of this review the monthly cost of its cell phones decreased from $26,300 to $16,100 per month, a decrease of $10,200 per month.

Our review identified that the Authority was not adequately monitoring its cell phones' usage and cost and that their cell phone policy was outdated.

Inventory of cell phones not maintained

Government policy states that an inventory record of cell phones is to be maintained which records the assigned users, current package, and serial number of phone and that the record should be updated as changes occur. The Authority did not maintain an inventory record of cell phones as required by Government policy.

Cell phone usage not monitored

Government policy states that the monthly phone usage must be reviewed and approved by an employee's immediate supervisor to ensure that the use is appropriate, warrants the continued use of the equipment (excluding personal airtime), and that the most cost effective service package is being utilized.

72 cell phones were identified where 2 or more cell phones were assigned to one employee or cell phones were assigned to terminated employees or employees on extended leave. Our review identified that 33 (6%) of these cell phones were inactive and that the Authority paid $7,051 for these inactive phones. Specifically:

- 27 cell phones were replaced, unused, or spare and had no activity from as early as December 2010. For the period December 2010 to December 2011, these cell phones cost the Authority $5,728.

- 3 cell phones were still assigned to employees that had terminated their employment, however, the cell phone had not been cancelled. For example, 1 employee terminated in September 2010, 1 employee was on extended sick leave in July 2011 with retirement date set for December 2011 and 1 employee terminated in October 2011 without the cell phone being cancelled. From termination dates to December 2011, these cell phones cost the Authority $389.

- 3 cell phones were assigned to 3 employees who were on extended leave; one for 20 months, one for 24 months and one for 27 months. For the period December 2010 to December 2011, these cell phones cost the Authority $934. Authority officials indicated that given the length of the periods of leave, the cell phone plans should have been cancelled.

Authority officials indicated that the plans for the 33 cell phones were subsequently cancelled after our enquiry.

Cell phone costs not adequately monitored

Since 2005, the Authority received electronic billings for its cell phones and up to December 2010 only requested paper bills for certain larger accounts. Authority officials indicated that the cell phone charges were not forwarded to each employee's supervisor for review. Our review of the electronic billings from December 2010 to December 2011 identified 68 employee accounts that had at least one monthly billing in excess of $100. Our review of 20 of these employee accounts identified instances where additional charges occurred with no documentation to indicate that the items had been reviewed. Specifically we identified:

- 4 employees incurred $608 in total over one month in additional air time charges.

- 5 employees incurred $1,572 in total over 1 to 2 months in roaming charges while out of the Province. For example, 2 employees, on leave in the United States, incurred roaming charges of $564 and $135 respectively.

- 5 employees incurred $949 over 20 months in texting charges. For example, one employee incurred $576 over 11 months.

- one employee incurred $136 in 1 month in data charges for mobile browsing.

- one fee-for-service physician incurred $1,655 in cell phone costs from December 2010 to December 2011; however, Authority officials indicated that these cell phone costs should have been paid for by the physician and not billed to the Authority. The physician was originally hired on August 23, 2007 and since then the cell phone was paid for by the Authority. Only when the physician was working as a locum at various times should the Authority have reimbursed the physician's cell phone costs.

Without documentation of a review, we could not determine if these charges were reviewed for legitimacy or whether changes to cell phone plans could be warranted to match employee needs.

3C. Other

Authority not adhering to by-laws

The Board is not adhering to the Authority's by-laws as to the number of times meetings are held per year. The Finance and Property Committee met 4 times in 2011 and 5 times in 2010 but is required to meet bi-monthly according to Part X 10.02 (c) of the by-laws.

Municipal tax discounts not taken

The Authority did not receive discounts on all their eligible municipal tax bills. For the year ended March 31, 2011, the Authority paid one municipality 2 weeks after the discount date which cost $7,614 in forfeited discount and paid another municipality the full assessed amount even though the invoice was paid before the discount date, costing an additional $55.

Recommendations

The Authority should:

- comply with Government's travel rules by ensuring travel claims are complete and documentation of approval is maintained;
- comply with Government's relocation policy for all employees and ensure that return-in-service agreements are signed and approved;
- control and monitor expenditures to identify inappropriate and unnecessary expenditures; and
- adhere to the Board's by-laws.

4. Tendering of Goods and Services

Overview

The Authority spent approximately $125.7 million during the fiscal year 2011 and $109.5 million for the period April 1, 2011 to December 31, 2011 on goods and services. Whenever the Authority 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*). Table 4 summarizes the requirements of the *Act*.

Table 4

Western Regional Health Authority
***Public Tender Act* Requirements**

When goods and services cost …	Or a public work costs …	Then the Authority must …
More than $10,000	More than $20,000	Invite tenders
$10,000 and less	$20,000 and less	• Obtain quotations from at least 3 legitimate suppliers, or • Establish for the circumstances a fair and reasonable price.

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

In our sample of 30 purchases over $10,000 and our sample of 20 purchases under $10,000 we identified issues with the tendering of goods and services in the following areas:

A. Goods and services greater than $10,000
B. Goods and services $10,000 and less

4A. Goods and services greater than $10,000

Introduction

Our review included a sample of 30 purchases greater than $10,000 totaling $6.6 million for the period April 1, 2010 to December 31, 2011 to assess the Authority's compliance with the *Act* and *Regulations*. Our review identified the following:

- 24 purchases totaling $5,851,687 were in accordance with the *Act*;

Provisions of the *Public Tender Act* not always adhered to

- 2 purchases totaling $607,919 where, although the Authority determined that it was a sole source purchase, the required Form B was not completed, the Government Purchasing Agency was not notified as required and consequently the House of Assembly was not informed of these instances; and

- 4 purchases totaling $186,604 were not tendered as required by the *Act*. Table 5 provides details of the 4 purchases not tendered as required.

Table 5

Western Regional Health Authority
Items not Tendered

Date	Amount (net of HST)	Description
July 2001 – March 2012	$ 91,200	Annual lease for Stephenville Medical Health Clinic
March 1991-March 2012	65,635	Annual lease for Piccadilly Medical Health Clinic
March 2011	15,987	Draperies at Bay St. George long term care centre
April 2011	13,782	Air filters
Total	**$186,604**	

One lease arrangement for a medical clinic cost the Authority $91,200 plus HST during the year ended March 31, 2011. The Authority entered into a 5-year lease agreement in July 2001 and has renewed this agreement with various increases in rental rates since that time without ever issuing a public tender call. Since 2001, the Authority paid $833,520 for this leasing arrangement.

Contract extension not properly approved

Our review identified one roofing contract for $88,675 where additional work totaling $10,124 was completed. The additional work was approved by the site manager; however, given the amount of the change order, the *Act* required the approval of the head of the government funded body. Authority officials indicated that change orders related to small scale in-house projects are approved either verbally or by email by one of the support services managers.

4B. Goods and services $10,000 and less

Quotes not always obtained for purchases

Our review included a sample of 20 purchases $10,000 and less totaling $82,745 which were reviewed to ensure that 3 quotes or a fair and reasonable price was established for the purchase. Our review identified that:

- 8 purchases had 3 quotes or had a fair and reasonable price established;
- 7 purchases totaling $21,935 had 2 or less quotes and in our opinion, 3 quotes could have been obtained; and
- 5 purchases were deemed to be sole source purchases; however, documentation to support this was not attached to the purchase.

Recommendation

The Authority should put processes and procedures in place to comply with the *Public Tender Act* and *Regulations*.

5. Capital Assets

Overview

As at March 31, 2012, the Authority reported capital assets at a cost of $190.6 million. For the Authority to control and monitor its capital assets, it must ensure that policies and procedures are documented and communicated to employees, and that assets are identified and recorded when purchased, periodically inventoried and reconciled to financial records. Table 6 provides a summary of the Authority's capital assets.

Table 6

Western Regional Health Authority
Capital Assets (original cost)
Fiscal Years 2011 and 2012
($000's)

	2011	2012
Land and improvements	$ 1,537	$ 1,537
Buildings	64,364	65,651
Parking lot	1,142	1,142
Equipment	105,391	113,438
Equipment under capital lease	7,163	7,163
Motor vehicles	1,096	1,461
Leasehold improvements	232	232
Total Capital Assets	**$180,925**	**$190,624**

Source: Western Regional Health Authority's Audited Financial statements

We identified issues in the following areas:

A. Computer Equipment
B. Motor Vehicles and Fuel Credit Cards
C. Buildings, Furniture and other Equipment

5A. Computer Equipment

Introduction

The Authority maintained a database for recording its computer equipment. The database was maintained by the Information Technology (IT) department for tracking, maintenance and access purposes. The database recorded 2,654 information technology assets, including 323 laptop computers, 1,335 desktop computers and 996 printers. The database included information such as the asset tag number, serial number, department, location, user name, model number and date in service.

Our review consisted of an analysis of the database, a sample of 31 computer purchases and the physical examination of a sample of 12 computers recorded in the database. We identified the following:

Database of computer equipment incomplete

- The database did not record all the required information for each asset. For example, 151 (10 laptop computers, 52 desktop computers and 89 printers) of the 2,654 items included in the database did not have information recorded on either the department, location or user name. In addition, 320 items (79 laptop computers, 152 desktop computers and 89 printers) did not have the serial number of the item recorded in the database.

- The database did not record the cost of the computer equipment, and as such, could not be reconciled to the financial records of the Authority.

- Computer equipment was not periodically counted and agreed to the database.

- We reviewed 31 computer purchases during fiscal 2012 to determine whether the items were included in the database. Our review identified 3 computers that were not included in the database. A subsequent search verified the existence of the computers on site; however, this confirmed the incompleteness of the database.

Computer equipment not always accounted for

- Prior to computer equipment being placed into service, the Authority stores its newly purchased equipment in a secured storage room. Once computer equipment is required by an employee, the equipment is removed from the storage room, a work order is prepared, the item is prepared for service and the item is recorded in the computer database for tracking. The Authority does not periodically review and monitor the inventory of items placed in the storage room prior to the computer equipment being placed into service. A review of one computer purchase identified that the time span between the purchase and the date in service was 4 months. Given this time period, it is important that items placed in the storage room be inventoried and monitored.

- We selected a sample of 12 computers from the database to physically examine. We located and examined 11 of the 12 computers; however, the Authority was unable to locate 1 laptop computer. Of the 11 computers located, 3 desktop computers were located in another department or were with a user other than that recorded in the database.

5B. Motor Vehicles and Fuel Credit Cards

Introduction

As of March 31, 2012, the Authority reported motor vehicles costing $1.5 million. As of December 2011, the Authority operated 41 vehicles (19 vehicles owned and 22 leased vehicles). In addition, the Authority used the services of various service stations and used fuel credit cards for refueling their vehicles. As of November 2011, the Authority had 3 accounts (5 fuel credit cards) with 2 companies. After November 2011, the Authority had 2 accounts (4 fuel credit cards) with one company. The Authority also had a number of charge accounts with service stations throughout its region.

Controls weak

Our review of the Authority's controls over its motor vehicles, fuel purchases and insurance policy identified the following issues:

- The Authority did not have documented policies or procedures for monitoring vehicle usage.

- The Authority did not keep log books for recording mileage and travel details when vehicles were used by employees.

- Sign out sheets were not used for all vehicles and locations. A vehicle booking register was used for 10 Corner Brook administrative/doctor vehicles for scheduling purposes and for 1 of the 6 maintenance/services vehicles. However, for other sites, Authority officials indicated that with the number of responsible employees and limited number of vehicles available, sign out sheets were not deemed necessary.

- The Authority did not record vehicle costs by vehicle in its financial information system. The financial information system recorded costs by site and department (i.e. maintenance, ambulance, etc) and officials indicated that actual to budget vehicle costs were monitored on a site and department basis.

- Our review of a sample of 3 fuel service station vendor files identified that vehicle costs (fuel and service costs) were not always charged to the correct site or department. For example, in December 2010, $247 was charged to the ambulance repairs account even though the 2 charge slips indicated the charges were for a patient passenger bus and in January 2011, $161 was charged to the Port Saunders hospital's maintenance fuel account, even though the 3 charge slips indicated that the charges were for a Corner Brook vehicle. As a result, if costs were not recorded properly, the Authority could not adequately monitor vehicle costs by site or department.

- The Authority did not obtain insurance coverage for 2 vehicles purchased in April 2011 and June 2011.

- The Authority paid insurance premiums ranging from a period of 1 year to 3 years on 4 vehicles which had been sold or returned to the lessor.

Monitoring of fuel expenditures

The Authority did not have a written policy for the use or control of fuel credit cards or vendor purchases. Discussions with officials indicated that fuel receipts were to be signed by the employee with notation made of the vehicle number or license plate number. The employees were not required to record the kilometer reading on the fuel slip.

Issues from review of fuel credit cards

We reviewed a sample of 23 monthly fuel credit card statement transactions for 3 sites - 12 for one site, 7 for the second site, and 4 for the third site. We identified the following:

- Required information such as vehicle number or license plate number was not always recorded on the fuel credit card slips. For example, none of the 65 slips reviewed for one site, 144 of 157 slips reviewed for a second site, and none of 230 slips reviewed at the third site had recorded the vehicle number or license plate number.

- Documentation was not always provided to support whether purchases made using the fuel credit cards were for legitimate vehicle expenses. For example, 1 transaction for $73 on June 11, 2010 was for a convenience item, 1 transaction for $100 on December 3, 2010 was for a gift card; and 1 transaction for $57 on January 21, 2011 was for 24 bags of ice.

- From May 2010 to November 2011 (card cancelled), $1,552 was charged in interest due to late payments on one credit card and from May 2011 to December 2011, $151 in interest was charged on a second credit card.

- On August 2, 2011, the Authority was charged $1,762 for a fuel purchase. The statement transaction was highlighted and the slip was marked "take off statement" as it was determined the transaction was an error. However, the payment was made in September 2011 and it was not until our review that the item was identified as a payment error and brought to the attention of the vendor. A credit was applied in March 2012.

- Purchases from one fuel credit card account were not properly coded to the financial information system. All transactions were charged to a vehicle operating account code with no breakdown between the ambulance or maintenance departments.

- We identified instances where the credit card slips were either not attached to the statement or did not support the statement transaction. For example, on October 25, 2011, 2 transactions for $95 each were included on one statement with no slips attached and on August 2, 2011, one transaction for $33 on one statement was supported with a fuel credit card slip that was recorded as "not approved".

Issues from review of fuel vendor charge accounts

We reviewed 3 fuel vendor charge accounts and identified the following issues:

- 21 out of 27 slips examined for one vendor had no vehicle number or license plate number noted on the transaction slips. Although there were only 2 vehicles located at the site (a passenger bus and a maintenance truck), without the required documentation, expenses could be charged to the improper account.

- One vendor charged $137 on July 20, 2010, which included $20 in fuel and $117 for other purchases. There was no details provided as to the $117 expense.

- Transactions were not always charged to the proper account in the financial information system. For example, 7 transactions totaling $514 for one vendor were charged to a different site or department than that indicated on the invoice or slip. All 27 transactions examined for 1 vendor were charged to the site's maintenance department, even though 2 invoices totaling $236 were identified as expenses which related to the recreational passenger bus.

5C. Buildings, Furniture and other Equipment

Introduction

As of March 31, 2012, the Authority reported buildings, furniture, and other equipment, excluding motor vehicles, costing $189.1 million. Our review of the Authority's controls over its capital assets identified the following issues.

No capital asset ledger

The Authority did not have a detailed capital asset ledger to support the amounts used in their annual financial statements.

Tagging not done for residential property furniture and appliances

The Authority did not tag furniture and appliances located at their 57 leased and owned residential properties. Therefore, the Authority cannot identify their property or track what is purchased during the year. If there is no tagging of individual items, the Authority cannot ensure what was purchased is still on the site or was disposed of but not removed from the financial statements.

No regular monitoring of capital assets

The Authority did not regularly monitor their capital assets to ensure they are on site. As there was no complete inventory listing, inventory counts could not be conducted.

No policy on disposals

The Authority did not have a policy on disposals of capital assets and no documentation is maintained to track disposals. As a result, assets could be disposed of without proper approval and the financial statements could be overstated if items were not removed from the financial records as they were disposed of.

Insurance premiums overpayments

The Authority paid insurance premiums ranging from a period of 7 months to 3 years on the contents of 2 residential properties even though the properties were no longer being leased.

Fuel tank registration issues

The Authority did not maintain the required registration on all of the fuel storage tanks or record up-to-date information on the registration of the fuel tanks. For example, we reviewed the Authority's spreadsheet on fuel storage tanks and identified the following:

- A 25 year-old 900 litre steel day tank located at the Dr. Charles L. LeGrow Health Centre was not registered as required under the *Heating Oil Storage Tank System* R*egulations, 2003*;
- A fuel oil tank listed as being at an Authority site in Port Saunders was disposed of 15 years ago; and
- A fuel tank listed as being at an Authority site in Cow Head was registered; however, Authority officials were not aware of this and had to contact Service NL to verify it.

Residential occupancy not monitored regularly

As of January 2012, the Authority had 57 residential property units - 33 units were owned by the Authority and 24 units were being leased. Of the 57 units, 12 units (21%) were charging rent, 23 units (40%) were provided rent free and 22 units (39%) were vacant. This information was compiled from an occupancy spreadsheet completed in February 2012 by the Authority upon our request. This information should be maintained and reviewed on a regular basis to reduce occupancy issues and associated costs.

Residential Property Guidelines not followed

The Authority established guidelines in 2006 for controlling and monitoring its residential properties. However, the Authority was not following their own guidelines regarding residential properties as follows:

- The guidelines indicate that "*Rental rates will reflect fair market value in the local area*". However, our review identified rates that were lower than fair market value, for example:
    - The Authority was leasing a property in Bonne Bay for $425 per month but only charging the physician $400 per month since September 2010.

- Although a physician's contract required the physician to pay rent since July 2010, as of December 31, 2011 this employee was not paying rent while staying in the Authority's property in Port Aux Basques.

- A laboratory technician in Stephenville did not pay rent or utilities from October 2011 to April 2012.

- The guidelines indicate that "*All rentals shall require a signed lease and shall be in compliance with the* Residential Tenancies Act." The Authority has no housing agreements with long-term locums even though they are provided with furnished houses. For example, one locum was provided with free lodging at the same site for 8 consecutive years and a damage deposit was not required nor was an agreement signed.

Leased properties not adequately monitored

The Authority did not adequately monitor leased properties as follows:

- For the 24 residential properties leased as of December 31, 2011, only 4 had formal lease agreements – of which 2 leases were expired and the remaining 2 leases were month to month.

- For the 23 non-residential properties leased as of December 31, 2011, 9 properties did not have lease agreements and 6 lease agreements had expired. In addition, some of the leasing arrangements required the Authority to pay for the operating and maintenance costs so the actual cost for leasing varied month to month. As a result, these leases need to be evaluated on an annual basis to determine if the cost is reasonable and to determine if the estimated annual rental value of the space is more than $10,000 which would require a public tender call to comply with the *Public Tender Act*.

Lease underpayment

The Authority had determined that they were underpaid $4,252 as a result of errors in processing 2 lease arrangements. One fee-for-service physician was not invoiced as required from April 2011 to June 2011 totaling $3,247 and overcharged $315 from July 2011 to May 2012 for a net underpayment of $2,932. Another fee-for-service physician was not invoiced for February and March 2011 totaling $1,320 even though the lease was in place and the space was being used.

Recommendations

The Authority should:

- develop and implement policies and procedures for the identification, recording, controlling and monitoring of capital assets;
- control and monitor vehicle expenditures including fuel credit cards and insurance;
- review and formalize its properties leasing arrangements and comply with its Residential Property Guidelines; and
- adhere to the *Heating Oil Storage Tank System Regulations, 2003* on fuel tank registration.

Authority's Response

Western Regional Health Authority (Western Health) was formed in 2005 from the integration of two predecessor health care organizations - Western Health Care Corporation and Health and Community Services Western. The vision of Western Health is that the people of Western Newfoundland have the highest level of health and well being possible - Your Health Our Priority.

This is the first financial review conducted by the Office of the Auditor General (OAG) since integration. The Authority is appreciative of the OAG recommendations to improve various internal controls, policies and procedures.

Upon its inception in 2005, Western Health inherited $31 million in accumulated debt from its two predecessor organizations. Since its inception, Western Health has recorded an operating surplus in five of the seven years ($2.9 million for Fiscal Year ending March 2012) which has allowed the Authority to pay down its accumulated operating deficit to $17.5 million, a 44% decrease. The financial statements included in the OAG report indicate a net debt of $92.8 million for accounting purposes. This amount would include the accrual for Severance, Annual/Paid leave and Sick leave entitlements unpaid at year end, as required by the Public Sector Accounting Standards. These expenditures are not funded on an annual basis.

1. Compensation and Recruitment

1A. Recruitment

Documentation not adequate

Western Health acknowledges sufficient documentation was not retained on file for the identified competitions. The Authority commits to ensuring that all recruitment files retain the appropriate documentation.

Hiring checklists are a standard component of the documentation retained on recruitment files. The Authority will continue to support improvements in hiring documentation processes to ensure competition files are complete and accurate.

1B. Employee Compensation

Documentation not adequate in personnel files

Western Health is committed to maintaining the highest level of confidentiality for its clients, patients, residents and employees. Comprehensive policies, mandatory training courses and other resources are in place to support this commitment. Monitoring strategies have been implemented to ensure compliance with the confidentiality policy. All new employees with Western Health are required to sign an oath of confidentiality upon hiring, which is retained on the employee's personnel file. In addition, all employees are required to complete an online e-learning module on confidentiality and privacy. Close to 90% of all employees have a current Oath of Confidentiality signed and on their personnel file. Of the remainder, the majority is either on various types of leave or worker's compensation.

Performance appraisals have been identified as an excellent tool for providing feedback to employees to support their continued growth. Western Health has made significant progress in promoting the use of performance appraisals. This has resulted in an increase in compliance with completion and documentation on the employee's personnel file. The Authority remains committed to ensuring that all employees participate in the performance appraisal process on a regular basis. Western Health has implemented a quarterly reporting process to provide all managers with regular updates on the status of performance appraisals in their respective areas.

Non-compliance with the Government Classification Policy

Western Health has implemented a classification/job offer policy that provides guidelines to ensure all positions are classified in a timely manner. In keeping with this policy, all positions within Western Health are to be classified appropriately by the Classification and Pay Division of the Human Resource Secretariat. In circumstances where a position has not been formally classified, the Human Resources Department will assign an interim classification and corresponding pay scale to the position pending formal classification from the Public Service Secretariat. This is to ensure that the circumstance identified will not occur in the future.

Step progression not applied correctly

Western Health's practice has been to provide management step progressions on the anniversary date of commencing a management position, versus the original hire date if the employee had previously worked in a unionized position. The Authority will continue to work with the Department of Health and Community Services to clarify the appropriateness of using the anniversary date of management positions to provide step progressions.

Compensation calculated incorrectly

Western Health has implemented required changes to ensure compensation is accurately calculated and any over/under payments are corrected in a timely fashion. The cases identified in the OAG findings are being reviewed and addressed on a case by case basis.

Payments not consistent with Government policy

Effective January 1, 2013, payment of in-charge pay was discontinued for employees not entitled to this benefit under their collective agreement.

Western Health terminated payment of the car allowance, in compliance with Government policy.

Western Health has been paying education allowances to certain executive and management employees as per its interpretation of Treasury Board's direction provided in 1979. The Authority will continue to work with the Department of Health and Community Services to ensure correct interpretation and application of Government policy.

Severance not calculated correctly

The findings of the OAG identified the need to improve current processes to ensure severance is accurately calculated. The types of leave and worked service that contribute to earned service for the calculation of severance, varies between the collective agreements and has changed within each agreement over time. Western Health has written the Newfoundland and Labrador Health Boards Association to request an interpretation of the proper procedure related to the calculation of severance. The required processes will be implemented to ensure accuracy when clarification is received.

1C. Employment Contracts

Chief Executive Officer contract

The Chief Executive Officer contract of employment expired January 24, 2010. However the Board of Trustees and the Chief Executive Officer were desirous of entering into a new contract, therefore the Board of Trustees did extend the contract indefinitely stating "This will allow for further discussion and ministerial consent for a new contract for your service, retroactive to January 24, 2010. Your current salary and benefits will continue as per the existing contract provisions." *While the contract was extended, there has been no change to the Chief Executive Officer compensation or benefits during the interim.*

The Board of Trustees continues to work with the Department of Health and Community Services to finalize a new contract with the Chief Executive Officer.

Physician contract issues

Western Health is committed to ensuring the provision of consistent physician coverage throughout the western region. In order to prevent interruption in services and periods of inadequate physician coverage, at times, the Authority did offer sign on bonuses which required physicians to commit to provide services in the western region for a specified period of time. These decisions were made to support Western Health's vision for providing quality health care services to the people of the western region. Western Health no longer offers sign on bonuses to physicians and continues to work with the Department of Health and Community Services to develop provincial standards with respect to recruitment and retention of physicians.

1D. Other Human Resource Issues

Double dipping

The majority of these pensioners are hired to provide relief for time off and/or to reduce the use of overtime payments. Many of these individuals are nurses who are placed on Western Health's casual call-in list and are only called after other qualified non-pensioner nurses have been provided with the opportunity to accept the work. Western Health has internal guidelines around the hiring of pensioners to ensure they are the only qualified candidate when offered employment.

No approval for one temporary management position

Western Health has a classification/job offer policy that provides guidelines to ensure all new positions are classified in a timely manner by the Human Resource Secretariat's Classification and Pay Division.

The Authority reimburses physicians for income tax

It was Western Health's understanding that the forgivable loan payments made under this program, which provided a commitment by the recipient to provide a specified number of years return in services, would not constitute a taxable benefit. This understanding was communicated to the medical students and formed part of the agreement entered into between the medical student and Western Health. Upon discovering the payments would be taxable, the Authority entered into an agreement with the physicians to compensate them for the tax liabilities and ensure they would not be penalized. Prior to the OAG review, the program had been discontinued. All tax liabilities resultant from the identified issue have been discharged as of the report date.

2. Leave and Overtime

Leave not always approved, documented and recorded accurately

Policies for the approval of annual leave and overtime are in place. Western Health is committed to improving compliance with existing leave and overtime policies as well as ensuring accurate calculation of leave entitlement.

Leave not adequately monitored

In 2012, Western Health began implementation of the Health Human Resources Information System which will automatically calculate an employee's leave entitlement. The entitlement will be based on having accumulated the number of hours stipulated in the various collective agreements and Government policy. A system has also been implemented to monitor paid leave usage and ensure approval is obtained prior to carrying forward unused days to the subsequent fiscal year.

Non-compliance with unpaid leave policy

It is the understanding of Western Health that the collective agreements and Government policy support the fact that severance entitlement is based upon the rate of pay on resignation/retirement and not the employee's last day of work. Western Health will continue to work with the Department of Health and Community Services and the Newfoundland and Labrador Health Boards Association to ensure correct interpretation of Government policy and collective agreements.

Western Health is currently implementing the Health Human Resources Information System. This system will provide enhanced tracking and calculations of various benefits including severance, paid leave entitlement, step progression and sick time. The Authority is currently conducting a comprehensive review to ensure that employee status, including unpaid and maternity leave is current and accurate.

Non-compliance with Statutory Holiday policy

Western Health is currently reviewing existing processes and exploring opportunities to improve compliance with the various collective agreements and physician memorandum of agreement.

Overtime not consistent with Government Policy

The practices identified in this section have all been discontinued as of the report date. Western Health is committed to following Government policy on overtime as outlined in the OAG recommendations.

The provision of quality health care requires the use of overtime based largely on the availability of health care providers. Western Health has made significant progress in reducing overtime costs without impacting the delivery of care. This has been achieved through an enhanced approval process and monitoring. Western Health has reduced overtime expenditures for two consecutive years and will strive to continue to effectively manage the use of overtime while balancing the need to provide quality services to the people of the western region.

3. Expenditures

3A. Travel and Relocation

Western Health acknowledges the OAG's findings with respect to including the names of those in attendance and will revise its policy to include this requirement. The Authority is confident that there is a high level of compliance with the organizational travel policy.

Western Health acknowledges that relocation documents were not provided to the Chief Executive Officer on a timely basis for approval prior to issuing payment. Internal processes are currently being reviewed and will be revised to ensure compliance with memorandum of agreement compensation relocation expense policy provisions.

3B. Cell Phones

Cell phones are essential to the provision of health and community services in the western region. Cell phones are used by staff for multiple reasons such as being on-call, to mitigate the risk of home visits and when working alone.

Upon further investigation the $576 in texting charges incurred by one employee over 11 months was identified to be an error of the service provider and was subsequently reimbursed to Western Health. All remaining balances identified have been repaid as appropriate.

In 2010, as referenced by the OAG, Western Health took concrete steps to significantly reduce the cost associated with the use of cell phones resulting in approximately $120,000 in annual savings. The Authority acknowledged that the inventory and policies, related to the use of cell phones, was incomplete and disclosed this to the OAG at the commencement of the review. To address this issue, the Western Health cell phone policy has been reviewed and revised to align with the requirements outlined in the Government policy. In addition, a new inventory database system has been implemented to ensure documentation relating to cell phones is complete and up-to-date.

Western Health has implemented a database of electronic billing data and an automated billing notification system. This enables a bill for every phone in the inventory to be forwarded to its designated "owner" on a monthly basis. This allows for usage to be reviewed on a regular basis and eliminated the problems stemming from shared phones. This data will be monitored on a regular basis to identify phones that are potentially being used excessively or that are not in use.

Western Health's new cell phone policy outlines the requirements for the reimbursement of costs associated with the employee's personal use of Western Health phones. The automated billing notification system referenced above allows employees to review their bills and to reimburse the organization for personal usage. The Authority can monitor for usage and costs above certain thresholds and assess compliance.

3C. Other

Authority not adhering to By-Laws

The by-laws of the Board of Trustees are currently being reviewed to determine the appropriate meeting schedule for the Finance and Property Committee.

Municipal Tax discounts not taken

Western Health acknowledges the forfeiture of discounts associated with two municipal tax bills. The Authority is currently exploring new procedures to ensure all discount dates are met.

4. Tendering for Goods and Services

4A. Goods and services greater than $10,000

Western Health acknowledges that there are opportunities to enhance internal controls and documentation processes in regards to tendered goods and services. The Authority will continue to examine ways to improve procedures to ensure required notification is communicated. Western Health recognizes the need for improved processes to ensure the timely tendering of goods and services such as leased space.

4B. Goods and services $10,000 and less

Western Health is committed to ensuring compliance with the Public Tender Act *and will review its processes and procedures to ensure all required documentation is retained on file.*

5. Capital Assets

5A. Computer Equipment

Western Health recognizes the need enhanced processes for tracking computer equipment. Since the review, an Inventory Management and Discovery application has been implemented that provides more detailed and timely information. In addition, a formal process for ongoing tracking and recording of computer equipment over its life cycle will be implemented.

Western Health acknowledges it was unable to locate one laptop computer that was listed as an asset in the database. Upon further investigation, the Authority located a request to replace and dispose of that particular computer as it had become unusable. Western Health is committed to developing new procedures to ensure the timely updating of the computer inventory database.

5B. Motor Vehicles and Fuel Credit Cards

Western Health recognizes the opportunity to strengthen internal controls related to the use of motor vehicles and fuel credit cards. The Authority has developed policies and procedures to comply with the recommendations made by the OAG. In addition, processes for ensuring the timely addition/deletion of vehicles from the fleet insurance policy have been strengthened.

5C. Buildings, Furniture and other Equipment

No capital asset ledger

The Authority will continue to work with the other Regional Health Authorities and the Department of Health and Community Services to determine the feasibility of compiling and maintaining a capital asset ledger.

Tagging not done for residential property furniture and appliances

Western Health is committed to reviewing the processes for tracking furniture and appliances in the residential properties throughout the region.

No regular monitoring of capital assets

Western Health conducts reviews of its major medical equipment to ensure the accuracy of the listing in its preventative maintenance program. The Authority acknowledges the need for improved monitoring of furniture and minor assets.

No policy on disposals

Western Health has developed a policy on the disposal of capital assets.

Insurance premiums overpayments

A regional Residential Properties Committee has been established with the purpose of reviewing current practices and implementing required changes. One of the key focuses will be the development of communication processes to ensure timely notification of changes to insurance.

Fuel tank registration issues

Western Health will be replacing the single tank identified in the review. The Authority's records will be updated annually to ensure consistency with the records of Service Newfoundland.

Residential properties

Western Health maintains residential properties throughout the region with the purpose of providing accommodations to travelling and/or visiting health care providers including physicians. In addition, Western Health has medical students rotating through its facilities as part of their training and the Regional Health Authorities are required to provide housing for these students.

The Authority acknowledges the vacancy rate may be high for some of its residential properties at times. However, it is the Western Health's position that having residences available for visiting physicians, medical students and other health care providers, particularly in the rural areas, is critical to ensuring the delivery of quality health care services.

In order to address identified issues, Western Health has established a regional Residential Properties Committee. A key objective of the committee will be the development, implementation and monitoring of processes to ensure compliance with guidelines throughout the region.

Summary

Western Health has proceeded to move forward with implementing a number of changes to enhance existing policies, procedures and internal controls based on findings and recommendations as outlined during the Office of the Auditor General review. The Authority will continue to work with key stakeholders to improve organizational efficiency. Western Health is committed to the delivery of quality health care services to the people of the western region.

PART 3.9

DEPARTMENT OF MUNICIPAL AFFAIRS

MONITORING OF MUNICIPALITIES

Executive Summary

The Department of Municipal Affairs (the Department) is responsible for all matters relating to municipal and provincial affairs. The primary clients of the Department are the 271 municipalities, 5 Inuit community governments, and 178 local service districts in Newfoundland and Labrador. The Department is responsible for administering a number of Acts including the *Municipalities Act, 1999* and the *Municipal Affairs Act*, which provide the framework against which municipalities govern. The Department is comprised of three branches: Municipal Support and Policy; Municipal Engineering and Planning; and Employment Support.

Our objective was to review the monitoring of municipalities within the Department of Municipal Affairs. We focused on activities within the Municipal Support and Policy Branch (the Branch).

The Branch is responsible for financial supports to local governments, training and advice to municipalities and other administrative matters, and supporting regional cooperation initiatives. Through its divisions, the Branch is responsible for advising municipalities on budgeting, financial statements and financial management matters, monitoring and reporting on provincial and municipal liabilities for municipal long-term debt and conducting reviews of local government administrative and operational practices including municipal inspections.

Our review of the monitoring of municipalities within the Department identified issues with regard to:

- lack of legislative compliance;
- inadequate performance measurement and monitoring;
- lack of monitoring of municipal debt;
- incomplete and inaccurate database information; and
- lack of policies and procedures.

Legislative Compliance

Our review of legislative compliance disclosed the following:

- Statutory deadline for financial statement adoption was not monitored. As a result, the Department is unable to determine if municipalities were complying with the provision that a council shall prepare and adopt financial statements before June 1 of each year.

- Audited financial statements were not received by the statutory deadline. A municipality is required to submit to the Minister of Municipal Affairs (the Minister), in the required form, the audited financial statements by established dates. We found numerous instances where municipalities submitted the required audited financial statements after the statutory deadline.

- The Department cannot determine whether actual expenditures exceeded budgeted expenditures. A municipality shall not, without the prior approval of the Minister, exceed the total estimated expenditure approved in the annual or revised budget. The Department could not compare actual expenditures with budgeted expenditures as budgets are prepared on the cash basis and financial statements are prepared on the accrual basis.

- Budgets were adopted by municipalities after the statutory deadline. A municipality must adopt a budget by established dates. We found numerous instances where municipalities adopted their budgets after the statutory deadline.

- Budgets were submitted to the Department after the statutory deadline. A municipality is required to submit to the Minister, in the required form, the adopted budget by established dates. We found numerous instances where municipalities submitted their budgets to the Minister after the statutory deadline.

- No time frame was established for the inspection of municipalities. The books and records of every municipal authority are required to be inspected by the Department. Our review indicated that there was no time frame established to ensure that all municipalities are inspected as required.

Performance Measurement and Monitoring

The Department had not established performance measures or reporting requirements for all divisions of the Municipal Support and Policy Branch. Upon enquiry, the Department could not provide any performance reports for any of the divisions of the Branch. Furthermore, there were no operational plans or work plans in place for any of its divisions.

Monitoring of Municipal Debt

The long-term debt of municipalities was in excess of $364 million at December 31, 2010. Our review of the monitoring of municipal debt disclosed the following:

- The Department does not monitor total debt and changes in total debt. The Department could not provide the amount of total municipal debt as at December 31, 2011 as all financial statement information had not yet been received.

  Although debt repayments and interest relating to long-term debt are required to be recorded on the financial statements, this information was not tracked separately in the database. As a result, we were not able to determine the total debt repayments and interest on long-term debt for municipalities.

- The extent of arrears on bank loans were not tracked. The Department had indicated that the principal portion of debt owing to the Newfoundland Municipal Financing Corporation (NMFC), which was in arrears at March 31, 2011 and March 31, 2012, was $3.2 million and $2.5 million, respectively. However, our review indicated that the Department does not track information on all municipal debt at chartered banks. As a result, it does not know the extent of arrears on bank loans, if any.

Database Management

We found issues with the accuracy and completeness of the budget information recorded in the Department's database. We also found issues with the completeness of the financial statement information recorded in the database.

Our review also indicated that information that would facilitate the monitoring of municipal inspections was not recorded in the database.

Policies and Procedures

The Department has not developed and communicated comprehensive policies and procedures to help ensure proper monitoring of municipal debt, database management, municipal inspections and legislative compliance.

Background

Overview

The Department of Municipal Affairs (the Department) is responsible for all matters relating to municipal and provincial affairs. The primary clients of the Department are the 271 municipalities, 5 Inuit community governments, and 178 local service districts in Newfoundland and Labrador. The Department is responsible for administering a number of Acts including the *Municipalities Act, 1999* and the *Municipal Affairs Act*, which provide the framework against which municipalities govern.

The Department is comprised of three branches:

- Municipal Support and Policy;
- Municipal Engineering and Planning; and
- Employment Support.

The Municipal Support and Policy Branch (the Branch) is responsible for financial supports to local governments, training and advice to municipalities and other administrative matters, and supporting regional cooperation initiatives. It consists of four divisions:

- Local Governance;
- Municipal Finance;
- Eastern Region; and
- Central/Western/Labrador Region.

Monitoring of Municipalities

Local Governance Division

The Local Governance Division is responsible for planning, directing, coordinating and managing Local Governance programs and services which aid the Department in realizing its vision of communities with viable, sustainable municipal services led by strong local governments. The Division is accountable for:

- promoting local governance;
- providing training opportunities for local government officials;
- evaluation of local government structures;
- formulating regional approaches to service delivery; and
- conducting reviews of local government administrative and operational practices.

Municipal Finance Division

The Municipal Finance Division is responsible for:

- providing financial assistance to municipalities in the form of grants and subsidies as well as assistance with capital borrowing;
- advising on budgeting, financial statements and financial management matters, in conjunction with the regional offices;
- preparing, evaluating and monitoring estimates with respect to debt servicing subsidies, municipal operating grants and special assistance grants;
- monitoring and reporting on provincial and municipal liability for municipal long-term debt; and
- the administration of the Gas Tax Program and Integrated Community Sustainability Plans.

Regional Divisions

The Regional Divisions deliver programs and services to municipalities and local service districts throughout the Province. These services include:

- municipal inspections;
- coordination and monitoring of capital works projects;
- assessment of infrastructure problems;

- first response for emergency measures to the municipality; and
- consultation and guidance to municipalities on legislative, policy and financial matters related to municipal operations.

Expenditures

Total expenditures for the Department for the year ended March 31, 2012 were $280.4 million as indicated in Table 1.

Table 1

Department of Municipal Affairs
Expenditures
For the Fiscal Years Ended March 31
($000s)

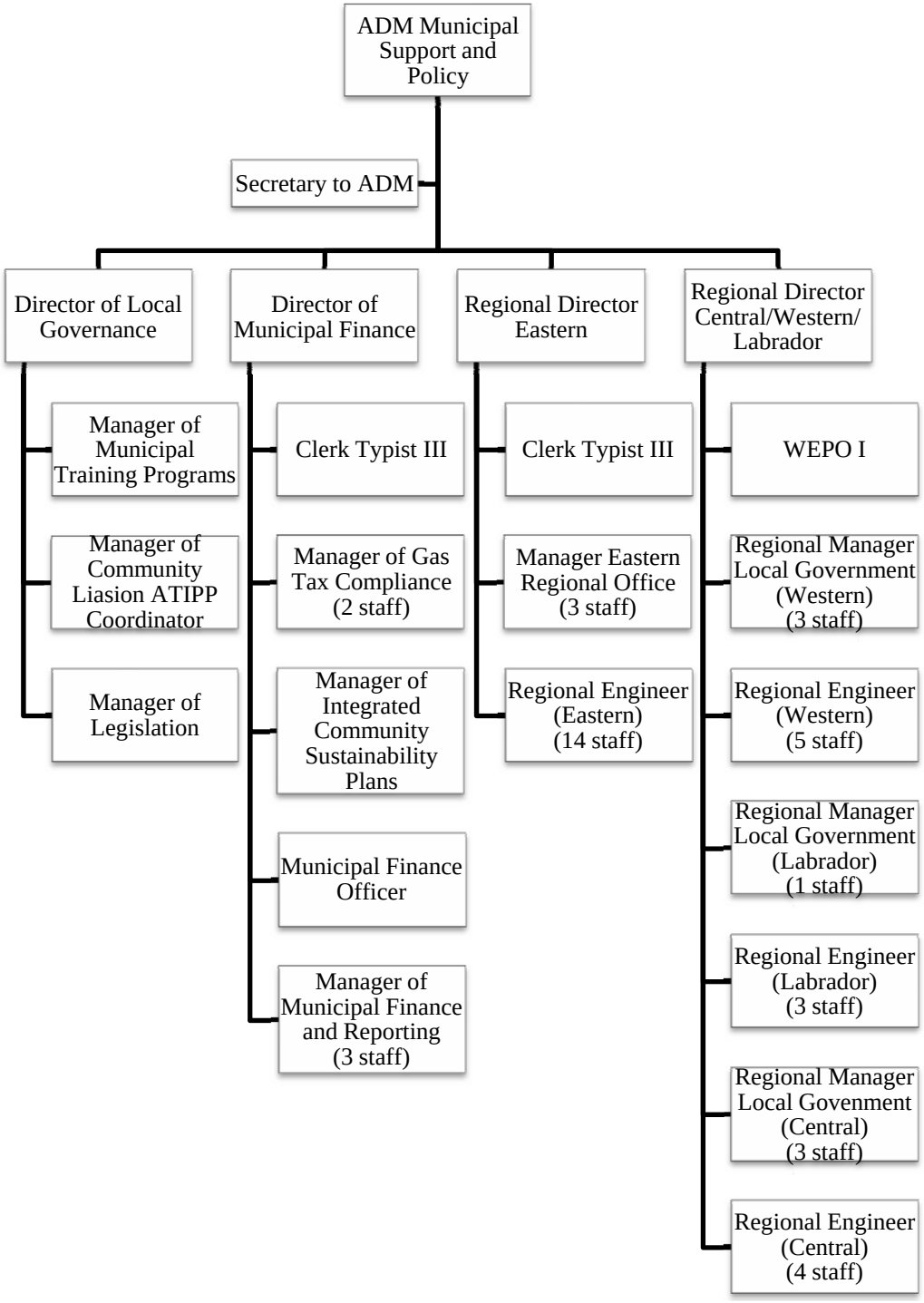
	2010	2011	2012
Assistance and Infrastructure			
Debt Servicing	$ 14,630	$ 12,173	$ 10,294
Municipal Operating Grants	17,751	17,760	26,219
Special Assistance	10,122	3,309	2,219
Community Enhancement	10,516	9,069	9,251
Municipal Infrastructure	99,733	88,992	110,825
Federal/Provincial Infrastructure Programs	61,975	86,815	78,069
Canada/Newfoundland and Labrador Gas Tax Program	48,860	29,008	15,566
Municipal Transit Infrastructure	3,769	0	0
Sub-total	267,356	247,126	252,443
Executive and Support Services	2,073	2,514	2,549
Services to Municipalities	9,205	7,761	5,128
Fire and Emergency Services	11,471	30,337	20,284
Net Expenditure	**$ 290,105**	**$ 287,738**	**$ 280,404**

Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund

The Department had a total staff of 130. The Branch had a total staff of 65. Figure 1 shows the organizational structure of the Branch:

Figure 1

Department of Municipal Affairs
Municipal Support and Policy
Organizational Chart



Source: Department of Municipal Affairs

Objectives and Scope

Objectives

The objectives of our review were to determine whether the Department was ensuring that:

- municipalities were complying with legislative reporting requirements;
- performance measurement and monitoring was in effect;
- monitoring of municipal debt was adequate; and
- database information used for municipal monitoring was accurate and complete.

Scope

Our review was completed in December 2012 and covered the fiscal year ended March 31, 2012. Our review included interviews with Department officials and an examination of relevant legislation, policies and procedures, database information and other documentation within the Department.

Our review did not include the 5 Inuit community governments or the 178 local service districts in Newfoundland and Labrador.

Detailed Observations

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

1. Legislative Compliance
2. Performance Measurement and Monitoring
3. Monitoring of Municipal Debt
4. Database Management
5. Policies and Procedures

1. Legislative Compliance

Overview

The *Municipalities Act, 1999* outlines a framework of accountability for municipalities to the Department, including provisions relating to budgeting, financing and general municipal operations. The *Municipal Affairs Act* provides for inspections of all municipalities by the Department.

The *Municipalities Act, 1999* includes provisions for the monitoring of municipal activities, including the requirement to submit annual balanced budgets and audited financial statements, and requiring prior approval of long-term borrowing by the Minister of Municipal Affairs (the Minister).

In order to determine compliance with the *Municipalities Act, 1999* we reviewed the database maintained by the Department containing financial statement and budget information of municipalities in the Province.

Requirement to submit audited financial statements and budgets

For the 2011 and 2010 calendar years, our review indicated that 275 municipalities were required to comply with the legislation relating to financial statements. 2 of these municipalities had the requirement to provide financial statements waived. As a result, 273 municipalities were required to submit audited financial statements for each calendar year.

Our review found that 271 municipalities were required to submit budgets for the 2012 calendar year while 275 municipalities were required to submit budgets for the 2011 calendar year.

Statutory deadline for financial statement adoption not monitored

Section 86 (1) of the *Municipalities Act, 1999* states "*A council shall prepare and adopt, before June 1 of each year, financial statements in a manner consistent with generally accepted accounting principles established periodically by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants*".

Our review determined that the Department does not track council adoption dates for the financial statements. As a result, the Department is unable to determine if municipalities were complying with this provision of the *Municipalities Act, 1999*.

Audited financial statements not received by statutory deadline

Section 92 (1) of the *Municipalities Act, 1999* states "*The auditor shall complete and submit the report on his or her audit to the council before June 1 of the year immediately following the financial year that he or she is auditing and, not more than 30 days later, the auditor shall submit a copy of that report to the minister*".

Unless the audit requirement is waived by the Minister, all municipalities are required to submit, to the Minister, by June 30 of each year, financial statements which are compliant with standards approved by the Public Sector Accounting Board (PSAB).

Audited financial statements are received by the Division of Municipal Finance by fax, e-mail or mail and are date stamped by the Department when received.

The Manager of Municipal Finance or the Finance Officer reviews the financial statements for PSAB compliance. Where compliance issues are identified, the Finance Officer must follow up with the respective town and work with it or their auditor, if requested by the municipality, on resolving the issues.

The financial statements are approved by the Department through the completion of an Approval Checklist. Once financial statements are determined to be compliant, the financial information from the statements is entered into the Municipal Information Management System (MIMS). The financial statements are then marked "Approved by Department" in MIMS. Data entry follows methods prescribed in the MIMS PSAB Financial Statement User Training Guide**.**

Table 2 outlines PSAB compliant financial statement submissions, as of November 2012, for the 2010 and 2011 calendar years:

Table 2

Department of Municipal Affairs
PSAB Compliant Financial Statement Submissions
For the Calendar Year Ended December 31

Status of Financial Statements	2010	%	2011	%
Financial Statements submitted on time	39	14.3	53	19.4
Financial Statements submitted late	226	82.8	162	59.4
Financial Statements not submitted and entered into database	8	2.9	58	21.2
Financial Statements required to be submitted	**273**	**100**	**273**	**100**

Source: Department of Municipal Affairs

For the 2010 calendar year, 226 financial statements were received late with receipt dates ranging from 4 days to 432 days after the deadline. For the 2011 calendar year, 162 financial statements were received late with receipt dates ranging from 3 days to 138 days after the deadline.

Actual expenditures exceeding budgeted expenditures not monitored

Section 81 of the *Municipalities Act, 1999* states "*A town council shall not, without the prior approval of the minister, incur, enter into, contract, or become liable for an expenditure or indebtedness exceeding the total estimated expenditure or indebtedness approved in the annual or revised budget*".

The Department tracks both budgeted and actual expenditures as recorded in the financial statements of municipalities in its database. In accordance with Departmental policy, annual municipal budgets are prepared on a cash basis while the financial statements are prepared on an accrual basis. As a result, the Department cannot compare actual expenditures with budgeted expenditures to ensure compliance with this provision.

Department officials indicate that they rely on the municipality to inform the Department, and obtain the required approval, if the municipality believes it will exceed its total budgeted expenditures.

For the 2010 and 2011 calendar years, 273 municipalities were required to submit financial statements. Our review of the expenditures in the audited financial statements, prepared on an accrual basis, disclosed the following:

- For the 2010 calendar year, 8 financial statements have still not been received and entered into the MIMS and 42 municipalities did not have budget expenditure information recorded.

  We identified 223 municipalities that had budgeted and actual expenditures recorded in MIMS. Our review of the database information indicated that 133 of these municipalities had actual expenditures in excess of budgeted expenditures, ranging from $541 to $5,262,765 and totaling in excess of $24.6 million. 39 of the 133 municipalities had actual expenditures in excess of budgeted expenditures of over $100,000. Of these, 4 exceeded $1,000,000.

- For the 2011 calendar year, 58 financial statements have still not been received and entered into the MIMS and 26 municipalities did not have budget expenditure information recorded.

  We identified 189 municipalities that had budgeted and actual expenditures recorded in MIMS. Our review of the database information indicated that 120 of these municipalities had actual expenditures in excess of budgeted expenditures, ranging from $608 to $2,081,081 and totaling in excess of $14.3 million. 25 of the 120 municipalities had actual expenditures in excess of budgeted expenditures of over $100,000. Of these, 3 exceeded $1,000,000.

We could not determine if these municipalities that exceeded their budgeted expenditures had violated the *Act.* Budgeted expenditures were recorded on the cash basis and financial statements were recorded on an accrual basis and therefore were not comparable.

Budgets adopted after statutory deadline

Section 77 (1) of the *Municipalities Act, 1999* states "*A town council shall, not later than 90 days after the day on which the council takes office following a general election of councilors and not later than December 1 in each succeeding year, prepare and adopt a budget containing estimates of the revenue and expenditure of the council for the next financial year and a statement showing tax rates that shall be imposed during that year*".

- For the 2011 calendar year, of the 275 municipalities, 241 (87.6%) adopted their 2011 budgets after the December 1, 2010 deadline. Adoption of the 2011 budgets ranged from 1 day to 370 days after the deadline.

- For the 2012 calendar year, of the 271 municipalities, 220 (81.2%) adopted their 2012 budgets after the December 1, 2011 deadline. Adoption of the 2012 budgets ranged from 1 day to 237 days after the deadline.

Budgets submitted after statutory deadline

Section 77 (2) of the *Municipalities Act, 1999* states "*A budget adopted under this section shall be in the required form and a copy shall be sent to the minister before the end of the calendar year of its adoption or in the case of a new council, within 30 days of its adoption*".

Table 3 outlines budget submissions, as of November 2012, for the 2012 and 2011 calendar years:

Table 3

Department of Municipal Affairs
Budget Submissions
For the Calendar Year Ended December 31

Status of Budgets	2011	%	2012	%
Budgets submitted on time	136	49.5	144	53.1
Budget submitted late	139	50.5	126	46.5
Budget not submitted and entered into database	0	0.0	1	0.4
Budgets required to be submitted	275	100	271	100

Source: Department of Municipal Affairs

As shown in Table 3, for the 2011 calendar year, 139 budgets were received late with receipt dates ranging 4 days to 343 days after the deadline. For the 2012 calendar year 126 budgets were received late with receipt dates ranging from 2 days to 220 days after the deadline.

Requirement for municipal inspections

Section 4 (1) from the *Municipal Affairs Act* states "*Inspectors shall be appointed in the manner authorized by law, and they shall, as required by the minister, examine and inspect all books of record and account, all bank books, assessment and collection rolls and all other papers and matters belonging to a municipal authority*".

Section 4 (2) of the *Municipal Affairs Act* states "*The books and records of every municipal authority shall be inspected by an inspector under the authority of subsection (1) and the minister may order a special inspection in the case of a municipal authority whenever the minister considers it advisable or upon the request of the municipal authority setting out clearly the reason why, in the opinion of the municipal authority, the special inspection is considered necessary*".

Under this section, the Department must assess a municipality's financial and administrative performance through the examination of records, budgets, financial statements, meetings, etc. The Department does this by performing municipal reviews and Community Capacity Assessments (CCAs).

Table 4 outlines the inspections done by region from 2010 through to 2012.

Table 4

Department of Municipal Affairs
Municipal Inspections
For the Years Ended March 31

Region	Inspections				Total Municipalities 2012
	2010	2011	2012	Total	
Eastern	30	20	25	75	109
Central	14	10	14	38	86
Western	11	19	25	55	61
Labrador	4	0	1	5	15
	59	**49**	**65**	**173**	**271**

Source: Department of Municipal Affairs

No time frame established for the inspection of all municipalities

For the fiscal year ended March 31, 2012, the Department performed 65 municipal inspections (49 inspections in 2011). Department officials indicated that 37 of the 65 municipalities had CCAs completed in 2012 and 13 of the 49 municipalities had CCAs completed in 2011.

In addition, over the 3 years from 2010 through to 2012, there were a total of 173 inspections completed. In 9 instances a municipality was inspected a second time.

As of March 31, 2012 the Department is responsible for inspecting 271 municipalities. Our review indicated that there were 164 different municipalities inspected over the last three years.

Prior to June 2004, Section 4 (2) *of the Municipal Affairs Act* required that the books and records of every municipality be inspected at least once every year and that the Minister could order a special inspection whenever it was considered advisable. An amendment effective June 2004, removed the requirement for annual inspections, however, inspections are still required.

Our review disclosed that there was no time frame established to ensure that all municipalities are inspected, as required by the *Municipal Affairs Act, 1999*.

Recommendations

The Department should ensure:

- budgets and financial statements are submitted in compliance with the *Municipalities Act, 1999*; and
- a time frame is established for the inspection of all municipalities to ensure compliance with the *Municipal Affairs Act.*

2. Performance Measurement and Monitoring

Overview

We would expect to find well defined performance measures relating to the monitoring of municipalities within the Municipal Support and Policy Branch. These performance measures would be included as part of the goals and objectives of the Branch and form part of the divisional operational/work plans. For example, performance measures for the monitoring of municipalities may include: budget/financial statements submission requirements and other legislative requirements, frequency of municipal reviews and community capacity assessments and frequency and content of management reports.

A divisional operational/work plan would contain information specific to the Division. This plan would contain goals, objectives, measures, and indicators for the goals and objectives, actions necessary and reporting requirements.

These plans would assist the divisions to focus their activities towards achieving Branch strategic goals and objectives. These plans would be necessary to determine whether the Department's Strategic Plan objectives are being met and are a necessary part of a good system of accountability.

We would expect established reporting standards for each division within the Branch, for such things as:

- responsibity for reporting;
- nature and content of the reports;
- frequency of reporting;
- deadline for report preparation and submission; and
- receipt and review of reports.

Our review indicated the following issues with the monitoring of municipalities within the Branch.

Performance measures or reporting requirements not established

The Department had not established performance measures or reporting requirements for all divisions within the Branch. Upon enquiry, Department officials could not provide any performance reports for the divisions of the Branch.

Furthermore, there were no operational plans or work plans in place for any of the divisions.

Recommendations

The Department should consider establishing:

- performance measures and reporting requirements for all areas related to the monitoring of municipalities; and
- operational plans for all divisions of the Municipal Support and Policy Branch.

3. Monitoring of Municipal Debt

Overview

The Department provides considerable funding to municipalities including assistance related to debt servicing and principal payments on the long-term debt of municipalities related to municipal infrastructure.

Debt servicing represents contributions by the Department for interest charges and other expenses incurred on municipal debt relating to water and sewer systems, road construction and paving, recreation facilities and other improvement projects.

Assistance related to municipal infrastructure represents contributions of the Department towards principal owing on debt incurred for municipal infrastructure projects relating to water and sewer systems, road construction and paving projects, recreation facilities and other improvement projects and for debt relief and other supports to municipalities.

According to Department officials for the year ended March 31, 2012 the Department contributed $10.3 million towards debt servicing on the outstanding debt of municipalities and $33.5 million towards the principal portion of the outstanding debt of municipalities. These amounts are included in the Assistance and Infrastructure sub-total in Table 1.

Total debt and changes in total debt not monitored

Debt incurred by municipalities is used to finance such infrastructure projects as water and sewer systems and roads. Total municipal debt is comprised of long-term debt owed by municipalities to the Newfoundland Municipal Financing Corporation (NMFC) and to chartered banks.

The mandate of the Municipal Finance Division includes monitoring and reporting on provincial and municipal liabilities for municipal long-term debt. We would expect the Division to monitor and report on total municipal debt and changes in municipal debt for all municipalities. This information would include financial information relating to new debt issuances, debt repayments, interest on long-term debt, per capita debt and interest as a percentage of municipal revenues.

Department officials indicated that they do not monitor total debt and changes in total debt. The Department could not provide the amount of total municipal debt as at December 31, 2011 for the 271 municipalities in the Province as all financial statement information had not yet been received as required. As noted previously, municipal debt information had not been recorded in the database for 58 municipalities.

The Department did provide a database extract of long-term debt as at December 31, 2010. As noted previously, this database information was not complete as municipal debt information for 8 municipalities had not been received and recorded. Our review of this information indicated that the long-term debt of municipalities was in excess of $364 million as at December 31, 2010.

Although debt repayments and interest on long-term debt are required to be recorded in the financial statements, this information was not tracked separately in the database. As a result, we were unable to determine the total debt repayments and interest on long-term debt for municipalities.

Extent of arrears on bank loans not tracked

Municipal debt is financed through the NMFC and chartered banks.

Section 5 of the *Municipal Affairs Act* states *"A bank or agency of a bank or another similar institution carrying on business in the province shall, upon request of the minister, provide the minister with a statement showing the balance or condition of the account of a municipal authority having an account with that bank or agency, together with particulars of the account that the minister may require*."

Department officials indicated that each month a report is received from NMFC on the arrears of municipalities. This report is used when considering applications for the Special Assistance Program and requests to the Minister from municipalities for approvals to borrow.

The extent of arrears on bank loans were not tracked. The Department had indicated that the principal portion of debt owing to NMFC, which was in arrears at March 31, 2011 and March 31, 2012, was $3.2 million and $2.5 million, respectively. However, our review indicated that the Department does not track information on all municipal debt at chartered banks. As a result, it does not know the extent of arrears on bank loans, if any.

Recommendations

The Department should ensure:

- the total liability for municipal long-term debt is monitored and reported upon; and
- the arrears on all municipal debt are tracked and monitored.

4. Database Management

Overview

The Municipal Information Management System (MIMS) is a web based, real time, system used by the Department to track information on municipalities. It is an integrated database used for tracking information related to municipal finance, waste management, capital works, etc.

We would expect to see information relating to budgets, financial statements and municipal inspections to assist in monitoring and reporting on municipalities. This would include dates and other details including:

- audited financial statements and council adoption dates;
- budget submission and council adoption dates;
- revised budget submission and council adoption dates;
- budgeted and actual revenue and expenditures; and
- results of inspections of municipalities.

Budget information recorded in database not complete and accurate

In order to test the accuracy of the budget information recorded in MIMS, we reviewed budget information, by municipality, extracted from the database. We selected 30 municipalities over a two year period for review.

Our review indicated the following:

- 7 instances where budgeted expenditure amounts recorded in the database did not agree with the budget submission;
- 1 adoption date in the database did not agree to the date in the budget submission;
- 4 instances where the submission date on the date stamp did not agree with the submission date recorded in the database;
- 7 instances where the budget had not been date stamped and we were unable to determine if the date recorded in the database was accurate; and
- 2 instances where the submitted budget could not be located. As a result, we were unable to determine if the information recorded in the database was accurate.

Our review of the database budget information for 2012 also indicated that there were requests by the Department for revised budgets from 31 municipalities. The database also indicated that there were 44 municipalities who submitted revised budgets.

Department officials indicated that the MIMS database does not track the date the revised budget was adopted by council. As a result, we were unable to determine if the revised budget was submitted within 2 weeks of adoption, as required by legislation.

We also note that as of November 2012, information on the 2012 budget for 1 of the 271 municipalities had not been entered into MIMS as it had not been received.

Financial statement information recorded in database not complete

As indicated previously, information relating to audited financial statements for 58 municipalities had yet to be received and therefore had not been entered in the MIMS database for the 2011 calendar year. In addition, information relating to 8 municipalities was not recorded for the 2010 calendar year.

To test the accuracy of the financial statement information recorded in MIMS, we reviewed financial statement information, by municipality, extracted from the database. We selected 20 municipalities over a two year period for review.

We found that the financial statement information was recorded correctly for all sampled items. However, we identified 7 instances where the financial statements were not date stamped. As a result, we were unable to determine if the date of submission recorded in the database was accurate.

Our review also identified instances where the budget expenditures in the financial statements were not recorded in the database for all municipalities. We identified 26 instances and 42 instances in 2011 and 2010, respectively.

Municipal inspection monitoring information not recorded in database

The MIMS database is able to capture information on municipal inspections. We would expect to see information included in MIMS that would facilitate the monitoring of municipal inspections. For example, information such as inspection type, expected completion date, actual completion date and report dates should be recorded in MIMS.

Our review indicated that the MIMS database used by the Department is not complete as inspection monitoring information is not being recorded in MIMS. As a result the Department is unable to determine the status and results of inspections from MIMS.

The Department did provide some manual documentation relating to inspections. However, we found that the regions were not consistent in how they captured the inspection information. Eastern and Central Regions provided information using an excel spreadsheet format, Western Region provided a copy of a hand-written list of inspections and Labrador Region provided a list of inspections in an e-mail.

Recommendation

The Department should ensure information relating to budgets, financial statements and municipal inspections are properly recorded in the MIMS database.

5. Policies and Procedures

Policies and procedures not well defined

The *Municipalities Act, 1999* and *Municipal Affairs Act* outline a framework of accountability by municipalities to the Department, including provisions relating to budgeting, financing and general municipal operations.

We would expect to see well defined policies and procedures at the Department to help ensure municipal compliance with *The Municipalities Act, 1999* and *Municipal Affairs Act*. These areas include financial statement and budget reporting requirements.

We would also expect to see well defined, documented policies and procedures relating to monitoring of municipal debt, database management and municipal inspections.

Our review indicated that the Department does have a Public Sector Accounting Board Financial Statement Procedure Manual and information is documented in forms and templates. However, the Department has not developed and communicated comprehensive policies and procedures to help ensure proper monitoring of municipal debt, database management, municipal inspections and legislative compliance.

Recommendation

The Department should develop and communicate well defined policies and procedures covering the monitoring of municipalities.

Department's Response

Recommendations

The Department should ensure:

- *budgets and financial statements are submitted in compliance with the* Municipalities Act, 1999*; and*
- *a time frame is established for the inspection of all municipalities to ensure compliance with the* Municipal Affairs Act.

Department's Response

The Department is confident that it has reasonable processes in place which support and promote the receipt of financial statements and budgets in accordance with legislative timelines, including the practice of with-holding grant funding until a municipality is compliant with these legislative requirements. The Department will continue to work with municipalities to improve compliance with these legislative timelines.

For clarification, the Municipal Affairs Act *does not require the Department to carry out inspections of all municipalities, but rather provides authority to conduct inspections as required by the Minister. Within available departmental resources, the Department carries out inspections using a general risk based approach in consideration of a variety of factors including, but not limited to, the length of time since last inspection; issues noted during previous inspections; reviews of budgets and financial statements; and issues conveyed to the Department by council and residents. In addition, in addressing one of the key issues in the Department's 2011-2014 Strategic Plan, Local Government Sustainability, the Department is committed to completing 130 community capacity assessments by March 31, 2014. These assessments include an assessment of legislative compliance.*

Recommendations

The Department should consider establishing:

- *performance measures and reporting requirements for all areas related to the monitoring of municipalities; and*
- *operational plans for all divisions of the Municipal Support and Policy Branch.*

Department's Response

The Department acknowledges the benefits of divisional plans and while written operational divisional plans are not being prepared as contemplated by your Office, accountability for the work requirements and deliverables of each Branch division is clearly understood and monitored on an ongoing basis. Examples include financial statements and budgets received; status of municipalities' arrears; progress of community capacity assessments; regionalization initiatives; review of policies in priority areas; and preparation of policy/legislative submissions. The key deliverables of the Branch are captured in a number of official documents of the Department, including the Strategic Plan, the Annual Report, the Deputy Minister's performance contract and the Department's annual work plan. The status of these key deliverables is reviewed on a regular basis through divisional and Executive meetings.

The Department will consider the establishment of more formal documented divisional operational plans (setting out performance measures and reporting requirements, where appropriate) for 2013-14.

Recommendations

The Department should ensure:

- *the total liability for municipal long-term debt is monitored and reported upon; and*
- *the arrears on all municipal debt are tracked and monitored.*

Department's Response

In capturing municipalities' financial statements in its information management system, the Department is able to generate consolidated reporting of not only long-term debt for all municipalities as a total, but other audited financial information disclosed pursuant to generally accepted accounting principles. While financial information on a total consolidated basis (comprising all municipalities) is informative to a degree, the Department's primary focus is on assessing the financial position of individual municipalities; not merely the debt component as a total for all municipalities. Examining the overall net financial position of individual municipalities is important in assessing financial health and represents an important component in evaluating the financial sustainability of individual municipalities on a going concern basis into the future. Likewise, the extent to which a particular municipality is in arrears in its debt payments is also but one component, reflected via audited financial statements, which is considered in this assessment.

Recommendation

The Department should ensure information relating to budgets, financial statements and municipal inspections are properly recorded in the MIMS database.

Department's Response

Information relating to budgets, financial statements and municipal inspections is currently recorded in the MIMS database. The Department notes the findings of your Office and will take the necessary action to improve the completeness and accuracy of information contained in MIMS.

Recommendation

The Department should develop and communicate well defined policies and procedures covering the monitoring of municipalities.

Department's Response

The Department has a number of documented policies and procedures for monitoring municipalities including inspection checklists, a community capacity assessment framework, and guidelines for assessing budgets and financial statements to determine whether they were submitted in the prescribed format and within the required legislative timelines.

The Department will, however, continue to identify opportunities to improve its policies, particularly in priority areas. To that effect, as outlined in the Department's 2011-2014 Strategic Plan and recent Annual Report, a number of programs/services were identified for development of new/revised policies and procedures during 2012-13 with an overall goal by March 31, 2014 to have enhanced policies and procedures to strengthen support to local governments.

PART 3.10

DEPARTMENT OF MUNICIPAL AFFAIRS

SPECIAL ASSISTANCE GRANT PROGRAM

Executive Summary

The Department of Municipal Affairs (the Department) administers a Special Assistance Grant Program (the Program). The Program is administered by the Municipal Finance Division of the Department.

The Program is intended to provide financial support to municipalities and related organizations for:

- emergencies related to health and/or of a life safety nature;
- assistance to municipalities experiencing financial difficulties;
- general assistance to municipalities beyond the municipal budgetary process; and
- special projects or initiatives involving municipalities, local service district communities and other entities.

The Department has prepared draft Program guidelines which are designed to outline the roles and responsibilities of the Municipal Finance Division and the Regional Offices in the administration of the Program.

Special assistance grants are reviewed by both a Finance Committee and an Executive Committee. A request for special assistance is normally initiated through a letter to the Department requesting assistance. When requests are received they are forwarded to the appropriate Regional Director for assessment and recommendation. The role of the Finance Committee is to recommend approval. Approval by the Executive Committee is evidenced by the signature of the Minister on the Executive Decision Summary minutes.

The draft guidelines outline the criteria for eligibility. Normally the Committee will review applications up to $30,000; however it has the discretion to approve higher capital and/or life/health safety projects. Regular maintenance, operational items due to lack of maintenance, and general operational costs can be ineligible; unless (i) it creates a health and/or life safety concern, (ii) the entity does not have the financial capacity to fund the work itself, or (iii) the work is considered to be urgent or an emergency.

The report provides detailed audit findings and recommendations in the following areas:

Non-compliance with Draft Program Guidelines

Our review showed instances of non-compliance with the draft program guidelines and other guidance provided to applicants.

Special Assistance Grants Provided to Fund Ineligible Projects

Our review showed instances where special assistance grants were provided for projects that appeared to be ineligible.

Inconsistencies in Projects Awarded

Our review found instances of inconsistent awarding of projects.

Inconsistencies in the Approval Process

Our reviewed showed instances where there were inconsistencies in the approval process and the type of project awarded.

Background

Introduction

The primary clients of the Department of Municipal Affairs (the Department) are the 276 municipalities, 178 Local Service Districts and 136 unincorporated areas in Newfoundland and Labrador. The Department administers a Special Assistance Grant Program (the Program). The Department's website indicates that the Program is intended to provide financial support to municipalities and related organizations for:

- emergencies related to health and/or of a life safety nature;
- assistance to municipalities experiencing financial difficulties;
- general assistance to municipalities beyond the municipal budgetary process; and
- special projects or initiatives involving municipalities, local service district communities and other entities.

The Program is administered by the Municipal Finance Division (the Division) of the Department.

Program Guidelines

Introduction

The Department has prepared draft Program guidelines which are designed to outline the roles and responsibilities of the Division and the Regional Offices in the administration of the Program and to provide guidance on the business processes.

The draft guidelines indicate that the Program provides financial aid to support municipalities, local service districts and non-municipal organizations, a broader group than those included on the website.

In addition, the Department website included "Frequently Asked Questions" (FAQs) which provided additional information for grant applicants. The FAQs have since been removed from the website.

Application Process

The draft guidelines indicate that there is no formal application form for special assistance grants. A request for funding is normally initiated through a letter to the Department and forwarded by the Assistant Deputy Minister (Municipal Support and Policy) to the appropriate Director for assessment and recommendation.

Assessment Process

Special assistance grant requests are assessed by a Departmental Finance Committee. The Committee consists of the Assistant Deputy Minister (Municipal Support and Policy), the Director of Municipal Finance, the Regional Directors, and the Director of Local Governance. The Finance Committee recommends approval, rejection or deferral of requests for funding.

An Executive Committee, consisting of the Minister, Deputy Minister, and Assistant Deputy Minister (Municipal Support and Policy), reviews the minutes and summaries from the Finance Committee, and makes decisions on approvals for special assistance grants. Approval is evidenced by the signature of the Minister on the Executive Decision Summary minutes. Discussions with Department officials indicated that ultimate approval rests with the Executive Committee. Internal documentation indicates that funding is at the discretion of the Minister.

A Local Government Review form (LGR) is used by the Regional Offices to assess municipal requests. The LGR is the written analysis and recommendation of the appropriate Regional Office. The LGR also has provisions for the preparer to indicate whether the previous year's financial statements and the current year budget had been submitted as required.

Criteria

The draft guidelines contain criteria for determining eligibility.

The criteria indicate that the Program provides financial aid to communities (municipalities, local service districts, unincorporated communities, Regional Service Boards) and non-municipal organizations for:

- Emergencies related to environment, health and/or life safety.
- Assistance for financial difficulties.
- General assistance beyond the municipal budgetary process.
- Special projects or initiatives involving communities (including Regional Service Boards) and non-municipal organizations.
- Infrastructure projects that would be too small in value to be captured by the Municipal Capital Works (MCW) program.
- Municipal Incorporation Anniversaries:
    - 25 years $500
    - 50 years $1,000
    - 75 years $1,500
    - 100 years $2,000
- Funding requests above the maximum threshold ($30,000) can be referred directly by the Finance Committee to the Director of Engineering and Land Use Planning for approval under the Municipal Capital Works Program.
- Normally, the Finance Committee will review applications up to $30,000, however, it has the discretion to approve higher capital or life/health safety projects.

Regular maintenance and operational items due to lack of maintenance, as well as general operational costs can be ineligible, unless it creates a health and/or life safety concern, the entity does not have the financial capacity to fund the work itself or the work is considered to be urgent or an emergency.

While not specifically addressed in the guidelines, the Department also had established additional criteria as indicated in a "Frequently Asked Questions" section of the Department website. This section included information regarding:

- cost sharing ratios;
- the requirement to check arrears with the Newfoundland and Labrador Municipal Financing Corporation, a Crown corporation established to consolidate the long-term borrowing programs of all municipalities; and
- the requirement to submit invoices to support the grant amount and the release of funding.

Special assistance grants awarded to municipalities are subject to a cost-sharing ratio based on population:

- 90/10 Provincial/Municipal cost sharing ratio for populations less than 3,000;
- 80/20 Provincial/Municipal cost sharing ratio for populations between 3,000 and 7,000; and
- 70/30 Provincial/Municipal cost sharing ratio for populations greater than 7,000.

Local service districts and non-municipal organizations are not subject to the cost sharing ratio, however, the Department may approve less than 100% of the requested funding.

Program Budget

Expenditures for the Program for the five year period April 1, 2007 to March 31, 2012 totaled $21.1 million as shown in Table 1.

Table 1

Department of Municipal Affairs
Special Assistance
Budget, Expenditures and Number of Applications
Years Ended March 31

Year	Original Budget	Actual Expenditures (Note)	Number of Applications Approved	Approved Grants for Municipalities	Approved Grants for Non-Municipalities
2008	$2,389,800	$2,803,889	321	$1,950,110	$929,565
2009	2,699,800	2,659,386	369	1,979,419	608,510
2010	1,784,800	10,122,344	341	2,412,134	7,702,688
2011	2,467,500	3,308,836	165	1,923,046	1,386,096
2012	2,571,300	2,218,749	169	1,294,596	922,566
Total	**$11,913,200**	**$21,113,204**	**1,365**	**$9,559,305**	**$11,549,425**

Source: Budget, Financial Management System and Department of Municipal Affairs
Note - The significant increase for 2010 was the result of claims related to the Grand Bruit relocation ($1,570,000), the Daniel's Harbour landslide ($4,457,300) and assistance to Haiti ($1,000,000).

Objective and Scope

Objective

We completed a review of the Program in November 2012. The objective of our review was to determine whether the Department is administering and monitoring the Special Assistance Grant Program in a consistent manner in accordance with Program guidelines.

Scope

Our review examined the administration and monitoring of the Program. The review covered the period April 1, 2009 to March 31, 2012.

Our work included discussions with officials of the Department and a review of the Program guidelines. We also examined the policies and procedures related to special assistance in use by the Department. We reviewed minutes of the Finance Committee and the Executive Committee.

Sample

We sampled a total of 80 items from the approved and rejected requests from April 1, 2009 to March 31, 2012.

Detailed Observations

This report provides detailed findings and recommendations in the following areas:

1. Non-compliance with Draft Program Guidelines
2. Special Assistance Grants Provided to Fund Ineligible Projects
3. Inconsistencies in Projects Awarded
4. Inconsistencies in Approval Process

1. Non-compliance with Draft Program Guidelines

Introduction

The draft guidelines have been developed to help the Department ensure consistency during the assessment and approval process. Guidelines help to streamline the process by providing a set routine of sound practice. Criteria provide a basis for comparison, a reference point against which all requests can be evaluated. We would expect to see all requests from municipal and non-municipal organizations treated equally during the decision making process based on the criteria that had been developed.

Non-compliance with draft program guidelines

We reviewed a sample of 80 special assistance grant requests from April 1, 2009 to March 31, 2012. As shown in Table 2, 63 grant requests were approved for funding and 17 were rejected.

Table 2

Department of Municipal Affairs
Special Assistance Grants
Sample Items - Number of Approved and Rejected Grant Requests

Type	Number of Sample Items	Number Approved	Number Rejected
Municipal	49	34	15
Non-municipal Organizations	31	29	2
Total	**80**	**63**	**17**

Source: Office of the Auditor General sample items

Of the 63 approved projects, 34 totaling $1,611,565 were for municipalities, and 29 totaling $2,033,159 were for non-municipal organizations.

Our review showed instances of non-compliance with the draft Program guidelines and other guidance provided to applicants. In particular:

- 5 grant requests, totaling $536,110, did not have a letter of request on file. Without a letter of request there was no documentation against which to evaluate the request. Two of these requests were from municipal organizations and three were from non-municipal organizations.

- 12 of the approved municipal grant requests, totaling $251,132, did not have a LGR completed. Such a review would provide the assessment and recommendation of the Regional Offices.

- 7 grant requests, totaling $75,197, had a LGR completed by the appropriate Regional Office but the form did not include a recommendation.

- 5 municipalities received special assistance grants totaling $118,320 where the LGR indicated that no audited financial statements and current year budget had been received by the Department.

- 3 special assistance grants to municipalities, totaling $118,300, were in excess of the $30,000 limit and there was no documentation to indicate the rationale for providing funding at the higher level.

- 4 special assistance grants to non-municipal organizations, totaling $575,000, were in excess of the $30,000 limit and there was no documentation to indicate the rationale for providing funding at the higher level.

- 7 special assistance grants to municipalities, totaling $149,264, did not have invoices submitted to the Department to demonstrate how the funds had been spent.

- 12 special assistance grants to non-municipal organizations, totaling $642,097, did not have invoices submitted to the Department to demonstrate how the funds had been spent.

- 11 special assistance grants to municipalities, totaling $153,709, had no evidence that the applicable cost-sharing ratio had been applied as required in the draft guidelines.

- One municipality was approved for funding in the amount of $11,000 despite being in arrears to the Newfoundland and Labrador Municipal Financing Corporation. In addition, the funding related to repairs which, based on the assessment of the Regional office, was not an emergency.

2. Special Assistance Grants Provided to Fund Ineligible Projects

Introduction

We would expect to see guidelines used to ensure that ineligible projects are not funded through the Program. Guidelines would provide a basis for consistent evaluation.

The draft guidelines state that funding can be provided to non-municipal organizations if these projects are within the criteria for the Program.

Special assistance grants are the responsibility of the Municipal Finance Division. The Program criteria indicates that funding is provided to municipal councils and local service district committees. Funding requests from other entities may be considered. Special assistance grants for municipalities are subject to a cost sharing ratio based on population while requests for non-municipal projects are not subject to the cost sharing ratio.

Regular maintenance and operational items due to lack of maintenance, as well as general operational costs can be ineligible, unless it creates a health and/or life safety concern, the entity does not have the financial capacity to fund the work itself or the work is considered to be urgent or an emergency.

Funding for ineligible projects

Our review of the 80 sample items identified grants for ineligible projects including the following:

- $17,000 paid to a non-municipal organization to assist with exterior renovations to its facility in order to enhance its catering business. This grant would be inconsistent with the draft guidelines in that the request was not of an emergency, environmental, health and/or life safety nature.

- One municipality was provided funding of $15,292 to help finish a project that was initially funded under the federal Recreational Infrastructure Canada Program. The special assistance funding was used to buy exercise equipment including an Olympic bench press, treadmill, elliptical, Olympic bar and rower. These are operational and not life/safety or emergency and should not qualify.

- A non-municipal private entity received funding of $15,000 to repair its breakwater, however, as noted by Department officials, there was no municipal infrastructure threatened. Department officials further indicated that funding for work such as this is generally available only in instances where the breakwater serves to protect public infrastructure, such as roads, water and sewer lines or town-owned buildings which provide basic core municipal services. The protection of undeveloped or privately-owned property is not eligible for special assistance funding. If municipal infrastructure was not threatened, then this request did not meet the draft guidelines for funding.

- One municipality was provided $1,500 to allow an individual to attend an annual conference in Quebec. This request was initially reviewed in June 2011 and rejected by the Finance Committee as it was considered outside the scope of the Program. On its second review in September 2011, the Finance Committee again rejected the request. It was indicated in the Finance Committee minutes that this request had been previously considered. However, the request was subsequently approved in the Executive Decision Summary minutes. Conference travel would be considered operational in nature and therefore not eligible.

- We reviewed six grant requests from municipalities for annual festivals. Four were approved for funding even though the purpose of the grant was outside the guidelines since it was not an emergency or a life/safety issue.

- Three requests for funds were approved to be used to repair/upgrade historical buildings. These types of grants are considered outside the special assistance guidelines and are ineligible for funding since they are operational. One of these historical buildings had received funding from other sources including the Atlantic Canada Opportunities Agency and the Department of Innovation, Business and Rural Development.

- Special assistance funding, totaling $7,500, was provided to the Newfoundland and Labrador Association of Municipal Administrators for their annual dinner. This is operational in nature and should not be eligible under the draft guidelines.

3. Inconsistencies in Projects Awarded

Introduction

We would expect to see the same types of projects receiving funding. Guidelines and criteria are in place to ensure that there is consistency in the projects awarded funding.

Inconsistencies in projects awarded

In our review of 80 sample items for funding requests made under the Program, we found the following inconsistencies in the awarding of special assistance grants:

- In one instance a festival applied for funding in 2011 and the request was rejected. It was indicated in the Finance Committee minutes that the Department does not have a program to fund festivals. However, the same funding had been requested in 2009 and the request had been approved.

- In two instances funding was approved to repair and/or upgrade war memorials. However, in another instance funding to sponsor a flagpole for a monument was denied. The Finance Committee minutes indicated that the Department does not have a program to fund war memorials.

- We found three examples of requests totaling $68,602 from municipalities to upgrade and/or repair a playground/ball field. One municipality requested funding to upgrade the playground/ball field, however, the Department rejected this request stating that it does not have a program available to provide funding to upgrade playgrounds/ball fields. In the rejection letter provided by the Department, the municipality was informed that the Department of Tourism, Culture, and Recreation provides a program for recreational facilities. However, we found two other instances where municipalities received funding to assist with costs to upgrade a playground/ball field.

- One municipality was denied assistance for roof repairs and removal of part of a building. The Finance Committee considered this to be operations and maintenance which should be provided for in the municipality's annual budget. However, a request from another municipality for assistance to replace shingles on the roof of the community center was approved. There was no indication that this was an emergency situation. It would appear that these requests were similar in nature.

- Three requests were received for repairs to a breakwater/seawall, with only one of the projects being approved for funding. Two of these projects were municipal and one was a request from a non-municipal private entity. Rejection for the two municipal requests was cited as due to the fact that the seawall did not protect any municipal infrastructure, and municipal infrastructure had not been threatened. One project for a non-municipal private entity received funding for repairs to a breakwater although Department officials determined that in this case municipal infrastructure was also not threatened.

- One non-municipal organization received funding to replace a roof, however, a local service district community applied for funding to have a roof repaired and part of a building removed and this request was turned down as it was considered repairs and maintenance and not considered eligible for funding. We also found another example where a local service district was denied funding to replace the roof of their pumphouse as it was considered operational.

- In two instances, arenas received funding to purchase a refrigeration condenser and to replace equipment and purchase materials to improve the arena. These requests were approved, however, no reason for the approval was noted in the minutes. However, a request from another arena to assist with the cost of a dehumidifier was rejected, with the Finance Committee minutes stating that the nature of the request was outside the guidelines of the Program. Initially, one of the approved requests was rejected with the minutes stating that the request was considered outside the guidelines of the Program, however, this request was subsequently approved.

- In one instance, a municipality requested funding to install a new fire alarm system in order to obtain a liquor licence. Based on the regional review, the only reason this work was needed was to obtain the liquor licence. This request was rejected by the Finance Committee with no reason specified, however it was subsequently approved by the Executive Committee due to the fact that it was a multi-use building.

4. Inconsistencies in Approval Process

Introduction

The committees that review requests for funding have criteria to follow when reviewing these requests. We would expect to see consistency in the approval process and the type of projects awarded.

Inconsistencies in approval process

- We found one instance where the same grant request was reviewed by the Executive Committee on three separate occasions. A non-municipal project was initially deferred at a meeting held April 28, 2011 noting that further review by the Regional Director was required for this non-municipal request. At a meeting held on May 11, 2011 the request was rejected. The minutes stated that the Department does not have a program to provide funding to non-municipal organizations. At the meeting of September 16, 2011 the request was once again rejected by the Finance Committee, however, it was ultimately approved by the Executive Committee with no reason given for the change in decision.

- We found one non-municipal entity that had requested $2,167 for roof repairs which was initially rejected by the Finance Committee. The minutes stated that the Department does not have a program to assist with cost of repairs to buildings. However, this initial decision was changed in the Executive Committee Summary minutes and approved with no reason given for the change.

- We found one instance of a non-municipal organization that had requested assistance with the cost to repair the steps of a public heritage building. This request was denied by the Finance Committee and the Executive Summary Decision stated that the request was outside the guidelines of the Program. A second request was made by the municipality (as opposed to the non-municipal organization) to repair the same structure. The request was reconsidered in the Finance Committee minutes and it was once again rejected, however, it was approved in the Executive Decision Summary with no reason given for the approval.

Recommendations

The Department should:

- finalize program guidelines for the Special Assistance Grant Program;
- make the guidelines available on the Department's website; and
- comply with the guidelines in a consistent manner.

Department's Response

The intent of this program is to provide special assistance to municipalities and other entities for emergencies related to health and/or of a life safety nature; assistance to municipalities experiencing financial difficulties; general assistance to municipalities beyond the municipal budgetary process and special projects or initiatives involving municipalities, local service district committees or other entities.

The draft program guidelines were prepared to provide guidance in the assessment of applications for Special Assistance, consistent with the intent of the program; however, by their very nature, each request is unique and professional judgment is exercised in assessing these unique circumstances, generally after further discussions with the applicant. For example, a request for repairs that are operational in nature is generally rejected; however, if the request is from a municipality that has no ability to fund this repair and the Department considers it a legitimate and needed repair, it may approve this application. The intent of the program provides for this flexibility. The Department acknowledges, however, that improvements can be made in documenting these unique circumstances to more clearly support the Department's decision. The Department will also endeavor to finalize the program guidelines.

PART 3.11

DEPARTMENT OF NATURAL RESOURCES

FOREST INDUSTRY DIVERSIFICATION PROGRAM

Executive Summary

The Forestry and Agrifoods Agency within the Department of Natural Resources (the Department) was responsible for administrating the Forest Industry Diversification Program (the Program). The Program was established in 2008 to assist the forest industry to compete in the global economy and to identify and develop specific new products and market opportunities. The Program was to provide support for the stabilization of the forest industry including those existing operations which could provide satisfactory evidence of future viability and sustainability and encouraged the development, diversification and modernization of a sustainable forest industry in either the primary or secondary processing sectors.

As of March 31, 2012, the Department had provided a total of $15.6 million in loans, equity and grants under the Program for four projects undertaken by three companies.

Our review identified that the Department did not always administer the Program in accordance with established guidelines or that Program guidelines were insufficient in other areas. Our review identified issues with regard to:

- Approval and Assessment of Applications;
- Payments; and
- Monitoring.

Approval and Assessment of Applications

We reviewed 3 approved projects and found a number of weaknesses in the approval and assessment process as follows:

- The application and business plan for Company A was incomplete and did not include required information regarding related companies, debts owing to the Province and a detailed market analysis.
- $9 million in funding for Company A was approved even though the Department's assessment questioned the long-term viability of the project. In addition, the Department had not completed its assessment of the company's marketing plan for the approved project prior to $8.9 million being provided to the company.

- The Department did not request Cabinet approval, as required, for a $780,000 contribution to one project for Company B. Since the total contribution from the Program exceeded $500,000, Cabinet approval was required.

- The Department approved funding of $780,000 from the Program for a saw log production line although the technical diagnostic performed by an independent consultant did not include an assessment of this additional production line.

Payments

Our review identified the following issues with the project funding and the payments made to the applicants:

- The Department did not always ensure that all sources of funding were confirmed or that the applicant's contribution was actually invested in the project prior to the disbursement of funds.

- The Department did not have adequate guidelines related to determining which expenditures were eligible under the Program. For example, the Department permitted the companies to submit invoices that were dated prior to the date the application was submitted and also prior to the date the funding agreement was signed.

- The Department reimbursed Company A approximately $1 million related to claims that included the Harmonized Sales Tax (HST) on the invoices claimed. The HST was eligible for an input tax credit and was, therefore, recoverable from the Federal Government by the company. As a result, the Department paid the company approximately $1.0 million that should not have been considered an eligible expense of the project.

- The Program guidelines did not include policies and procedures to address related party transactions to ensure that the transactions were at fair market value and, therefore, the Program contributions were reasonable.

- Although Program guidelines normally limit funding to 80% of a project's total cost, for two projects, the Program funding exceeded 80%. For one project the Department funded 100% of the total approved project costs and for a second project, the Department funded 84%.

Monitoring

The Department was not adequately monitoring projects or business results to determine whether the applicants were in compliance with the terms and conditions of funding. Specifically, for Company A, additional debt was incurred and loans were provided to two related companies without written consent from the Department, as required.

The Department was not adequately monitoring each project outcome to determine if approved projects were a success or met the Program objectives. Specifically, the Program guidelines did not require applicants to report on the project final outcomes once the project was completed. Information such as the total project cost, employment generation, technologies created, economic benefits, or other performance measures were not captured and reported by the Department.

Background

Introduction

The Forest Industry Diversification Program (the Program) was established in 2008 to assist the forest industry to compete in the global economy and to identify and develop specific new products and market opportunities. The Program is administered by the Forestry and Agrifoods Agency within the Department of Natural Resources (the Department). The Program is designed to provide support for the stabilization of the forest industry including those existing operations that could provide satisfactory evidence of its future viability and sustainability. It is also intended to encourage the development, diversification and modernization of a sustainable forest industry in either the primary or secondary processing sectors.

Program expenditures

As of March 31, 2012, loans, equity and grants totaling $15.6 million had been issued under the Program. Table 1 shows the Program expenditures for fiscal years 2010 to 2012.

Table 1

Department of Natural Resources
Forest Industry Diversification Program Expenditures
Fiscal Years 2010 to 2012

Description	2010	2011	2012	Total
Expenditures				
Loans, advances and investments (Note 1)	$7,750,000	$3,700,000	$2,118,000	$13,568,000
Grants (Note 1)	1,200,000	700,000	100,000	2,000,000
Total	**$8,950,000**	**$4,400,000**	**$2,218,000**	**$ 15,568,000**

Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund
Note 1: $1.2 million expended in 2010 and $100,000 expended in 2012 were reported as loans, advances and investments by the Province; however, the $1.3 million were grant payments.

Oversight of the Program

The Program is administered by the Forestry and Agrifoods Agency's Forest Industry Diversification Advisory Committee (the Committee). This Committee is comprised of employees of the Department and the Department of Innovation, Business and Rural Development. Proposals for funding up to $500,000 can be approved by the Committee. Proposals in excess of $500,000 require the approval of Cabinet.

Program description

The Program was primarily intended to stimulate and attract investment in the forest industry, stimulate new value added product development and promote diversification into new sustainable markets. Funding priority was to be placed on projects that enhanced competitive capability, supported commercialization, expanded market opportunities and created economic growth and employment in the forest industry.

The Program objectives included:

- Enhancing the economic sustainability of the forest industry in the Province;
- Supporting commercialization and the introduction of new technologies and processes;
- Encouraging investment in value-added and secondary processing of commodities produced within the Province;

- Increasing job opportunities and economic growth within the forest sector through the development of new, or expansion of existing, forest industry businesses;

- Assisting in further expansion into export markets; and

- Providing net economic benefit to the Province without providing an unfair competitive advantage through the provision of funding.

The Program provided financial assistance by way of an interest free, repayable loan, an injection of equity in the form of a separate class of common shares or a non-repayable grant.

Program initiatives

The Program was divided into two main initiatives:

- The **Modernization** initiative provided financial support to forestry sector businesses which had identified a market that did not negatively impact on existing businesses in the Province, and had undergone a technical diagnostic and financial assessment that indicated potential for long-term viability and sustainability following an up-grade, improvement or enhancement to their plant or equipment.

  Funds from this initiative could be used for the acquisition, transportation and installation of fixed assets and working capital, including start-up expenses associated with the technology, purchase of inventory of raw material and other expenditures deemed eligible by the Department, provided it was essential to the success of the project.

- The **Innovation** initiative provided financial support to forestry sector businesses that had undergone a technical diagnostic, marketing and financial assessment which indicated potential for long-term viability and sustainability related to the introduction of an innovative product to the Province or the commencement of a secondary processing operation, either of which would utilize locally-grown wood. The business must show satisfactory evidence that they would be selling the innovative product or the production from a secondary process into a market without a negative impact on other Provincial businesses. The Department would assess the innovative and non-competitive nature of the project.

Funds from this initiative could be used for the acquisition, transportation and installation of fixed assets and working capital, including start-up expenses, purchase of inventory of raw material and other expenditures deemed eligible by the Department, provided it was essential to the success of the project.

Objectives and Scope

Objectives

The objectives of our review were to determine whether the Department:

- assessed and approved projects in accordance with the Program guidelines;
- ensured payments for funding were supported by required documentation and were properly approved; and
- monitored the conditions for funding and project results.

Scope

Our review was completed in November 2012 and included an examination of Program policies and procedures, minutes of the Forest Industry Diversification Advisory Committee, interviews with Department officials and a review of Department files.

Detailed Observations

Overview

Since the Program commenced in 2010, the Department contributed $15.6 million for four projects undertaken by three companies. Table 2 shows information on the approved projects and funds provided.

Table 2

Department of Natural Resources
Forest Industry Diversification Program
Payments

Company	Description	Total
Company A	Modernization of a saw mill and the construction of a wood pellet plant. The project also included financing for the purchase of wood from local loggers and the construction of a wood yard to hold the wood until the operation restarted.	$ 9,000,000
Company B Project 1	Modernization of a saw mill.	2,250,000
Company B Project 2	Purchase of a saw to establish another production line at a saw mill.	500,000
Company C	Modernization of a saw mill.	3,818,000
Total		**$15,568,000**

Source: Forestry and Agrifoods Agency

We reviewed three project files related to two companies, Company A and Company B. This report provides detailed findings and recommendations in the following sections:

1. Approval and Assessment of Applications
2. Payments
3. Monitoring

1. Approval and Assessment of Applications

Introduction

All applicants were required to submit an application, have a positive diagnostic assessment of their operation by an independent consultant, from a technical and a financial perspective, and submit a proposal or business plan to the Department for review and evaluation. The plan had to include the following:

- an overview of the business and the project;
- background of the business;

- ownership indicating the percentage of ownership of each partner or shareholder;

- details of the management team indicating any specific accreditations held, related experience and the remuneration of each member;

- detailed marketing plan indicating major customers, payment terms offered, direct competition and the competitive advantage held, as well as, the proposed method of distribution;

- production plan; and

- financial section including the following:

    - detailed breakdown of the proposed uses of funds supported by firm quotes required to complete the project, and the proposed sources of funds, along with confirmation of these sources of funds.

    - projected financial statements, including the assumptions used, for the 3 years following completion of the project.

    - projected cash flows, including the assumptions used, for the 36 months following completion of the project.

Applicants that were already operating a business were required to provide external accountant prepared financial statements or income tax returns for the last 5 years, personal net worth statements for all major owners and any other information deemed appropriate by the applicant or deemed necessary by the Department.

Applicants that intended to start a new business were required to provide personal net worth statements for all major owners and any other information deemed appropriate by the Department.

Our review of 3 of the 4 projects that were approved and funded identified the following:

Application information not complete

The application requires the applicant to list all associated and affiliated companies and any outstanding debts owed to the Province by the applicant and its related parties. Our review of the application for Company A identified that:

- while the application made reference to one related company, our review identified an additional two related parties; and

- the applicant reported $220,444 in outstanding debt owed to the Provincial Government by Company A. However, our review identified that the company also had $50,000 in equity financing (with established repayment terms) and a related company (not identified in the application) had an additional $500,000 in equity financing (with established repayment terms) owing to a Crown agency, which was not reported in the application.

Business Plan incomplete

A review of the projects' business plans was performed to determine if they included the required information and were properly assessed. Our review identified the following:

- For Company A, a personal net worth statement (undated) was provided by the applicant to the Department which included information only to 2005, however, the project application was received in June 2009. We would have expected that an updated net worth statement would have been received.

- Company A's business plan contained a marketing section, however, the section lacked details that would support the project's future sales. As a result, the Department requested that Company A submit a detailed marketing plan by March 31, 2010 as a condition of funding, however, this plan was not received by the Department until August 2010 at which point the Department had already contributed $8.4 million of the $9.0 million in approved funding. In addition, in a letter to the company in December 2010, the Department indicated that they had not yet finalized their assessment of the company's marketing plan and questioned if the company had any confirmation of markets. At this time $8.9 million had been contributed to Company A without an approved marketing plan which was required prior to any funds being disbursed.

- The Department accepted Company A's project proposal although it did not include any quotes or estimates for shipping or storing of the materials to be produced. In addition, in the Department's assessment of the proposal, officials identified that the transportation and shipment of the product in a cost effective manner would be an issue for the company. This issue had not been addressed by the Department prior to approving and funding the project. We note that since January 2012, the pellet plant has been idle due to a number of issues, one of which was inadequate shipping and storage capabilities.

Funding not properly approved

During the 2011 fiscal year, the Committee approved $500,000 in equity funding to Company B for a $780,000 saw log production line project. In addition, the Department approved the transfer of unused funds from Company B's first project, the modernization of its sawmill, approved at $2,250,000, in order to make up a $280,000 shortfall for the second project. As a result, the total Program funding for the second project was $780,000. Our review identified that, although the $280,000 loan transfer was originally approved by Cabinet under the company's first project for $2,250,000, the second project was different in scope and the Department should have requested Cabinet approval for the second project as the project funding totaled $780,000, which required Cabinet approval as it exceeded $500,000.

Program criteria not met

Under the Program guidelines, the Program was to provide financial support to businesses that had identified a market that did not negatively impact on existing businesses in the Province and that had undergone a technical diagnostic and financial assessment which indicated potential for long-term viability following an up-grade, improvement or enhancement to plant or equipment. This guideline was established to prevent businesses from using funds to expand operations by purchasing more equipment to increase production. Our review identified the following instances where, in our opinion, projects did not meet the Program objectives or assessment criteria as established by the Department:

- The Department approved $780,000 in funding to Company B for a saw log production line project even though the technical diagnostic performed by an independent consultant on Company B did not include an assessment of an additional saw log production line. Instead, the results of the technical diagnostic recommended various efficiency improvements.

- The Department provided $9.0 million in funding to Company A although issues related to long-term viability and sustainability of the project had not been adequately addressed. For example, the Department's assessment of Company A's proposal indicated that:

  - there would be issues with transporting the wood in a cost-effective manner which would be an impediment to the company;

  - the business strategy presented was based upon optimal production capacity versus a more reasonable in-depth market analysis;

  - there was no comprehensive market strategy reflecting both domestic and export market demands;

  - the company did not have the human resources or training to handle the expansion predicted; and

  - limited long-term planning was evident.

The assessment concluded that the Province would be taking a significant risk by approving the funding.

Confirmation of project costs not adequate

For Company A, the project proposal identified project costs totaling $11.7 million as outlined in Table 3.

Table 3

Department of Natural Resources
Forest Industry Diversification Program
Company A - Projected Costs
($ 000's)

Description	Amount
Pellet plant	$ 4,213
Upgrade sawmill	624
Kiln	750
Working capital	4,152
Wood yard	1,500
Marketing/Technical supports	471
Total Projected Costs	**$ 11,710**

Source: Offer of Funding

The Department's assessment of the project's cost estimates indicated they were lacking scope, and for some projected costs, only one estimate from one individual had been obtained. Later, during site visits, the Department indicated that the lack of scope in the proposal led to future cost overruns.

Recommendation

The Department should ensure project proposals are properly assessed before being approved to ensure all projects meet the criteria established for funding, required documentation is received and the long-term viability of a project is supported.

2. Payments

Funding

Funding was to be made available to forest industry producers and processors who had an active presence in the Province or, in the case of the innovation initiatives, also to those intending to commence forest industry production or processing. Funding was to be primarily provided to operators with a good record and an adequate financial position, as determined by the Department and supported by the Committee.

Successful applicants were eligible to receive funding dependent upon project size, other available sources of financing and the needs of the business. Normally, the amount of the funding was not to exceed 80% of the total project cost.

Financial assistance under the Program was to be provided by way of an interest free, repayable, loan, an injection of equity in the form of a separate class of common shares with all the rights of other common shareholders except the right to vote, and/or a non-repayable grant, depending upon the future circumstances of the business.

Loans would be repaid over a period not to exceed 15 years either in accordance with an established repayment schedule or based upon a percentage of positive annual cash flow. Similarly, equity would be redeemed by way of a percentage of positive annual cash flow for a period not normally exceeding 7 years.

Once an application was approved, an Offer of Funding was entered into between the Department and the applicant. The Offer of Funding stipulated the approved project costs and funding, applicable repayment terms, security details, contingent and underlying conditions of funding and important funding dates.

In addition, a funding agreement was also entered into between the Department and the applicant. Under the terms of the agreements signed with the companies, the Department set restrictions and limits on what could be purchased with the funds advanced for the project. This not only ensured that the funds would be used for the purposes that the Department intended, but also that any excess purchase of goods and services could be detected. The Department required that companies submit copies of invoices to support the use of the funds advanced.

Our review identified that the Department did not always determine whether sources of funding were confirmed, payments made to the applicants were in accordance with Program guidelines or approved funding conditions were met.

All sources of funding not confirmed

Table 4 provides the proposed sources of funding for Company A's project. The Offer of Funding required that prior to the disbursement of funds, the applicant would have to provide written confirmation that all proposed sources of financing had been approved.

Table 4

Department of Natural Resources
Forest Industry Diversification Program
Company A - Proposed Sources of Funding
($ 000's)

Source of Funding	Funding
Applicant investment	$ 458
Forest Industry Diversification Program interest-free loan	7,000
Forest Industry Diversification Program non-repayable grant	2,000
Green Fund non-repayable grant	1,000
Federal Government (ACOA)	1,252
Total Funding	**$ 11,710**

Source: Offer of Funding

Our review identified that all sources of funds were not confirmed prior to the disbursement of funds. Specifically:

Federal Government contributions not confirmed

The Department did not obtain the required written confirmation from ACOA for potential contributions totaling $1,252,000. The $1,252,000 in funding was to be comprised of a $500,000 loan towards the pellet plant and a $752,000 grant towards the wood yard. The grant was to be provided to a local regional economic development corporation which was supporting the project. The Department indicated in a January 2010 site visit report, two months after the project was approved, and at which time $2.8 million had been provided to the company, that the $500,000 loan from ACOA had been withdrawn and that ACOA's funding in total was to be $444,000, or $808,000 less than expected.

Applicant contribution not confirmed

Company A's Offer of Funding required the Department to confirm the applicant's contribution of $458,000 towards the project. According to the Department's assessment, the contribution from the applicant was to be comprised of $300,000 in equipment that had been purchased by the company, and $158,000 which would be borrowed against the equity of the company. Our review identified the following:

- The Department did not require the company to make its contribution prior to the Department disbursing its funding. Our review indicated that the applicant's contribution was an ongoing issue which was documented during several future site visits. For example, the Department reported in a June 11, 2010 site report that the applicant's contribution had been very little to date, however, the report stated that the applicant had indicated that its contribution would be evident before the project was complete.

- Our review did not identify documentation in the Department's project file to confirm the applicant's investment of $458,000. Upon enquiry, the Department provided a listing to support the applicant's contribution totaling $399,885 as of May 2011. A review of this listing indicated that $129,749 of the $399,855, related to the purchase of equipment ($114,677) and a plant manager's salary ($15,072) which had also been claimed by the company and already allowed as an eligible expense by the Department**.** Therefore, after subtracting the amounts that the Department had already reimbursed to the company, the applicant's contribution, as provided, would only be $270,136.

In addition, Company A was also eligible to receive HST rebates of approximately $1.0 million related to the costs funded by the Department and, as a result, it appears that the company did not contribute any of its own funds to the project.

- The Department stated that they stopped monitoring the applicant's contribution in May 2011.

Expenditures were made before agreements were signed

The Department did not have adequate guidelines covering what expenditures were eligible for Program funding. For example, the Department permitted the companies to submit invoices which were dated prior to the date the applications were received and also prior to the date the funding agreements were signed. Table 5 shows the value of invoices approved for payment which were dated prior to the application and agreement dates.

Table 5

Department of Natural Resources
Forest Industry Diversification Program
Invoices Dated Before the Application and Agreement

Project	Prior to Application Received		Prior to Agreement Signed	
	Application Date	Amount	Agreement Date	Amount
Company A	June 15, 2009	$252,876	October 29, 2009	$ 556,412
Company B - Project 1	December 22, 2008	53,688	October 26, 2009	1,094,210
Company B - Project 2	February 22, 2010	-	March 31, 2010	125,000
Total		**$306,564**		**$1,775,622**

Source: Forestry and Agrifoods Agency project files

As indicated in Table 5, the Department reimbursed $306,564 in invoices which were dated prior to the receipt of the applications and $1,775,622 in invoices which were dated prior to the date the agreements were signed.

Non-eligible expenses funded

Our review identified two instances where claimed expenditures should not have been considered for payment. Specifically:

- The Department reimbursed Company A approximately $1 million in Harmonized Sales Tax (HST) charged on eligible invoices. The HST was eligible for an input tax credit and, therefore, was recoverable from the Federal Government. Although the Program guidelines did not cover the claiming of HST, we note that for the other two projects we reviewed, HST was excluded from the eligible expenses. As a result, the Department reimbursed the company approximately $1 million that, effectively, they did not pay.

- In March 2010, Company A claimed, and the Department funded, $57,949 related to a 30% deposit on a piece of equipment. However, our review of claims and invoices submitted by the company to support the $1 million in funding approved under the Province's Green Fund administered by the Department of Environment and Conversation, identified that the same deposit was used in March 2010 to support a claim under that Program. Although the Department of Natural Resources was not responsible for the administration of the Green Fund, given that the funding was used for the approved project and was identified in the Offer of Funding, the Department should have determined what the $1 million in funding was used for.

Purchase of wood inconsistent with project proposal

The Department provided Company A with approximately $3.0 million in funding for the purchase of wood. Table 6 provides an overview of the proposed purchase of wood compared to the actual purchase of wood.

Table 6

Department of Natural Resources
Forest Industry Diversification Program
Company A - Wood Purchases
Cubic Metres (m^3)

Type of Wood	**Proposed**	**Actual**	**Variances**
Energy Wood	43,000	38,000	(5,000)
Sawlogs	14,000	20,200	6,200
Total Wood Purchased	**57,000**	**58,200**	**1,200**

Source: Site Visit Reports

As Table 6 indicates, the Department approved and paid for approximately 5,000 m^3 less in energy wood for the company's pellet plant operations and 6,200 m^3 more in sawlogs for its sawmill operations than that approved. As such, the Department funded expenditures that were not in accordance with the approved project.

Wood inventory not being processed

Our review of the site visit reports identified concerns with the wood inventory as follows:

- Company A's business plan indicated that the inventory of wood was to be drawn down and used over a period of 3 years, however, Department officials indicated that, given the amount of wood purchased, it was more likely that it would take in excess of 3 years to consume this wood which could affect the quality of the wood fibre.

- To prevent loss due to spoilage, the wood was to be managed such that it did not remain in inventory for more than 12 months, however, beginning in February 2010, the Department began expressing concerns that the volume of wood in the yard might prevent the company from properly managing its inventory.

No guidance provided on related party transactions

The Program guidelines did not include policies or procedures covering related party transactions. For example, Company A purchased approximately $1.8 million of its $3.0 million in wood inventory from a related party. While there is no indication that the value paid is greater than fair market value, in the absence of guidelines, there may be no assessment undertaken to determine whether this type of transaction is at fair market value and, therefore, the Program contributions are reasonable.

Inconsistent Program funding limits

Although the Program guidelines normally limit Program funding to 80% of total project costs, the Department funded two projects in excess of the 80%. For Company B's second project, the Program funded 100% and for Company C's project, 84% was funded.

In addition, the Program guidelines did not provide adequate guidance on the appropriate contribution level from an applicant. Our review of the funding for all four projects identified that the applicants' investment (based upon proposed project expenditures) ranged from 0% to 16%.

Table 7 shows the breakdown of funding as disclosed in the offers of funding.

Table 7

Department of Natural Resources
Forest Industry Diversification Program
Proposed Project Funding
(000's)

Description	Company A		Company B				Company C	
			Project 1		Project 2			
	Amount	%	Amount	%	Amount	%	Amount	%
Loans	$ 7,000	60	$2,250	86				
Loan transfer			(280)	(11)	$280	36		
Equity					500	64	$3,818	84
Grants	2,000	17						
Program funding	**9,000**	**77**	**1,970**	**75**	**780**	**100**	**3,818**	**84**
Other Provincial funding								
- Green Fund	1,000	8						
Federal funding (ACOA)	1,252	11						
Other financing			526	20				
Company's investment	458	4	125	5		0	704	16
Project Cost	**$11,710**	**100**	**$2,621**	**100**	**$780**	**100**	**$4,522**	**100**

Sources: Offers Of Funding

Recommendations

The Department should:

- confirm all sources of funding prior to project approval;
- develop Program guidelines that address the eligibility of expenses related to timing, HST, and related parties; and
- comply with Program guidelines related to funding percentages.

3. Monitoring

Introduction

Although the Program guidelines did not document specific procedures required to monitor the loans and investments made through the Program, the application, agreements, and offers of funding provided various monitoring procedures. Monitoring procedures included the submission of annual review engagement or audited financial statements, prior written consent by the Department for changes to underlying conditions and periodic access to the applicant's business records and facilities for account monitoring.

Our review identified issues in the following areas:

A. Monitoring of Underlying Conditions
B. Monitoring of Project Outcomes

3A. Monitoring of Underlying Conditions

The Department was not adequately monitoring projects or business results to determine whether the applicant was in compliance with the terms and conditions of funding. Specifically:

Additional debt incurred without prior written consent

The underlying conditions to the Offer of Funding for Company A indicated that the applicant was not permitted to incur any additional debt without the prior written consent of the Department. Our review identified that during the 2010 and 2011 fiscal years, Company A's long-term debt increased by $1,576,114. Although the Department consented to a $1.3 million loan from a Federal lending agency in 2011, there was no documentation on file to indicate that the Department provided prior written approval for the additional debt of $276,114 ($225,000 in 2010 and $51,114 in 2011).

Regarding the $1.3 million borrowed from a Federal lending agency in 2011, the Department received a request and agreed to a partial release on its first charge mortgage security on certain land that was held as security against its own $7 million loan. However, although the mortgage for the $1.3 million loan was entered into between Company A and the Federal lending agency on January 6, 2011, the partial release of the mortgage between Company A and the Province had not been signed as of November 2012. Department officials indicated that the loan proceeded based on the acknowledgement that the agreement was being drafted and it would be eventually signed.

Loans issued to related companies without prior written consent

The underlying conditions to the Offer of Funding for Company A indicated that the company was not permitted to make loans to, investments in, or guarantees on behalf of others without the prior written consent of the Department. Our review indicated that in 2011, Company A provided loans totaling $254,845 to two companies owned, or partially owned, by the principal owner of Company A.

Lack of policies for non-compliance with terms and conditions

There were no consequences included in the terms and conditions of funding to address instances of non-compliance. There was no documentation on file to indicate that the Department took any action for instances of non-compliance. Furthermore, there were no written policies regarding the procedures to follow if a client was not in compliance with the terms and conditions of funding or delayed the submission of information.

3B. Monitoring of Project Outcomes

The Department was not adequately monitoring each project's outcomes to determine if approved projects were a success or met the Program objectives. Specifically:

Monitoring of project's outcomes

The Program guidelines did not require applicants to report on the final outcomes once the project was completed. Information relating to the total project cost, employment generation, technologies created, economic benefits and other performance measures would assist the Department in reporting on the Program level of success in relation to the Program objectives.

Monitoring of project completion and project costs

Although the Province agreed to provide funding totaling $10.0 million (85%) for Company A's estimated project costs of $11.7 million, there was no documentation included in the project file to support the total actual costs for the project. The Department of Natural Resources had documentation to support its $9.0 million investment and the Department of Environment and Conservation had documentation to support its $1.0 million investment, however, there was no documentation on how other funds totaling $2.3 million was applied to the project. Specifically, Company A received funding totaling $1.3 million from a Federal agency and an HST rebate of approximately $1.0 million related to costs funded by the Department of Natural Resources. In total, these sources of funding, excluding the contribution from the applicant and ACOA funding, totaled $12.3 million for a project that was approved at $11.7 million.

Monitoring of project employment

Our review indicated that the Department did not monitor the employment created and maintained as part of its monitoring of approved projects to determine if projects achieved the expected outcomes.

For example, the Departmental assessment of the application from Company A recommended that the project be approved - recognizing that the request for assistance represented the only option to stabilize and maintain the entire industry on the Northern Peninsula, balanced against the risk associated with the loan. Given this recommendation, the Department's monitoring of employment would be key in determining the success of the project.

For Company A, the approved project was expected to create and maintain 322 jobs. Specifically, the project was expected to create 22 and maintain 42 permanent full-time jobs within the company, and maintain another 258 direct and indirect jobs outside of the company. We note that the company provided detailed payroll records to substantiate the claims submitted, however, the Department did not periodically report on jobs created and maintained in its site visits reports and file memos.

Recommendations

The Department should:

- monitor the underlying conditions within each Offer of Funding to ensure conditions are being met; and
- monitor and report on Program and project outcomes to ensure that Program objectives are being met and actual project results are in line with expected project results.

Department's Response

The Department of Natural Resources – Forestry and Agrifoods Agency has reviewed the findings and recommendations of the audit conducted by your office of the Forest Industry Diversification Program (FIDP) (specifically the administration of the Industry Diversification Fund, FIDF) in the areas of Approval and Assessment of Applications, Payments and Monitoring. It is the opinion of the Department that the program was delivered in a responsible and effective manner while exercising due diligence. The Department of Natural Resources acknowledges the comments of the Auditor General and offers the following comments for clarification.

Approval and Assessment of Applications

The Department acknowledges that one of the applicants for funding under the FIDF omitted information on related companies; however this was identified during the financial analysis included within the Presentation of Funding. The committee was made aware of these findings and incorporated the information into their decision for funding approval.

The Department acknowledges awarding an extension of business plan delivery dates and change of scope for one of the FIDF applicants. Given the scope of the project and the changes within the identified markets (Europe), such occurrences were deemed acceptable. It was recognized that product development must be reactive to market conditions and in the case of non-traditional forest products the difficulties of getting a product to market are great. This factored into awarding the extension.

The Department feels that the FIDF committee adhered to the guidelines of funding approval. All four projects under the fund were properly assessed, with Cabinet Approval sought where required under the program guidelines. While variances were evident between individual applications, all program criteria were met. Each project contained elements of Modernization or Diversification within the forest products sector. The funding approval process was guided by a sawmill technical diagnostic of each operation performed by an external authority. Ideas and suggestions generated by the proponents themselves were also eligible for consideration. The risk associated with new project development was identified and incorporated into funding analyses.

The Department acknowledges and shall abide by the recommendation that additional diligence be given to assessment of applications to ensure all documents are provided. The assessment of long-term viability of projects is somewhat difficult under the current climate of production of forest products. The Department will strive to improve its knowledge base to assist in these assessments through the engagement of professional forest products expertise (such as that of FP Innovations).

Payments

The Department was confident that the level of Federal Government contributions for one of the FIDF projects was firm at the time of application review and approval. Federal Government's partial withdrawal of funds was unfortunate and resulted in the re-evaluation of project funding options by the proponent. These events, were outside of the control of the FIDF committee and occurred after funding approval was granted.

The Department is confident that the level of required contributions for all projects funded under the FIDF has been met. It is acknowledged that timelines for demonstrating applicant contribution for one of the projects was extended. Given that this project continues to evolve with funding provided or sourced by the applicant the Department is confident that all contributions have been met.

The Department acknowledges that permission was granted to applicants to make expenditures before final agreements were signed. The rationale was based on cost savings that were realized which dramatically improved the financial position of the projects. The applicants were advised of the risk associated with the expenditures in the event that final funding approval was not granted. All expenditures were reviewed by the Department and deemed to be directly related to the individual FIDF proposal.

The Department acknowledges that closer accounting practices should have occurred between the Industry Diversification Fund and the Green Fund which both contributed to one of the FIDP projects.

The Department acknowledges that variances in the level of wood purchases under one of the projects occurred. These variances did not impact the level of funding provided and were made to improve the financial position of the project. It should be recognized that projected volumes at time of project submission were estimates based on local forest inventories and specific saw log specifications. The minor changes in delivered volumes reflect real life occurrences associated with harvesting operations and lumber sales, and did not impact employment levels or funding thresholds.

The Department recognizes that delays in startup for one of the projects may increase the projected length of time for storing wood. What impact this may have on the quality and calorific value of wood pellets produced is yet to be determined.

The Department acknowledges that third party purchases of wood were made for one of the projects, however these where identified in the initial proposal. The rates used for the transactions were the same as all other permit holders; fair market value.

The Department acknowledges that contribution levels varied from project to project as each project was assessed on individual merit, the proponent's financial position and proposed in-kind contribution. There was no absolute threshold identified in the program guidelines as the Department recognized the differences that existed between the potential proponents. The success of the program would have been limited should there not have been room to make such allowances.

The Department shall adhere to the recommendations in regards to confirming all sources of funding as well as enhancing and adhering to program guidelines to address eligible expenses, related parties and funding percentages.

Monitoring

The Department acknowledges that paperwork on the revised security for a loan from BDC with one of the proponents is outstanding. This shall be addressed in 2013. In regards to the two smaller loans obtained from related companies the Department acknowledges that no written approval was granted and that these loans were not identified until the review of year end financial statements. The intent to develop a related startup company (pellet stove sales) by the proponent was known by the Department, however the amount invested was not identified until review of year end financials.

The Department acknowledges that there were no written policies in regards to non-compliance with terms and conditions.

The Department continues to monitor all projects funded under the FIDF. Of the four funded only two are completed to date with the other two progressing. Once completed each shall be assessed for project outcomes, total costs and projected employment levels. It should be recognized however, that the forest industry has undergone significant changes in the past four years (lumber markets, stalled US economy, and devaluation of the Euro all impact sales and markets). Thus, variances to projected estimates are anticipated and certainly well beyond the control of the proponent or the FIDF committee.

The Department shall review and monitor the underlying conditions of each individual offer of funding to ensure conditions are being met. The Department shall also continue to monitor each project, however expected project results must be balanced with an ever changing economy. Long term projects must remain flexible and accommodations for allowances made, which will improve the success of the investment as well as the proponent's ability to repay GNL's investments.

PART 3.12

SERVICE NL

GOVERNMENT PURCHASING AGENCY - *PUBLIC TENDER ACT* EXCEPTIONS

Executive Summary

The Government Purchasing Agency (the Agency) is responsible for both procurement of goods and services for government departments and oversight of public sector procurement. As the centralized procurement unit for the Government of Newfoundland and Labrador, the Agency conducts its procurement activities in accordance with the *Public Tender Act* (the *Act*). The Agency derives its operational authority from the *Government Purchasing Agency Act* which places "*immediate management and control*" with the Chief Operating Officer of the Agency. The Agency reports to the Minister of Service NL.

Although the *Act* makes public tendering a requirement when acquiring goods or services, the *Act* does specify instances when tenders are not required. These instances are commonly referred to as "tender exceptions".

The *Act* stipulates that the Chief Operating Officer is responsible for reporting certain types of tender exceptions to the Speaker of the House of Assembly.

The *Act* provides the Chief Operating Officer with the ability to review "*…the grounds on which a government funded body determined that a tender was not required to be invited...*" As well, the Agency has developed internal guidelines that specify how to conduct procurement audits and assess the appropriateness of tender exceptions.

Our review of *Public Tender Act* exceptions identified issues with regard to:

- Reporting of tender exceptions;
- Review and adjudication of tender exceptions; and
- Conducting risk-based audits and follow-up audits.

Reporting of Tender Exceptions

We found that instances of late, non-complaint reporting of tender exceptions by government funded bodies are not being adequately addressed by the Agency.

Review and Adjudication of Tender Exceptions

Our review of the process used by the Agency to review and adjudicate public tender exceptions revealed:

- Inappropriate application of the tender exceptions by government funded bodies;
- Inadequate adjustments of tender exceptions by the Agency; and
- The process for sending letters of opinion from the Agency to government funded bodies is not in compliance with the Act or internal Agency policy.

Conducting Risk-based Audits and Follow-up Audits

We found that risk-based audits or follow-up audits, as required by Agency guidelines, are not being conducted.

Background

Agency Overview

The Government Purchasing Agency (the Agency) is responsible for both procurement of goods and services for government departments and oversight of public sector procurement. As the centralized procurement unit for the Government of Newfoundland and Labrador, the Agency conducts its procurement activities in accordance with the *Public Tender Act* (the *Act*). The Agency derives its operational authority from the *Government Purchasing Agency Act* which places "*immediate management and control*" with the Chief Operating Officer of the Agency. The Agency reports to the Minister of Service NL.

The *Act* defines a government funded body to include the following types of entities:

- all government departments;
- a company in which not less than 90% of the issued common shares are owned by the Crown;

- a corporation established by an Act which the corporation is made an agent of the Crown (Nalcor Energy and its subsidiaries, and the Research & Development Corporation of Newfoundland and Labrador are exempt from the *Act*);
- a municipality or local service district under the *Municipalities Act*, the City of Mount Pearl, the City of St. John's and the City of Corner Brook;
- a school board established under the *Schools Act;*
- an agency or authority of the Province;
- a hospital included in the Schedule to the *Hospitals Act*, and
- a board, commission, corporation, Royal Commission or other body listed in the Schedule to the *Act*.

Organization

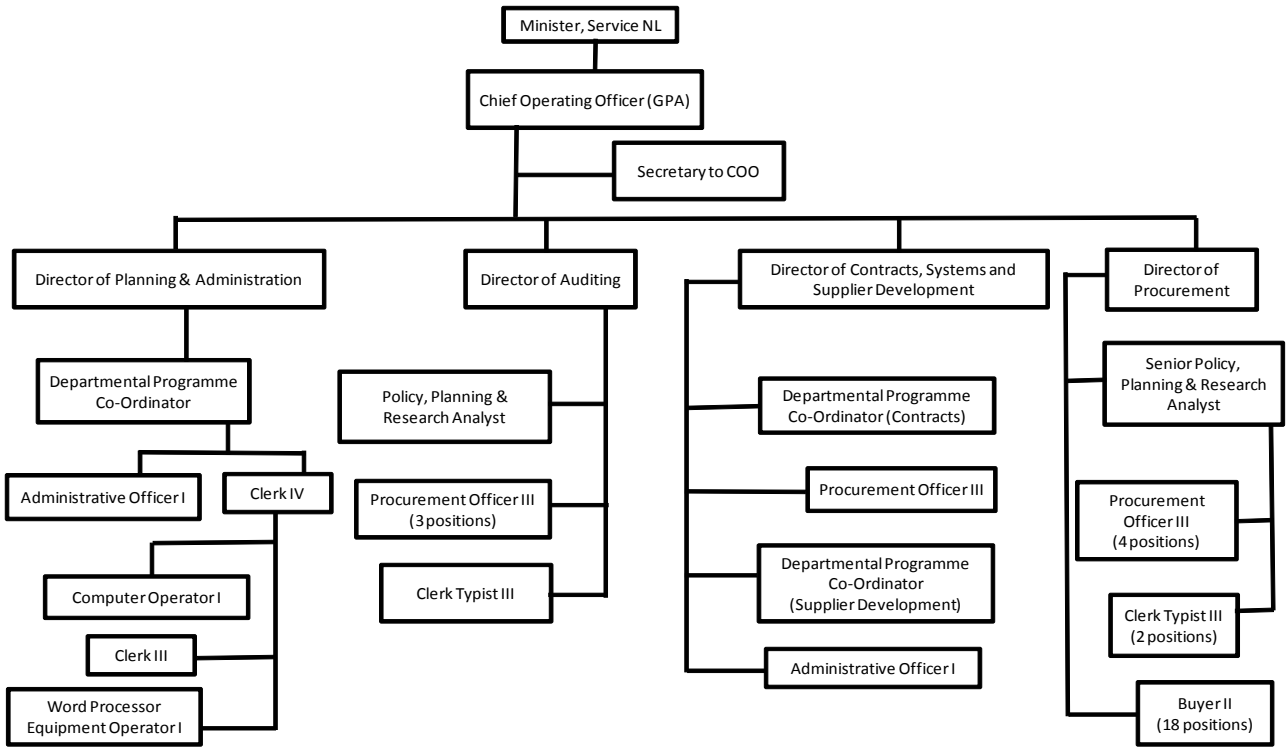
The Agency is comprised of four divisions:

- Procurement;
- Audit;
- Contracts, Systems and Supplier Development; and
- Planning and Administration.

The Agency has a total staff of 46, as shown in Figure 1.

Figure 1

Government Purchasing Agency
Organizational Structure



Source: The Government Purchasing Agency

Audit Division

The Audit Division (the Division) is responsible for assisting in the promotion of the accountability and proper application of procurement legislation throughout the public sector. The Division derives its direction from its Auditing Training Manual (the Training Manual). According to the Training Manual, the Division is responsible for a number of activities, including:

- auditing purchases made by government funded bodies;
- reporting tender exceptions to the House of Assembly in accordance with the *Act*; and
- reviewing the basis on which government funded bodies determine that a tender is not required.

Public Tender Exceptions

Section 3. (1) of the *Act* states that: "*Where a public work is to be executed under the direction of a government funded body or goods or services are to be acquired by a government funded body, the government funded body shall invite tenders for the execution or acquisition.*"

Although the *Act* makes public tendering a requirement when acquiring goods or services, the *Act* does specify instances when tenders are not required. These instances are commonly referred to as "tender exceptions".

Table 1 details the tender exceptions specified within section 10 of the *Act* that are required to be reported to the Speaker of the House of Assembly.

Table 1

Government Purchasing Agency
Tender Exceptions
Detailed in Section 10 of the *Act*

***Public Tender Act* Exception**	**Description**
3(2)(b)	Where the estimated cost of a work or acquisition is not more than $25,000, exclusive of tax and it appears to the head of the government funded body that tenders do not need to be invited.
3(2)(d)	In the case of a pressing emergency, where the delay resulting from inviting tenders would be injurious to the public interest.
3(2)(e)	Where the dealer, supplier or contractor providing the work or acquisition is the only source for that work or acquisition.
3(2)(i)	Where the work or acquisition is for an economic development purpose in the opinion of the Minister of Innovation, Business and Rural Development and subject to the approval of the Lieutenant-Governor in Council.

***Public Tender Act* Exception**	**Description**
3(2)(j)	Where, in the opinion of the head of the government funded body, inviting a tender would not result in the best value. Approval by the Lieutenant-Governor in Council required.
4(1)(b)	Where the rental value of the space is no more than $30,000 exclusive of Goods and Services tax, and it appears to the head of the government funded body that, given the nature of the lease, it is not advisable to invite tenders.
4(1)(d)	There is an urgent need for the government funded body to: • vacate existing space and insufficient time is available to invite tenders; or • vacate existing space because continued use of the space is deemed injurious to employees or the public.
4(4)	A lease for space that was originally publicly tendered and contains a provision for a renewal option may be renewed with the approval of the Treasury Board, providing the area of the renewed space is less than or the same as the space leased in the original lease. The area of space held under a lease may be reduced with the approval of the Treasury Board: • in accordance with the terms of the original lease; or • where the terms do not exceed the fair market value for that leased space.
4(5)	A lease for space that was not originally publicly tendered or that was originally publicly tendered without a provision for a renewal option and a lease for an increase of the area of leased space may be renewed or entered into with the approval of the Lieutenant-Governor in Council; • in accordance with the terms of the original lease; or • on terms where the terms do not exceed the fair market value for the leased space.

Source: *Public Tender Act*

Table 2 compares the total annual tender exceptions, as detailed in section 10 of the *Act*, reported to the Speaker of the House of Assembly for the period April 1, 2007 to March 31, 2012. Table 2 also details the exceptions as a percentage of the total annual expenditures.

Tender Exceptions by Fiscal Year

Table 2

Government Purchasing Agency
Annual Tabled Tender Exceptions,
as Detailed in Section 10 of the *Act,*
as a Percentage of Total Annual Expenditures
For the Years Ended March 31

Fiscal Year Ended March 31	Total Tender Exceptions $	Number of Tender Exceptions	Total Expenditures $	Tender Exceptions as a % of Total Annual Expenditures
2008	89,009,725	1,268	5,703,522,000	1.56%
2009	86,818,768	1,285	6,281,561,000	1.38%
2010	87,528,405	1,459	7,329,353,000	1.19%
2011	132,843,331	1,725	7,539,302,000	1.76%
2012	102,770,186	1,471	7,809,344,000	1.32%

Source: Contracts Reported By Government Funded Bodies Without Tender Invitation, as provided by the Government Purchasing Agency and the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund.

Recent development

The Government is proposing new legislation to replace the *Public Tender Act.* The *Procurement by Public Bodies Act* was introduced in the 47th General Assembly and received first reading on March 5, 2012.

Objectives and Scope

Objectives

The objectives of our review were to determine whether:

- instances of contract awards without tender invitation, as permitted by section 10(1) of the *Act*, were reported to both the Chief Operating Officer of the Agency and the House of Assembly within the specified reporting time requirements noted within the *Act* and *Regulations*;
- the Agency reviewed and challenged the basis upon which government funded bodies determined that a tender exception was valid;
- the Agency monitored the procurement environment for risk factors to assist in the development of an annual risk-based audit schedule; and
- the Agency conducted follow-up audits of government funded bodies.

Scope

Our review was completed in December 2012 and covered the period April 1, 2007 to March 31, 2012.

We selected a sample of 67 reported tender exceptions and reviewed each item for legislative compliance and to assess the level of adjudication performed by the Agency. Our review also included interviews with Agency officials and an analysis of relevant legislation, policies and procedures.

Detailed Observations

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

1. Reporting of Tender Exceptions
2. Review and Adjudication of Tender Exceptions
3. Conducting Risk-based Audits and Follow-up Audits

1. Reporting of Tender Exceptions

Overview

The *Act* allows government funded bodies to execute a public work or acquire goods and services without an invitation for tenders under specific circumstances. In such instances, the government funded bodies are required, under section 8 of the *Public Tender Regulations* (the *Regulations*), to submit documentation to the Agency giving the reasons why a tender was not invited. This submitted documentation is referred to as a "Form B".

Government funded bodies are comprised of all government departments and all other government organizations (hereinafter referred to as "non-departmental bodies") within the government reporting entity with only two exceptions (Nalcor Energy and its subsidiaries and the Research & Development Corporation of Newfoundland and Labrador).

Section 8 of the *Regulations* requires non-departmental bodies to submit Form Bs to the Agency *"…within 30 days of the awarding of the contract…"* Furthermore, section 10. (1) of the *Act* requires the Chief Operating Officer of the Agency to submit a report detailing all Form B related exceptions to the Speaker of the House of Assembly for tabling "*…within 30 days after receipt of notification of the awarding of the contract…*" or "*…if the House of Assembly is not then in session, within 30 days from the opening of the next session.*"

Our review indicated the following issues with the reporting of tender exceptions.

Form Bs not submitted to the Agency on time

Of the 67 Forms Bs sampled, 48 were submitted by non-departmental bodies. Of the 48 non-departmental Forms Bs reviewed, we noted 26 instances of late submissions. These late submissions ranged from 26 to 382 days.

Discussions with Agency officials indicated that the Agency does not track instances of non-compliant submissions of Form Bs. Furthermore, the Agency does not communicate instances of late Form B submissions to the heads of the applicable non-departmental bodies.

By not notifying non-departmental bodies in instances when Form Bs are submitted late, the Agency is failing to promote proper application of procurement legislation within the public sector, thereby diminishing the timeliness and relevancy of the information being reported to the House of Assembly.

Form Bs are reported late to the Speaker of the House of Assembly

When the House of Assembly is in session, the Agency has 30 days from receiving a Form B to report the exception to the Speaker of the House. We would expect the Agency to have a system in place for reporting Form Bs that would achieve compliance with the *Act*. However, our review revealed that the Agency waits until the end of the month before preparing a draft exception report for internal review and approval by the Director of Auditing; thereby increasing the likelihood of not getting Form Bs to the Speaker of the House of Assembly within 30 days. Our sample testing identified 10 instances of late Form B submissions to the Speaker of the House of Assembly.

Form Bs not date stamped

As previously indicated, the *Act* and *Regulations* stipulate two deadlines relating to the reporting of tender exceptions. We would expect the Agency to date stamp every Form B upon receipt to ensure compliance with the reporting requirements contained within the *Act* and *Regulations*.

Of the 67 Form Bs sampled, 30 were not date stamped; thereby reducing our ability to assess for reporting compliance.

Recommendations

The Government Purchasing Agency should:

- inform heads of the non-departmental bodies when Form Bs are submitted late;
- institute a system for reporting Form Bs that achieves compliance with the *Act*; and
- ensure that Form Bs are date stamped upon receipt.

2. Review and Adjudication of Tender Exceptions

Overview

When a Form B is received from a non-departmental body, the Agency will then forward the Form B to the Audit Division.

When a Form B is received from a government department, the Agency will forward the Form B to a procurement officer. The procurement officer will assess the validity of the tender exception, and if satisfied, will authorize the purchase order within Government's Financial Management System. The Form B is then forwarded to the Audit Division.

The Audit Division will review the exceptions for completeness and then input the information into a database. After all Form Bs for the month have been verified for accuracy, completeness and clarity, a summarized, monthly exception report is prepared and submitted to the Speaker of the House of Assembly for tabling.

Table 3 details the number of tender exceptions reported to the Speaker of the House of Assembly for the period April 1, 2007 to March 31, 2012.

Tender exceptions by type

Table 3

Government Purchasing Agency
Number and Percentage of Tender Exceptions,
For the Years Ended March 31

Public Tender Act Exception	Form Bs Submitted									
	2008		2009		2010		2011		2012	
	#	%	#	%	#	%	#	%	#	%
3(2)(b)	32	2.5%	22	1.7%	34	2.3%	15	0.9%	15	1.0%
3(2)(d)	144	11.4%	153	11.9%	211	14.6%	251	14.6%	105	7.1%
3(2)(e)	1,065	84.0%	1,057	82.3%	1,172	80.3%	1,427	82.6%	1,266	86.1%
3(2)(i)	1	0.1%	5	0.4%	9	0.6%	2	0.1%	0	0.0%
3(2)(j)	4	0.3%	2	0.2%	2	0.1%	5	0.3%	1	0.1%
4(1)(b)	14	1.1%	30	2.3%	26	1.8%	14	0.8%	69	4.7%
4(1)(d)	4	0.3%	4	0.3%	2	0.1%	1	0.1%	5	0.3%
4(4)	4	0.3%	8	0.6%	2	0.1%	8	0.5%	6	0.4%
4(5)	0	0.0%	4	0.3%	1	0.1%	2	0.1%	4	0.3%
Total	**1,268**		**1,285**		**1,459**		**1,725**		**1,471**	

Source: Contracts Reported By Government Funded Bodies Without Tender Invitation, as provided by the Government Purchasing Agency and the Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund

Table 3 indicates that over 80% of all submitted Form Bs are “sole source” exceptions.

During our review, we identified issues in the following areas related to the review and adjudication of tender exceptions:

A. Review of Tender Exceptions
B. Adjudication of Tender Exceptions

2A. Review of Tender Exceptions

Inappropriate pressing emergency exceptions

Our review of Form Bs indicated that government funded bodies did not always apply section 3(2)(d) of the *Act*, the pressing emergency exception, appropriately. Of the 67 Form Bs reviewed, 13 were categorized as a pressing emergency and, in 6 of the 13 instances, we considered that rationale to be inappropriate. For example:

- Anti-virus software ($72,664.53): this pressing emergency exception was approved by the head of the non-departmental body on March 25, 2010 and related to the renewal of an anti-virus software license agreement that expired on March 31, 2010. In our view, the entity purchasing the software license had sufficient opportunity prior to the expiry of the current anti-virus software, and should have issued a tender;

- Audio visual equipment for the 2009 Royal Visit ($33,700): the department was aware of the visit and had sufficient time to invite a tender;

- Staff relocation services ($10,752.28): the department cited that there was "*not enough time for public tender due to start date of employment*", yet the department was still able to obtain three quotes, raising doubt on the validity of the emergency; and

- Meeting space and meals for departmental training sessions at a local St. John's hotel ($20,544.63). As per the Form B, by the time the department realized that the original meeting place would not be able to accommodate all of the training participants, there was insufficient time to issue a tender. This shortened time period meant that only one of the hotels in the local area could accommodate the department's training space requirements. In our view, the department should have conducted more upfront planning so as to better predict the number of course participants. Furthermore, the Form B did not explain how a deferral of the training sessions in order to allow for a tender to be called would be "injurious to the public interest".

Economic development exception missing Ministerial opinion

Section 3(2)(i) of the *Act* provides for a tender exception for economic development. The exception is only valid when the Minister of Innovation, Business, and Rural Development and the Lieutenant-Governor in Council are of the opinion that the work is required for economic development purposes. Our sample identified one economic development exception. Upon review of the exception, we discovered there was no documentation to support the opinion of the Minister of Innovation, Business and Rural Development.

Inappropriate sole source exceptions

Our review indicated that government funded bodies did not always apply section 3(2)(e) of the *Act*, the sole source exception, correctly. Of the 67 Form Bs reviewed, we found 48 instances where the sole source exception was reported and in 5 of these 48 instances, we would consider the rationale to be inappropriate. For example:

- In all of the five instances the contract awards were for electronic black/ whiteboards for educational purposes ($288,497), however, the sole source exemption for the awards was based on a specific brand of product, rather than unique product attributes.

2B. Adjudication of Tender Exceptions

Insufficient challenging of exceptions

The Audit Division is responsible for seeking clarifications on Form Bs in instances when the rationale is not clearly stated.

Our review indicated the Division did not always seek clarification. Of the 67 Form Bs sampled, we identified 42 instances where further clarification was required, yet the Division did not seek a further explanation. Also, our review indicated the Agency files did not contain sufficient documentation to fully substantiate the reasoning why the stated tender exceptions were warranted. By not seeking clarification in instances where it is required, Agency oversight and accountability related to the reporting and adjudication of tender exceptions is diminished.

Non-compliant reporting of letters of opinion

As per section 10. (2) of the *Act*, *"The Chief Operating Officer of the Government Purchasing Agency may review the grounds on which a government funded body determined that a tender was not required to be invited….and express his or her opinion to the head of the government funded body with respect to the sufficiency of the grounds for not inviting a tender."*

Consequently, the Agency does conduct periodic reviews of submitted tender exceptions. The Training Manual provides further direction on the challenge process:

"During the review process, if it is determined that further information is needed to assess the conditions under which a contract was awarded, a formal Challenge letter is forwarded to the head of the government-funded body or designate requesting additional documentation and/or meeting. The information obtained during the investigation process is evaluated with information previously received to determine whether an opinion will be given. Opinion letters are sent to the head of the government funded body and a copy is forwarded to the Chief Operating Officer."

Sending both the pre-review challenge and final opinion letters to the heads of the government funded bodies provides the Agency with the opportunity to directly communicate any identified issues relating to the application of the tender exception legislation to the individuals ultimately in charge of the purchasing environment.

We reviewed a sample of Agency-issued opinion letters and discovered that the Agency is not sending either the pre-review challenge letters or final opinion letters to the heads of the government funded bodies. Our review indicted that the letters are being sent to either the Managers of Supply Chain Management or to the Director of Financial Services.

This chosen method of reporting by the Agency is not in compliance with the *Act* or its own Training Manual and diminishes the level of accountability within the government-wide procurement environment.

Recommendations

The Agency should:

- improve its clarification and adjudication procedures of Form Bs;
- ensure files possess sufficient documentation supporting both the adjudication process and the rationale supporting the tender exception; and
- address both the challenge and opinion letters to the heads of the government funded bodies.

3. Conducting Risk-based Audits and Follow-up Audits

Overview

According to the Training Manual, when developing its annual audit strategy, the Audit Division must develop a "Risk Based" audit schedule by assessing the purchasing activities of the government funded bodies.

We would expect the Agency to have developed a risk-based audit strategy to focus on the areas that possess the greatest risks to the public sector purchasing environment. A risk-based strategy would start with first identifying the key risks.

We would expect the following key risk factors to be monitored and factored into the annual risk-based audit schedule:

- late submissions of Form Bs to the Agency;
- instances where the contract award date noted on the Form B is before the authorization/signing date by the head of the government funded body;
- instances of incomplete Form Bs;
- higher number of reported exceptions; and
- instances of questionable application of the tender exceptions noted in the *Act*.

At the completion of an audit, the Training Manual requires that the Audit Division conduct a follow-up audit within two years. Follow-up audits provide opportunities for the Agency to evaluate whether recommendations have been implemented by the government funded bodies and to promote compliance with the *Act*.

No risk-based auditing

Discussions with officials in the Audit Division revealed that the Division does not follow a risk-based audit methodology. Consequently, the Division is not tracking the key risk factors related to the reporting of tender exceptions and incorporating these factors into the annual audit strategy.

For example, in a review of 67 Form Bs submitted by government funded bodies, there were 23 incidences identified where the contract was awarded prior to the head of the body authorized the Form B. Although this is not required by legislation, it does demonstrate a heighted risk for non-compliance. Discussions with Agency staff indicated that the Division is not tracking incidences where the contract award date is before the date the Form B is signed.

By not considering or incorporating the risk factors relevant to the tender exception process into their audit methodology, the Division diminishes its ability to promote the proper application of procurement legislation throughout the public sector.

No follow-up audits being conducted

Our review indicated the Division is not conducting follow-up audits. As a result, the Agency is not properly evaluating the corrective actions of the government funded bodies where audits have been completed; thereby limiting its ability to measure compliance with procurement legislation.

Recommendations

The Agency should:

- develop a system for monitoring the key risk factors pertinent to the application and reporting of tender exceptions;
- incorporate these risk factors into the development of an annual risk-based Audit Schedule; and
- conduct follow-up audits after the initial audit to determine compliance.

Agency's Response

1. Reporting of the Tender Exceptions

Form B's not submitted to the Agency on time *- The responsibility for ensuring Form B's are submitted to the Agency for reporting to the House of Assembly lies directly with the head of the government-funded body. Upon receipt of a Form B the Agency records the information and at the end of the month compiles a report for submission to the House of Assembly. The Agency has formally reviewed this process in the past and has notified the heads of the government-funded bodies on instances of late submission and their requirements under the legislation. The Agency believes this supports an accountable and open process.*

Form B's are reported late to the Speaker of the House of Assembly *- As Form B's are received by the Agency, the information is entered into its database and monthly reports for the House of Assembly are compiled. Reports that have been compiled when the House is not in session are submitted within 30 days after the opening of the House in accordance with the legislation. Reports continue to be compiled monthly when the House is in session and reported the following month. This practice has been on-going since the inception of exception reporting in 1987 and provides for a timely and accountable reporting process.*

Form B's not date stamped *- This is an administrative detail that does not affect the timeliness of the reporting in accordance with the legislation. The Agency's records indicate that there is verification on the file as to when the Form was received at the Agency.*

2A. Review of Tender Exceptions

Inappropriate use of pressing emergency exceptions *- Heads of government-funded bodies are responsible for the acquisition of goods and services in accordance with the* Public Tender Act *and* Regulations. *The Agency is made aware of acquisitions made by government-funded bodies without a tender call, after the acquisition has been made, through the reporting of the Form B. It is the responsibility of the Head of the government-funded body to assess the appropriateness of the use of the exception. The Agency conducts reviews of exceptions to determine if those exceptions are necessary. An opinion with respect to the sufficiency of the grounds for not inviting a tender will be provided to the government–funded body if deemed necessary.*

Economic development exception missing Ministerial opinion *- The approval to use the economic development exception - 3(2)(i) is obtained through the opinion of the Minister of Innovation Business and Rural Development (formerly Innovation Trade and Rural Development) subject to Lieutenant Governor in Council approval. This is a formal process directed by government and the Agency views any exceptions that use the economic development exception under this formal process.*

Inappropriate use of sole source exceptions *- As with above**,** the heads of government-funded bodies are responsible for the acquisition of goods and services in accordance with the* Public Tender Act *and* Regulations. *It is the responsibility of the Head of the government-funded body to assess the appropriateness of the use of the exception. The Agency conducts reviews of exceptions to determine if those exceptions are necessary and will offer an opinion to government-funded bodies with respect to the sufficiency of the grounds for not inviting a tender if it deems it necessary.*

2B. Adjudication of Tender Exceptions

Insufficient challenging of exceptions *- In accordance with the* Public Tender Act *the Agency **may** review the grounds on which a government-funded body determines that a tender was not required. The Agency reviews Form B's that are submitted by government-funded bodies and requests further information from these entities where, in its professional opinion, it is deemed necessary. The Agency does formally challenge exceptions where required. Based on its procurement expertise the Agency is satisfied that all exceptions are challenged where appropriate.*

Non-compliant reporting of letters of opinion *- The Agency issues letters of opinion to officials within the organization who have been delegated procurement authority by the head of the government-funded body. This allows for issues to be addressed immediately by the entity to ensure any required action is taken in a timely fashion. The Agency considers this to be in accordance with the spirit and intent of the* Act.

3. Conducting Risk-Based Audits

The Agency performs audits of government-funded bodies within its legislative responsibility to determine whether an entity has issued tenders where required and if tenders were not issued to determine whether these acquisitions were reported in accordance with the Public Tender Act.

The Agency breaks down government-funded bodies into larger and smaller bodies. The larger government-funded bodies are reviewed regularly especially those which traditionally have a greater amount of funds expended. Additionally, the Agency reviews smaller bodies in a regular schedule to determine compliance to the Act.

Since these audits are performed often the opportunity exists to determine whether past recommendations have been followed and to what degree and to follow up with government-funded bodies on proper procurement procedures if necessary.

Government Purchasing Agency - *Public Tender Act* Exceptions

PART 3.13

SERVICE NL

INSURANCE ADJUSTERS, AGENTS AND BROKERS REGULATION

Executive Summary

The Financial Services Regulation Division (the Division) of the Consumer and Commercial Affairs Branch of Service NL is responsible for regulating individuals and companies that provide financial products and services to the public.

The Director of the Division is appointed as Superintendent of Insurance under the *Insurance Companies Act.* As Superintendent, the Director has statutory responsibility to regulate the insurance adjusters, agents, and brokers segment of the financial services industry as defined under the *Insurance Adjusters, Agents, and Brokers Act* (the *Act*). This would include licensing of adjusters, agents, and brokers, compliance by adjusters, agents, and brokers with ongoing and annual requirements, and handling customer inquiries, complaints and investigations as defined under the *Act* and the *Insurance Adjusters, Agents, and Brokers Regulations* (the *Regulations*).

As at April 11, 2012, there were 381 licensed insurance agents, brokers, and adjustment companies, and 3,988 licensed insurance adjusters, and representatives.

Our review identified a number of concerns with respect to the regulation of insurance adjusters, agents, and brokers within the Division. In particular, our findings included the following:

Through our review of licensing compliance under the *Act* and Regulations we found that:

- Annual filings were submitted late or were unprocessed; and
- Terminated licences were not returned to the Department.

Through our review of the financial filings we found that:

- Licensees' financial reports were not submitted, were submitted late, or incomplete; and,
- The Superintendent of Insurance exceeded his authority by only requiring annual financial filings to be submitted by licensees that maintained trusts.

Through our review of whether on-site examinations were performed in a systematic manner we found that:

- The risk assessment process for licensees was informal and undocumented; and
- There were no on-site examinations performed during the period of April 1, 2010 to March 31, 2012.

Through our review of whether there were performance measurement and monitoring standards in place to guide the regulation process we found that:

- There were no performance measures or reporting requirements; and
- Policies and procedures were not well defined.

Background

Overview

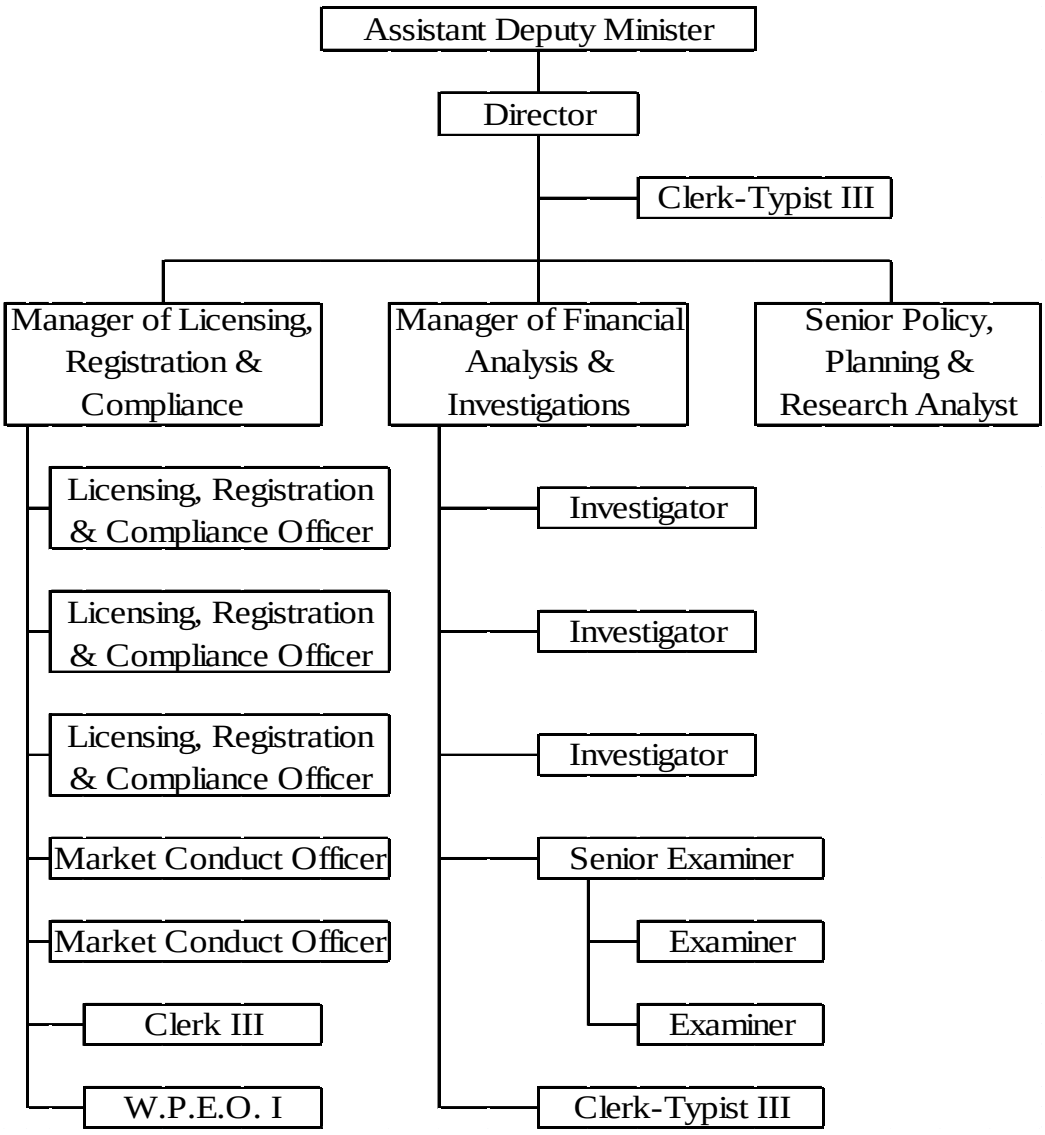
Service NL (the Department) provides a variety of services to the public including licensing and inspections related to public health, public safety, environmental protection, and the provision of vital documents.

The Financial Services Regulation Division (the Division) of the Consumer and Commercial Affairs Branch is responsible for regulating individuals and companies that provide financial products and services to the public. The Division regulates licences, and registration services for Provincial financial services activities such as insurance, securities, pension plans, real estate, mortgage brokers, and prepaid funeral services.

The Division has a staff of 19 involved in financial services regulation, as shown in Figure 1.

Figure 1

Service NL
Financial Services Regulation Division
Organizational Chart



Source: Service NL

The Director of the Division is appointed as Superintendent of Insurance under the *Insurance Companies Act.* As Superintendent, the Director has statutory responsibility to regulate the insurance segment of the financial services industry. The legislation applicable to this segment of the financial services industry is the *Insurance Adjusters, Agents and Brokers Act* (the *Act*) and the *Insurance Adjusters, Agents, and Brokers Regulations* (the *Regulations*).

Under the *Act* and the *Regulations*, the Superintendent has discretionary powers to refuse to issue a licence, to suspend, cancel or revoke a licence or to place conditions on a licence. As at April 11, 2012, there were 381 licensed insurance agents, brokers, and adjustment companies, and 3,988 licensed insurance adjusters, and representatives.

Regulation includes control over entrance to the industry, compliance by adjusters, agents and brokers with ongoing, and annual requirements, handling of customer enquiries, complaints, and investigations of allegations of improper conduct.

For the year ended March 31, 2012, the Division had expenditures of approximately $1.3 Million. Table 1 outlines the expenditures of the Division from fiscal years 2009 through 2012.

Table 1

Service NL
Financial Services Regulation Division
Expenditures for the years ended March 31
(000's)

Expenditure	2009	2010	2011	2012
Salaries and Benefits	$944,725	$1,121,582	$1,161,142	$1,174,712
Transportation and Communications	44,755	38,026	39,748	31,798
Supplies	13,937	15,938	7,813	8,324
Professional Services	28,416	30,778	7,126	-
Purchased Services	16,139	17,815	62,946	73,091
Property Furnishings and Equipment	9,103	2,566	3,134	1,539
Grants and Subsidies	25,655	-	-	-
Total Expenditure	**$1,082,730**	**$1,226,705**	**$1,281,909**	**1,289,464**

Source: Report on the Program Expenditures and Revenues of the Consolidated Revenue Fund

Objectives and Scope

Objective

The objective of our review was to assess the regulation of insurance adjusters, agents, and brokers by the Financial Services Regulation Division of Service NL to determine whether:

- Licensing and financial reporting were in compliance with the *Insurance Adjusters, Agents, and Brokers Act* and *Regulations*;
- On-site examinations were performed in a systematic manner; and
- Performance measurement and monitoring standards were in place to guide the regulation process.

Scope

Our review covered the period April 2010 to April 2012. It included interviews with personnel within the Division along with an examination of legislation, regulations, policy and procedure and other documentation within the Department. Our review was completed in April 2012.

Detailed Observations

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

1. Licensing
2. Financial Reporting
3. On-site Examinations
4. Performance Measurement and Monitoring
5. Other Findings

1. Licensing

Overview

Under the *Regulations* there are several different licences issued by the Division. These licences may be summarized into 3 types, with each type having between 2 and 3 categories, and each category having between 1 and 5 classifications, as outlined in Table 2.

Table 2

Regulation of Insurance Adjusters, Agents and Brokers
Number of Licences by Type, Category, and Classification
April 11, 2012

Type	Category	Classification	Licensed
Insurance Adjusters	Adjuster	Adjuster Level I	147
		Adjuster Level II	108
		Adjuster Level III	25
		Adjuster Level IV	288
	Adjustment Company	Adjustment Company	16
Life (including Accident and Sickness Insurance)	Life (excluding Accident and Sickness Insurance)	Representative	1,015
		Representative Level II	1
		Representative Level III	283
		Agent	84
		Broker	89
	Accident and Sickness Insurance	Representative	223
		Agent	9
		Broker	5
Travel Insurance Agent	Travel Insurance Agent	Travel Insurance Agent	14
Property and Casualty Insurance	Property and Casualty Insurance	Representative	1,045
		Representative Level II	131
		Representative Level III	722
		Agent	27
		Broker	132
Special Insurance Broker	Special Insurance Broker	Special Insurance Broker	5

The *Regulations* outline the process required to be followed to obtain each classification of licence, including the educational, experience, and sponsorship requirements.

Licensees are required to submit annual filings in accordance with the *Act*. The annual filings are due throughout the year, depending on when the individual licences were originally issued. These filings are used to maintain up-to-date records of vital licensee information including: the address of the licensee and the sponsor, if applicable, and confirmation that the appropriate insurance coverage, as required by the original application, remains in effect.

For property and casualty representatives, the sponsor can be a property and casualty agent or broker or an insurer operating in the same industry and licensed under the *Insurance Companies Act.* The *Regulations* state that "*the sponsor shall not sponsor more than five property and casualty insurance representative Level I licensees for each property and casualty insurance representative Level II or Level III licensee that they sponsor.*"

The *Regulations* state that individuals holding an Adjuster Level I through Adjuster Level III licences must be sponsored by the holder of an Adjuster Level IV. Also, the *Regulations* state that Adjuster Level IV licence holders cannot sponsor more than five Adjuster Level I licensees.

To obtain a licence as a representative or an adjuster, an applicant must submit an application and provide proof of sponsorship, educational qualifications, and proof of sufficient professional liability insurance. For corporate or partnership licences, the applicant must provide proof of registration under the *Corporations Act*, a copy of its Articles of Incorporation, and proof of fidelity and errors and omissions insurance.

At the Division, when an application is received the Licensing Officer should ensure that the educational criteria are met and that the application and other information requirements are complete. If these criteria are met, the licence certificate is generated and forwarded to the applicant with a copy kept on file.

Upon cancellation of the licence a letter is sent to the licensee requesting the return of the licence. When a cancelled licence is returned it is to be filed in the registry.

Our review identified the following issues in this area:

Annual filings were submitted late

During November 2011, we selected a sample of 20 valid licensee files and found that 2 of the 20 (10%) licensees submitted their annual filings late by 18 and 47 days respectively.

Annual filings unprocessed or overdue

As part of the Division's responsibilities in the administration of the *Act* and the *Regulations*, it maintains the Automated Licensing and Enforcement Tracking (ALERT) system. This system tracks and reports valid licensees as well as the processing date for the annual filings related to those licensees. The database does not provide the information to determine when the annual filings are received, only when the filings are processed. Therefore, it is not possible to determine from the ALERT system if the filings are late or unprocessed.

We obtained a report at two points during the period of our review.

Report Date	Valid Licences	Unprocessed or Overdue Filings	Percentage Unprocessed or Overdue
April 18, 2011	3,893	327	8%
April 11, 2012	4,369	363	8%

Our analysis of this data revealed the following:

- As at April 18, 2011, 70 of the 327 (21.4%) annual filings were unprocessed or overdue for more than 100 days.
- As at April 18, 2011, 147 of the 327 (45%) annual filings were unprocessed or overdue for more than 30 days.
- As at April 11, 2012, 46 of the 363 (12.7%) annual filings were unprocessed or overdue for more than 100 days.
- As at April 11, 2012, 178 of the 363 (49%) annual filings were unprocessed or overdue for more than 30 days.

The ALERT system does not track the dates that the reports were received, therefore, the Division was not able to readily monitor whether the reports were received or how long it took to process the reports.

ALERT not updated for unlicensed licensees

The *Regulations* require that all sponsors of licensees be themselves licensed under the *Insurance Companies Act* or the *Insurance Adjusters, Agents, and Brokers Act.* The ALERT system contains sponsor information for each licensee. We obtained a report on sponsors at two points during the period of our review and compared the list of sponsors to a list of valid licences issued under both Acts.

Report Date	Valid Licences	Number of Sponsors	Sponsors without a valid Licence	Licensees sponsored by Unlicensed Sponsors
April 18, 2011	3,892	224	3	5
April 11, 2012	4,369	259	1	1

Although the ALERT system reported that these were licensees sponsored by unlicensed sponsors, Division officials indicated that the licences are automatically suspended when the sponsors licence is suspended per the *Act* and that the ALERT system does not automatically update and had not been manually updated to reflect the suspensions.

Terminated licences not returned

During our review we examined the 3 licence suspensions and 4 licence terminations on record in the Division's computer system. We found the following:

- None of the terminated licences had been returned to the Department as required by the *Act*.
- 1 of the files related to a suspended licence did not contain documentation indicating that the licensee had been notified of their suspension. Department Officials indicated that the licensee was incorrectly identified as suspended in the ALERT system.

Recommendation

The Department should ensure that licensing is in compliance with the *Act and Regulations* including annual filing requirements, sponsorship requirements, and terminated licence requirements.

2. Financial Reporting

Overview

The *Act* and *Regulations* outline the financial reporting requirements to which agents, brokers, special insurance brokers and representatives must adhere as a condition of their licence. The *Act* also provides the Superintendent of Insurance, or a representative, with the authority to examine or audit the records of an agent, broker or representative.

The *Act* states that: "*An individual, a partnership or corporation licensed as a representative, agent or broker shall* (emphasis added) *present annually to the superintendent not later than 3 months after the fiscal year end of the representative, agent or broker, a statement of the financial affairs of the insurance business of the licensee in a form* (emphasis added) *prescribed by the superintendent for the period then ended.*"

The Superintendent of Insurance has prescribed certain financial reporting requirements through the Agent Broker Financial Reporting Requirements. The Superintendent has determined that these financial reporting requirements are only required to be submitted by the licensees that maintain trust funds.

Further to these provisions of the *Act*, the *Regulations* require agents, brokers, special insurance brokers and representatives to maintain current accounting records, in accordance with generally accepted accounting principles, showing the financial affairs of their business. The only exception is where a representative is an employee of another representative, broker, agent, or insurer.

The *Regulations* also outline the following additional requirements:

- an agent, broker, special insurance broker and representative, other than a representative who is an employee of them (or an insurer), shall be required, upon the request of the Superintendent, to provide a current audited financial statement within 60 days after written request.

- an agent, broker, special insurance broker or representative may be required to file a statement of financial affairs in a form prescribed by the Superintendent at the times the Superintendent considers necessary. In accordance with this provision, the Superintendent requires each licensed agent or broker to file an unaudited semi-annual report within 60 days after the first six months of each fiscal year. The report would consist of the "Balance Sheet - Trust Fund" as at the end of the second quarter, prepared by the company and certified by management. The unaudited semi-annual reports are only required to be submitted by licensees that maintain trust funds.

The *Act* requires agents, brokers, or representatives to maintain a trust fund for all funds which they have received, or are receivable, on behalf of:

- an insurer from members of the public, less the commission and other deductions authorized by the insurer in writing; and

- members of the public from an insurer.

If an agent, broker, or representative is required to maintain a trust fund the *Regulations* require them to: "*maintain current trust account records and prepare a monthly reconciliation of all trust accounts showing trust assets and liabilities and shall keep appropriate documents to verify trust account transactions.*"

The Division maintains a financial filings database that was developed internally by its staff. This database is designed to track the various documents which licensees are required to provide.

We obtained a copy of this database at two points during our review, April 28, 2011, and April 4, 2012.

Our review identified the following issues in this area:

Superintendent of Insurance exceeding authority

The Agent Broker Financial Reporting Requirements prescribed by the Superintendent of Insurance provides that the annual statement of financial affairs will only be required from licensees *"when a licensee does not need to maintain a trust account because the trust funds are either made payable directly to the beneficiary within three business days of receipt and has filed the prescribed Declaration, there will be no requirement for financial statements of either the general fund or the trust fund"* For licensees that maintain trust funds, the Superintendent requires the annual statement of financial affairs to include audited financial statements for both the General and Trust Fund(s) and an auditors' opinion on compliance with the legislation relating to trust accounts and financial statements.

The Superintendent of Insurance does not have the authority to exclude licensees from the requirements of *Sections 33(1)* and *33(2)* of the *Act*, which state that all licensees, except those who are employees of an insurer, broker or agent, shall submit a statement of financial affairs. In our view, the *Act* allows the Superintendent to prescribe the form of the statement but does not provide the flexibility to waive the requirement.

2011 annual statements of financial affairs not submitted, submitted late, or incomplete

The receipt of the required financial reports from agents, brokers, special insurance brokers and representatives on a timely basis is intended to provide the Division with the information that it needs to effectively monitor and analyze the financial affairs of these licensees on a timely basis. In particular, it should allow the Division to determine whether licensees are maintaining the required trust funds and promptly take corrective action where necessary. This information is also important in the identification of licensees for further investigation or on-site examination.

The Division used the database as at April 28, 2011 to track 75 licensees in 2011 that maintained trust funds, and were required by the *Act* to submit annual statements of financial affairs. Our review indicated that:

- 15 of the 75 (20%) licensees being tracked had not submitted the annual statement of financial affairs.
- 60 of the 75 (80%) licensees tracked had submitted the annual statement of financial affairs. However:
    - 48 of the 60 (80%) licensees that had submitted annual statements of financial affairs were noted by the Division as incomplete. Details are as follows:

Year	Licensees that provided a submission	Missing Audited Balance Sheet - Trust Fund		Missing Auditors Report on Compliance		Missing Audited Financial Statements	
		#	%	#	%	#	%
2011	60	43	72%	37	62%	35	58%

    - 30 of the 60 (50%) licensees being tracked had submitted the annual statement of financial affairs after the deadline. The submissions were late between 1 and 91 days, with the average being 27 days.

2012 annual statements of financial affairs not submitted, submitted late, or incomplete

The Division used the database as at April 4, 2012 to track 75 licensees in 2012 that maintained trust funds and were required by the *Act* to submit annual statements of financial affairs. Our review indicated that:

- 42 of the 75 (56%) licensees tracked had not submitted the annual statement of financial affairs.
- 33 of the 75 (44%) licensees tracked had submitted the annual statement of financial affairs. However:
    - 21 of the 33 (64%) licensees that had submitted annual statements of financial affairs were noted by the Division as incomplete. Details are as follows:

Year	Licensees that provided a submission	Missing Audited Balance Sheet - Trust Fund		Missing Auditors Report on Compliance		Missing Audited Financial Statements	
		#	%	#	%	#	%
2012	33	14	42%	15	45%	11	33%

- 15 of the 33 (45%) licensees being tracked had submitted the annual statement of financial affairs late. The submissions were late between 1 and 113 days, with the average being 33 days.

As a result, the Division did not receive all the required annual financial reports from licensees or received them late. As well, when the financial reports were received, they were often incomplete. As a result, the Division's ability to effectively monitor licensees and ensure they were maintaining the required trust funds was impaired, possibly resulting in the Division failing to take corrective action where necessary.

Negative trust balances present risk to public

The trust balance represents the net funds the agent or broker has received, or is receivable, on behalf of either an insurer from its clients or its clients from an insurer. A negative balance indicates that the agent or broker owes insurers or its clients more money than is available in the trust account.

- 3 of the 75 (4%) licensees had annual statements of financial affairs which, according to the Division's database as at April 28, 2011, had negative trust balances.
    - 2 of the 3 annual statements of financial affairs were submitted late by 7 and 28 days respectively. Also, 2 of the 3 annual statements of financial affairs were noted as incomplete.
- 2 of the 75 (3%) licensees had annual statements of financial affairs which, according to the Division's database as at April 4, 2012, had negative trust balances. 1 of these 2 annual statements of financial affairs were noted as incomplete.

Negative trust balances may result in a client not receiving money to which they are entitled, or may indicate possible going concern issues with the broker or agent.

2011 semi-annual trust fund balance sheets not submitted, submitted late or incomplete

The same 75 licensees as at April 28, 2011, were required by the Superintendent to submit semi-annual trust fund balance sheets and a certification from the agent's or broker's management. Our review indicated that:

- 5 of the 75 (7%) licensees had not submitted the semi-annual trust fund balance sheet.
- 70 of the 75 (93%) licensees had submitted the semi-annual trust fund balance sheet.
    - 12 of the 70 (17%) licensees that had submitted semi-annual trust fund balance sheets that were noted by the Division as incomplete. Details are as follows:

Year	Licensees with submissions	Trust Fund Balance Sheet		Management Certification Missing	
		#	%	#	%
2011	70	1	1%	12	17%

    - 43 of the 70 (61%) licensees were late submitting the semi-annual trust fund balance sheet. The submissions were late between 2 and 147 days, with the average being 38 days.

2012 semi-annual trust fund balance sheets not submitted, submitted late or incomplete

The same 75 licensees as at April 4, 2012 were required by the Superintendent to submit semi-annual trust fund balance sheets and a certification from the agent's or broker's management. Our review indicated that:

- 21 of the 75 (28%) licensees had not submitted the semi-annual trust fund balance sheet.
- 54 of the 75 (72%) licensees had submitted the semi-annual trust fund balance sheet.
    - 5 of the 54 (9%) licensees that had submitted semi-annual trust fund balance sheets that were noted by the Division as incomplete. Details are as follows:

Year	Licensees with submissions	Trust Fund Balance Sheet		Management Certification Missing	
		#	%	#	%
2012	54	1	2%	5	9%

- 29 of the 54 (54%) licensees were late submitting the semi-annual trust fund balance sheet. The submissions in 2012 were late between 20 and 203 days, with the average being 44 days.

The Division did not receive all the required semi-annual financial reports from licensees or received them late. As a result, the Division's ability to effectively monitor licensees and ensure they were maintaining the required trust funds was impaired, possibly resulting in the Division failing to take corrective action where necessary.

Negative trust balances in 2011 present risk to public

In addition, 2 of the 70 (3%) licensees had a semi-annual trust fund balance sheet which, according to the Division's database as at April 28, 2011, had negative trust balances. The semi-annual trust fund balance sheet was submitted 24 and 28 days late respectively.

Recommendation

The Department should enforce the licensee financial reporting requirements by the required deadlines and review the reports to ensure compliance with requirements.

3. On-site Examinations

Overview

The *Act* provides the authority for the Department, through the Superintendent of Insurance, to inspect any licensee's financial records to determine whether there is compliance with the *Act.* The Financial Analysis and Investigation section of the Division is responsible for performing financial monitoring, analysis activities, on-site examinations and investigations to detect, on a timely basis, the improper use of trust funds and ensure compliance with the *Act*, *Regulations*, and related policies.

We would expect to see a risk based system in place to assess the priority and frequency of licensee examinations. A risk based system would improve the Division's ability to appropriately assess risk and allocate their limited examination resources in an optimal manner. A risk based approach to examinations could include an assessment of the following:

- the financial information related to the licensee, in particular, the extent of any trust funds maintained by the licensee;
- the sales volume of the licensee and the number of clients served;
- the past history with the licensee (the extent of late or incomplete financial filings);
- the extent and nature of complaints received regarding the licensee; and
- the examination and investigation history associated with the licensee.

The Financial Analysis and Investigations section has developed an examination program, consisting of 125 procedures and sub-procedures designed to determine whether licensees are in compliance with the *Act*, *Regulations*, and related policies. These procedures include determining whether licensees have:

- employees selling insurance who are not licensed under the *Act*;
- maintained current and appropriate accounting records, in particular accounting records related to trust funds;
- required insurance and deductible amounts in place; and
- not pledged trust assets as security on banking and/or loan agreements.

We would expect that these procedures would have been followed for all examinations.

Our review indicated the following issues:

Risk assessment process informal and undocumented

Officials of the Division indicated that there was no formal risk based system in place to identify, assess and document the risk that each licensee poses to the public. Rather, officials indicated that they used the information contained in their financial filings database, in an informal manner, to assess whether licensees may require further examination.

However, our review indicated that the Division did not receive all the required financial reports from licensees or received them late; and when the financial reports were received there were cases in which they were incomplete. Therefore, the Division's approach to assessing whether licensees require further examination may result in its examination resources not being allocated in a manner which maximizes consumer protection as it could be based on late or incomplete information.

No on-site examinations performed

Officials indicated that there were no on-site examinations of insurance adjusters, agents or brokers performed during the 2011 and 2012 fiscal years due to the Division choosing to focus its examination activity on the other financial services industries regulated by the Division.

Recommendations

The Department should:

- develop a risk based system to identify, assess and document the risk for each licensee to determine the priority and frequency of examination activity; and

- perform on-site examinations of licensees, in accordance with the risks identified, to ensure compliance with the *Act*, *Regulations*, and related policies.

4. Performance Measurement and Monitoring

Overview

We would expect to find well defined performance measures relating to insurance adjuster, agent, and broker regulation within the Division. These performance measures would be included as part of the performance measures for the financial services regulation within the Division. These measures should form part of a divisional operating plan. Performance measures may include: expected complaint processing time, expected application processing time, frequency of examinations and frequency and content of management reports.

A Divisional operational plan would contain information specific to the Division. This plan would contain goals, objectives, measures, and indicators for the goals and objectives, necessary actions and reporting requirements.

A Divisional operational plan would enable the Division to focus its activities towards achieving strategic goals and objectives. The plan would be necessary to determine whether the Department's Strategic plan objectives are being met and are a necessary part of a good system of accountability.

We would also expect established reporting requirements, within the Division, 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.

Our review indicated the following issues with performance monitoring and reporting:

No performance measures or reporting requirements

The Department had not established either performance measures or reporting requirements for the Financial Services Regulation Division (with the exception of financial services activities related to securities). Upon enquiry, Division officials could not provide any performance reports for the Division, except for reports related to securities.

Furthermore, there was no operational plan in place for the Division.

Recommendations

The Department should:

- establish performance measures and reporting requirements for all areas of Financial Services Regulation; and
- create an operational plan for the Financial Services Regulation Division.

5. Other Findings

Policies and procedures not well defined

The *Act* outlines the Department's responsibility relating to the regulation of insurance adjusters, agents, and brokers in the Province.

We would expect to see well defined policies and procedures within the Department to help ensure compliance with the *Act* and the *Regulations*. These policies and procedures would address receiving, recording, and processing of applications, assessing annual filings for continued compliance, allocation of examination resources, and defining the procedures to be completed during on-site examinations.

Our review indicated that, although some information relating to several of these areas are on the Department's website, the Department had not developed and communicated comprehensive policies and procedures in all areas of financial services regulation. As a result, there was an increased risk of non-compliance with legislation within the Division, non-compliance amongst licensees remaining undetected, as well as inconsistent treatment of licence applicants, and licensee monitoring.

ALERT operations manual not maintained

The Automated Licensing and Enforcement Registration Tracking (ALERT) system is a customized application used by the Division for application and licence processing.

We would expect to see the application and licence processing system information documented in an operations manual. This manual could be used by staff as an aid to understand the system and would provide policies and procedures to follow. In addition, we would expect the manual to be updated for any changes in policy, processes or procedures.

ALERT database integrity and maintenance issues

The ALERT system was implemented by the Department in 1993, and has had few major changes since that time. During our review we noted the following issues with the system:

- An operations manual was not being maintained by the Division.
- Data validation and entry errors are manually reviewed and corrected. An automated system should identify and report entry errors for review and correction. A manual process should not be required to detect and correct errors as this process could lead to further errors.
- Data comparisons relevant to monitoring the *Act* and the *Regulations* could not be produced through the system's default menus. For example, a comparison of a list of sponsors to the list of licensees was not present by default. Therefore, it is possible an unlicensed sponsor could sponsor a licensee and remain undetected.
- Records with inaccurate information were present in system. For example, there were no data checks built into the system and information important to the monitoring of licensing could not be consistently entered, as there were no fields built into the system for certain information.
- Reports produced by the system could be incomplete. For example, during our review we noted reports that, after analysis, provided a different list of valid licensees than the systems-generated report. The list we produced through analysis showed more valid licensees than the report produced in ALERT, possibly leading to deficiencies in monitoring by the Division.
- According to Division Officials, users cannot set their own passwords, therefore, user passwords are set by the system administrator. This presents a significant security risk to the system.

Recommendations

The Department should:

- develop and communicate documented policies and procedures for all areas of financial services regulation, including the ALERT system; and

- review the ALERT system's structure to ensure data accuracy and validity.

Department's Response

Licensing

Annual filings were submitted late or were unprocessed

Service NL views late filings and unprocessed filings as two separate issues.

In the 1990s, the licensing requirements shifted from issuing licenses on an annual basis with an annual expiry date to issuing licenses that do not expire annually but are subject to annual filing requirements. Failure to file the required annual filings results in the cancellation of the license. The current licensing process was designed to enable staff to manage the volume of work while not unnecessarily prohibiting a person from working in the industry solely because their annual filing is not processed as soon as it is received.

Licensees who fail to file their annual return by the required date receive a registered letter notifying them their license will be cancelled if the filing is not made within 21 days. Service NL will review internal processes, given the current IT system, to determine whether processing can be completed on a more efficient and timely basis.

ALERT not updated for unlicensed licensees

When Service NL suspends a license and that licensee is a sponsor for other licensees, all sponsored licensees are automatically suspended at the same time the sponsor's license is suspended. This automatic suspension is provided for in the Insurance Adjusters, Agents and Brokers Act.

Service NL advises that the recording of licenses that are automatically suspended in the ALERT system is a manual process; while every effort is made to minimize the frequency of human error, the non-recording of the suspended licenses in the ALERT system was an oversight by staff. Staff have been advised of the report findings and the need to ensure these automatic suspensions are recorded in the ALERT system.

Terminated licenses were not returned to the Department

Service NL advises that its current process when suspending or cancelling a license is to provide a copy of the suspension or cancellation notice to both the licensee and the licensee's sponsor which advises that the licensee will be prohibited from continuing to carry on business in the insurance industry. The Department believes this provides good disclosure to the sponsor and recognizes it may be difficult to enforce the physical return of terminated licenses.

Service NL currently discloses who holds a valid license on its web site, enabling both the public and the industry to determine if an individual or company is licensed.

Financial Reporting

The Superintendent of Insurance exceeded his authority by only requiring annual financial filings to be submitted by licensees that maintain trust accounts

Service NL is reviewing this issue with its solicitor and will take appropriate action to address the issue, if necessary. Service NL is of the opinion that the intent of the financial filings requirement is directed to insurance agents and brokers that hold consumer premiums in trust accounts for a period of time before forwarding them to the insurance company and is not directed at licensees that do not maintain trust accounts. Based on this interpretation, since the enactment of the legislation the practice has been to only require annual financial filings to be submitted by licensees that maintain trust accounts. As noted in the report, there is a separate part in the Regulations dealing with trust funds that indicate a company does not have to put consumer premiums in a trust account where the premiums are paid over to the insurance company within three business days.

Licensees' financial reports were not submitted, were submitted late or incomplete

For annual filings, Service NL advises the issues relate to the requirement to provide independent auditor's reports on compliance with the legislation and on the company's financial operations. The majority of companies that maintain trust accounts file financial information that indicate all trust funds are indeed in trust. Financial reports that show otherwise are reviewed to determine the reason why and corrective action is taken wherever necessary. For semi-annual filings, Service NL advises that the issues mainly relate to the required certification by company officials of the accuracy of the financial information or the information not being filed in the required format. Financial information is filed that show all trust funds are indeed in trust and reports that show otherwise are reviewed accordingly and action taken as necessary.

Service NL acknowledges that some companies have not filed financial information as required by legislation, or submitted late or incomplete reports. This is unacceptable to Service NL and all of these cases are followed up on. However, Service NL notes that most of these companies are companies incorporated in another jurisdiction that are required to file trust fund financial information with the regulator in its home jurisdiction.

On-site Examinations

The risk assessment process for licensees was informal and undocumented and no on-site examinations were performed during the period of April 1, 2010 to March 31, 2012

The current regulatory approach for trust funds places an onus on the agents and brokers that maintain trust funds to have an external auditor verify annually they have handled trust funds appropriately and for the auditor's report to be filed with Service NL. These agents and brokers are also required to file semi-annual trust position reports. This approach allows Service NL to readily identify any risks to trust funds and deal with the risks in a timely manner through enquiry, an on-site examination where deemed necessary, and other available regulatory tools. A formal documented risk assessment process is therefore not required. No issues requiring a detailed on-site examination were identified during this period.

Performance Measurement and Monitoring

No performance measures or reporting requirements

While performance measures and reporting requirements have not been formalized and an operating plan is not in place, performance expectations and operational objectives and achievements are established and are regularly monitored. The Divisions' operations and work plans are derived mainly through legislative and regulatory requirements that fall within its responsibility. Service NL is satisfied with this oversight model.

Other Findings

Policies and procedures not well defined

Service NL is committed to better defining the policies and procedures (including those in relation to the ALERT system) currently in place in the Financial Services Regulation Division.

ALERT System

Service NL acknowledges there are operating challenges with the ALERT system and advises it will continue to take these challenges into consideration in establishing its IT priorities.
