

2.4 Seconded Positions

Introduction

Secondment

A secondment, for purposes of this report, is defined as the assignment of an employee to another existing position, for a temporary period of time.

The Department of Education has been seconding teachers to its program consultant positions since the early 1980's.

The Newfoundland and Labrador Teachers' Association collective agreement indicates teachers can be seconded to the Department of Education, Memorial University of Newfoundland, and school boards.

Department of Education Policy

The policy followed by the Department of Education for seconding teachers was formally documented in May 2000. The policy indicates that:

- the secondment of teachers into the Department is intended to provide specialized expertise in the conduct of special projects and initiatives;
- the secondment will provide developmental opportunities for the teacher;
- the terms and conditions of the secondment will conform with collective agreements;
- teachers will be seconded into consultant positions which are generally equivalent to a GS-42 position (i.e. seconded teachers will not normally be placed in management positions);
- secondments should be for a 1 year term with the option to renew for 2 additional terms for a total of no more than 3 years; and
- a new letter of contract is to be signed each year.

In instances where a teacher is seconded to the Department of Education's program consultant position (GS 42), the Newfoundland and Labrador Teachers' Association collective agreement states that the teacher shall be paid at the rate of a school board program specialist which is a higher salary than the Department's program consultant position.

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Public Service Commission Policy

Although Government departments also enter into secondments with Government employees, the Public Service Commission did not have a formally approved secondment policy until February 2005. The Commission's policy states that secondments should be for a “*temporary period of time*” and indicates that:

- current employees will continue to receive their regular salary;
 - extensions beyond 12 months must be approved by the Public Service Commission;
 - secondments are used to provide developmental opportunities or to provide extra assistance on a specific project;
 - it is the responsibility of departments/agencies to obtain a written letter of agreement outlining the terms and conditions for the secondment; and
 - where necessary, conditions of respective collective agreements apply.
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Secondments at the Department of Education

As of January 2005 the Department of Education had 246 employees, of which 32 (13% of all employees) were teachers seconded to fill program consultant positions at the Department.

Audit Objective and Scope

Objective

The objective of our review was to determine whether secondments in the Department of Education were in accordance with the Department's secondment policy.

Scope

The scope of our audit included interviews with Departmental staff and a review and analysis of:

- policies and procedures;
- collective agreements;
- correspondence; and
- samples of personnel and competition files.

Our review covered secondments to January 2005.

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Conclusions

Non-compliance with the Department's Secondment Policy

The Department of Education is not complying with its own secondment policy relating to teachers. For example:

- Although secondments are designed for a temporary period of time, secondments are being used to fill positions on a long-term basis. Of the 32 seconded teachers at January 2005, 16 (50%) had been seconded for periods in excess of the Department's three-year limit. Seven of the 16 secondments were for a period of between eight and thirteen years.
 - Contracts were not in place with all seconded teachers. Of the 32 seconded positions in place at January 2005, there were 7 (22%) with no contract.
 - Although the Department's policy provides that seconded teachers will not normally be placed in management positions, 4 of the 32 seconded teachers at January 2005 had been promoted to a management position. In 3 of the 4 cases, the seconded teachers were promoted without a job competition being held.
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Contravention of Government's Merit Principle

The Department is contravening the spirit and intent of Government's recruitment process (i.e. the Merit Principle) by filling some seconded positions without a job competition. For example:

- Of the 32 seconded teachers at January 2005, 19 (59%) were seconded without a job competition.
 - 3 of the 19 were promoted to management positions, again without any job competition.
 - 1 seconded teacher who, although not in a seconded position as at January 2005 (i.e. not 1 of the 32), was transferred to a management position in the Department without a job competition.
 - 1 seconded teacher who, although not in a seconded position as at January 2005 (i.e. not 1 of the 32), was seconded to a Departmental consultant position (i.e. non-management) in March 2001 and in September 2003 was appointed to the position on a permanent basis without a job competition.
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Non-compliance with Redundancy Policy

The Department is not complying with Government's policy relating to payment of redundancy. In one instance, a Department employee was seconded to a position with a school board and was paid a redundancy amount of \$82,323 when the seconded position at the board was declared redundant. The payment was made through the Teachers' Payroll account administered by the Department.

The Department was involved in this redundancy decision and therefore knew that the employee would be declared redundant. In this case, the seconded employee should have been returned to their permanent position in the Department and no redundancy amount should have been paid.

Contravention of Pension Legislation

Although the *Portability of Pensions Act* requires the transfer of pensionable service between various Government pension plans when an employee transfers to a new position, we found 6 instances where individuals on secondment, who were subsequently transferred to permanent positions, were permitted to continue to pay into a pension plan even though they no longer belonged to the group the plan was designed for.

Pension plan transfers were not made in 3 instances by the Department, in 1 instance by the Executive Council, in 1 instance by a school board, and in 1 instance by the Newfoundland and Labrador Teachers' Association.

Non-compliance with Salary Differential Policy

Contrary to Government's policy, during the year the Department paid approximately \$82,000 to 9 management staff relating to salary differentials. There are two issues relating to these overpayments:

- Government policy only allows salary differentials to be paid based on positions which are classified on a job evaluation plan administered by Treasury Board - teaching positions are not classified on such a job evaluation plan. However, in these 9 instances, the Department used teaching positions as a basis for the calculation of salary differentials.
- Furthermore, by filling program consultant positions through secondments, the Department is paying these individuals more than the position value because of a bonus amount required by the Newfoundland and Labrador Teachers' Association collective agreement. Contrary to Government policy, the Department included the bonus amount which resulted in some of its management staff receiving a salary differential because of the inflated salary of their subordinates.

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The practice of paying salary differentials has been ongoing since the Department started seconding teachers into program consultant positions in the early 1980's.

Error in Retroactive Pay

The Department has overpaid one staff member a total of approximately \$2,100 by incorrectly calculating retroactive salary payments.

Findings and Recommendations

1. Secondment Policy

Duration of Secondments

Department of Education policy provides that secondments should be for a 1 year term with the option to renew for 2 additional terms for a total of no more than 3 years.

Our review indicated that the Department is not complying with this policy. We reviewed 32 secondments in place at January 2005 and found that 16 (50%) exceeded the maximum 3 year term provided in the Department's policy, with 7 of these 16 secondments being for a period of between 8 and 13 years.

The following table outlines the duration of secondments at the Department of Education as at January 2005:

Duration of Secondment	Number of Seconded Positions
Less than 1 year	5
Between 1 year and 2 years	6
Between 2 years and 3 years	5
Between 3 years and 8 years	9
Between 8 and 13 years	7
Total	32

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Contracts

Department of Education policy requires that a new letter of contract be signed each year for each seconded position.

Our review indicated that the Department is not complying with this policy in that contracts are not always signed annually between the seconded employee and the Department. Of the 32 seconded teachers at January 2005, there were 7 (22%) with no letter of contract.

The following table provides information on secondment contracts in each of the past 6 years for the files reviewed.

School Year	Total	No Contracts	Signed Contracts
2004/2005	32	7	25
2003/2004	33	31	2
2002/2003	29	29	None
2001/2002	24	24	None
2000/2001	17	4	13
1999/2000	9	9	None

Promotions

Department of Education policy provides that seconded teachers will not normally be placed in management positions.

Our review indicated that the Department is not complying with this policy in that seconded employees are being promoted and transferred to management positions. Of the 32 seconded teachers at January 2005, 4 were promoted to a management position, 3 of which were promoted without a job competition being held.

Furthermore, 1 of the 3 seconded teachers promoted to a management position without competition was given a promotion allowance of 10% above the previous management position. However, their previous salary as Director of Corporate Planning was also established based on a promotion of 5% of the seconded program consultant salary rather than the position classification salary.

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2. Recruitment Process

Merit Principle

The Merit Principle, championed by the Public Service Commission (the Commission), requires that candidates be assessed with fairness and equity so that jobs will be awarded to the candidates most suitable for a position. The Merit Principle is the primary means to restrain or avoid political and bureaucratic influence over appointments and internal promotions.

The *Public Service Commission Act* allows the Commission to delegate responsibility for appointments and promotions to a chief executive officer or Deputy Minister. This delegation is subject to an annual review by the Commission for compliance with its hiring practices and with the spirit and intent of the recruitment process (i.e. the Merit Principle).

No Job Competitions

Our review indicated that the Department did not always follow the spirit and intent of Government's recruitment process (i.e. the Merit Principle) in seconding employees. Although there were instances where the Department did advertise, interview, and rate applicants for seconded positions, the process was not followed on a consistent basis. For example:

- Of the 32 seconded teachers at January 2005, 19 (59%) were seconded without a job competition.
- 3 of the 19 were transferred to management positions, again without any job competition.
- 1 seconded teacher who, although not in a seconded position as at January 2005 (i.e. not 1 of the 32), was transferred to a management position in the Department without a job competition.
- 1 seconded teacher who, although not in a seconded position as at January 2005 (i.e. not 1 of the 32), was seconded to a Departmental consultant position (i.e. non-management) in March 2001 and in September 2003 was appointed to the position on a permanent basis without a job competition.

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In addition to seconded employees, we identified the following two additional instances where the Merit Principle was not followed relating to permanent Departmental employees:

- The Manager of Private Training was temporarily assigned to the position in November 2001 without a current job competition and was appointed permanently on 31 March 2004 again without a current job competition. Although the Department indicated that there was a job competition in 1998, this could not be considered a “recent competition” as required by the Public Service Commission.
 - The Director of Institutional and Industrial Education was hired 1 April 2000 without a job competition. The Department used Government's re-employment priority policy to fill this position; however, this policy is not applicable since the individual was formerly in an Executive position to which neither the *Public Service Commission Act* nor Government's re-employment priority policy applies.
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3. Redundancy

Government Policy

Treasury Board has established a redundancy policy which provides that in addition to severance pay, employees whose employment is terminated by Government are eligible for redundancy pay, which is effectively pay in lieu of notice. The amount paid to an employee depends upon their age and length of service.

Non-Compliance

The Department is not always complying with Government's policy relating to payment of redundancy.

Our review indicated that in August 2004, the position of Director of Education for the Burin Peninsula School Board was declared redundant and the employee in that position was paid a redundancy amount of \$82,323 through the Department's Teachers' Payroll account. However, in this case, the employee had been seconded from the position of Director of Institutional and Industrial Education at the Department of Education and therefore, instead of being paid redundancy pay, should have been returned to that position at the Department. Furthermore, the Department was involved in the decision and therefore knew that the employee would be declared redundant.

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Original correspondence at the Department indicates the individual resigned as Director of Institutional and Industrial Education at the Department to assume the permanent position with the Board. However, this was subsequently termed a “secondment” so that the employee would not have to transfer from the Public Service Pension Plan to the Teachers' Pension Plan and would therefore not have to pay any contribution shortfalls between the two plans.

4. Pensions

Legislative Requirements

The *Portability of Pensions Act (the Act)* requires the transfer of pensionable service between various Government pension plans when an employee transfers to a new position. In instances where employees accept a new position covered under a different pension plan, there may be a situation where the employee pension contributions are not sufficient to cover the pension costs of the new plan. Prior to 1996, in these instances, Government paid the contribution shortfall. Effective August 1996 the *Act* was amended to require the transferring employee to pay all shortfalls in contributions resulting from the transfer.

Non-Compliance

Although the *Portability of Pensions Act* requires the transfer of pensionable service when an employee transfers to a new position, we found 6 instances where individuals on secondment, and subsequently transferred to permanent positions, were permitted to continue to pay into a pension plan even though they no longer belonged to the group the plan was designed for.

For example:

- There are 3 former teachers who now are in “permanent non-teaching positions” (i.e. positions covered by the Public Service Pension Plan) with the Department of Education who were not required to transfer to the Public Service Pension Plan from the Teachers' Pension Plan. As a result, these employees were allowed to remain in a more lucrative pension plan.

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- A former teacher was seconded to the Department of Education and later assumed the position of Chief of Staff to the Premier and subsequently Chair of the Newfoundland and Labrador Liquor Corporation. This individual was not required to transfer to the Public Service Pension Plan from the Teachers' Pension Plan. As a result, the employee was allowed to remain in a more lucrative pension plan. The employee left the position in September 2004.
- A former employee of the Department of Education was allowed to continue to contribute to the Public Service Pension Plan even though their new permanent position of Director of Education with the Burin Peninsula School Board was a position covered by the Teachers' Pension Plan. As a result, the employee did not have to pay the contribution shortfall between the two pension plans. The Department originally maintained that the new position at the School Board was a “secondment”; however, when the position was declared redundant in August 2004, the employee was provided with redundancy pay rather than being required to return to their permanent position as would be the case with a seconded employee.
- A former teacher was seconded to the Department of Education and later assumed a position with the Newfoundland and Labrador Teachers' Association. This individual was not required to transfer to the Public Service Pension Plan from the Teachers' Pension Plan. As a result, the employee was allowed to remain in a more lucrative pension plan.

5. Salary Differential

Salary Differential Policy

Government's salary differential policy states that:

- a management employee should receive 5% above the top step of their highest classified bargaining unit subordinate's pay scale; and
- a management employee should receive 1% above the base salary of their highest classified management subordinate's pay scale.

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The policy is not applicable:

- if either employee's position is not officially classified on a job evaluation plan administered by the Classification and Pay Division of Treasury Board; or
- when the subordinate is:
- paid on the basis of individual qualifications;
- red-circled; or
- paid on a personal basis or otherwise paid higher than the regular rate of pay for the position that he/she occupies.

Non-Compliance

Our review indicated that the Department of Education is not complying with Government's policy relating to the payment of salary differentials.

Teaching positions are not classified on a job evaluation plan administered by Treasury Board. Instead, teachers are compensated based on their individual qualifications. Furthermore by filling program consultant positions through secondments, the Department is paying individuals more than the regular rate of pay for the position at the GS 42 level. Therefore the salary differential should not be applied to these salary levels.

However, the Department is using the teacher's salary plus the additional amount provided for under the Newfoundland and Labrador Teachers' Association collective agreement to calculate salary differentials and as a result, is overpaying staff approximately \$82,000 per year. This type of overpayment has been ongoing since the Department started seconding teachers into program consultant positions in the early 1980's.

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The following table shows the overpaid salary differential:

Position	Date of Hire	Approved salary (Jan.1/04)	Paid	Differential
Director of Student Support Services	Mar.13, 2000	HL 29, Step 25 \$81,897	\$87,623	\$ 5,726
Director of Evaluation, Testing and Certification	June 5, 2000	HL 27, Step 25 \$78,244	83,934	5,690
Manager of Certification	Sept.3, 2002	HL 23, Step 25 \$69,915	83,103	13,188
Manager of Private Training	Nov.19, 2001	HL 23, Step 25 \$69,915	83,103	13,188
Manager of Language Programs	May 1994	HL 24, Step 25 \$73,798	83,103	9,305
Manager of Curriculum and Learning Resources	Aug.27, 2001	HL 26, Step 25 \$76,722	83,103	6,381
Director of Corporate Planning and Research, and Director of Adult Learning and Literacy	Dec.18, 2001	HL 27, Step 14 \$69,969	83,103	13,134
Manager of Industrial Training	Sept.3, 2002	HL 23, Step 25 \$69,915	83,103	13,188
ADM of Planning and Educational Programs	Apr. 15, 2002	EP 23, Step 25 \$98,030	100,549	2,519
Total				\$82,319

6. Retroactive Pay

Retroactive pay calculations

Our review indicated that the Department incorrectly paid an employee approximately \$2,100 in retroactive pay as detailed in the following table.

Date	Description
September 2002	A seconded program consultant commenced performing duties of the Manager of Certification; however, no such position existed in the Department.
January 2003	The Department applied to Treasury Board to create the position of Manager of Certification.
March 2003	Treasury Board approved a temporary position pending classification (vacant at the time).
August 2003	Classification approved at HL-23 effective on the date of appointment.
September 2003	The Department paid retroactive pay to September 2002 although the position did not exist until March 2003. This resulted in an overpayment of \$2,100.

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Recommendations

The Department should:

- *comply with Government and Departmental policy with regard to secondments;*
 - *comply with the Portability of Pensions Act; and*
 - *comply with Government policies for hirings and promotions, and the payment of redundancy, salary differentials, and retroactive amounts.*
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Department's Response

Thank you for your report outlining findings from your review of secondments in the Department of Education over the last five years. The report will be useful on a go-forward basis in informing the Department of your perspective on the matter. I offer the following in response to your findings.

- 1. Comply with Government and Departmental policy with regard to secondments.***

Department Response:

- *There was no government policy on secondments until 2005;*
- *The authority for the recruitment of secondments is the NLTA Collective Agreement that speaks to the ability to second and recognizes the payment of bonuses;*
- *The Department established a guiding policy for the recruitment of secondments in 2000 and acknowledges the many challenges that this guiding policy has created;*

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- *The Department acknowledges that it has employed and continues to employ seconded individuals beyond the three-year period noted in the 2000 policy document. Clearly, from the perspective of the Department, and with the experience of the past five years since the development of the 2000 policy document to draw on, there is an operational need for consultant positions that fall into two categories - one for shorter term projects and initiatives and one for longer term ongoing developmental and implementation work;*
- *The likelihood that in the future such positions could be filled by qualified individuals with no attachment to the school system - thereby avoiding the need to staff such positions through secondment - is remote;*
- *The Department is currently working with the Public Service Commission to address the issues of recruitment, retention, and succession planning as it relates to senior management positions in program areas.*

2. Comply with the Portability of Pensions Act.

Departmental Response:

- *The Department acknowledges that there were problems with the portability of pensions of teachers between the Public Service Pension Plan (PSPP) and the Teachers' Pension Plan (TPP) that makes it prohibitive for members of the TPP to accept permanent positions within the Department;*
- *Generally speaking, this means that an individual moving from TPP to PSPP could do so and receive substantially less in benefit at a substantially greater cost. These changes compounded already existing recruitment challenges and imposed significant financial burden (potentially in the order of tens of thousands of dollars, depending on years of service) on any employee transferring between plans;*

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- *In short, these arrangements have created an untenable situation. The Department, with the Department of Finance has been actively pursuing options to address the dilemma associated with incompatibility of benefits and punitive effects of transferability across plans. Officials in the Pensions Division of the Department of Finance have recommended that the Department seek an amendment to the Teachers' Pension Act to provide for seconded employees to maintain their membership in the TPP during the period of secondment. The Department of Education has accepted this recommendation and has authorized the Pensions Division to initiate an amendment to the Teachers' Pension Act to give effect to the long standing practice of permitting educators who continue their careers in the public service to remain in the TPP.*
- 3. Comply with Government policies for hiring and promotions, and the payment of redundancy, salary differentials, and retroactive amounts.**

Departmental Response:

- *Since 2003, the Department has been posting secondment opportunities throughout the public service, including the school districts;*
- *Despite adherence to a Public Service Commission approved recruitment process since 2003, the Department has been unable to fill some key positions. The Department had to identify and recruit individuals at the District level;*
- *The Department is working with the Public Service Commission to address the challenges of recruiting qualified individuals with education credentials to senior management positions;*
- *With respect to the issue of the payment of redundancy, the Department paid redundancy in accordance with employment contracts;*
- *On the issue of salary differentials, the Department will be requesting approval from the Public Service Secretariat for the payment of salary differentials for management personnel when seconded employees are subordinate and earning more than the Manager;*

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- *The policy followed by the Department was consistent with Government's Human Resource Policy of the payment of 1% differentials between managers and 5% between bargaining unit and management;*
- *Any overpayments of salary discovered during the Auditor General's audit will be identified, investigated, and appropriate action taken.*

Summary:

- *I acknowledge the substance of certain findings and have taken or will take measure to resolve the issues identified;*
- *The Department of Finance has advised that the pension plan portability issue will be, at the earliest available opportunity, actioned through an amendment to the Teachers' Pension Plan Act and Regulations;*
- *All recruitment actions are now undertaken through a Public Service Commission approved process;*
- *Many of the identified recruitment challenges are being resolved in consultation with the Public Service Commission.*