

Borrowing without Legislative Authority

The most recent financial statements of the 15 Crown agencies created under the *Corporations Act* disclosed that 5 of these entities had a total of \$174.7 million in outstanding debt due to entities outside of the government reporting entity. If the enabling legislation of an agency does not provide specific authority for it to borrow funds or if it has been created under the *Corporations Act*, then the Crown agency does not have the legislative authority to borrow. The *Financial Administration Act* prohibits the raising of money by way of loan without legislative authority. As a result, these entities contravened the *Financial Administration Act* by borrowing money without legislative authority.

The most recent financial statements of the 4 health and community services boards which were created under the *Health and Community Services Act* disclosed that 2 of these entities had a total of \$983,000 in outstanding long-term debt to entities outside of the government reporting entity. The *Health and Community Services Act*, under which these entities were created, does not provide specific authority to borrow. The *Financial Administration Act* prohibits the raising of money by way of loan without legislative authority. As a result, these entities contravened the *Financial Administration Act* by borrowing money without legislative authority.

Although the *Transparency and Accountability Act* requires that the approval of the Minister of Finance be obtained before a public body (Crown agency) may borrow, this does not provide legislative borrowing authority to Crown agencies created under the *Corporations Act* or entities without borrowing powers in their legislation.

2.4 Framework of Accountability

In previous Reports to the House of Assembly, my Office has expressed concern over the lack of performance information being provided to the House of Assembly by Government departments and Crown agencies. As a result, my Office recommended the implementation of a legislated accountability framework for all Government departments and Crown agencies which would include the requirement to provide an annual performance report.

Although I am pleased that a new *Transparency and Accountability Act* has received Royal Assent and will come into force on a day to be proclaimed by the Lieutenant-Governor in Council, I am concerned that amendments were made to exclude the Memorial University of Newfoundland from certain requirements of the *Act*. The University should be part of Government's reporting entity and should be held accountable to the House of Assembly as any other Crown agency.

During 2004, all 19 Government departments and 67 of the 80 Crown agencies at 31 March 2003 had some form of annual report tabled in the House of Assembly relating to the 2003 fiscal year. Furthermore, 17 of the 19 Government departments and 27 of the 82 Crown agencies at 31 March 2004 had some form of annual report tabled in the House of Assembly relating to the 2004 fiscal year. However, these reports, in general, did not provide the information necessary to hold each entity accountable for its performance in relation to its approved plans using established measurable criteria.

The required improvements in accountability information should be addressed by the requirements of the new *Transparency and Accountability Act* after it is proclaimed.

2.5 Monitoring Agencies of the Crown

Section 14 of the *Auditor General Act* requires the auditor of an agency of the Crown or a Crown controlled corporation to deliver to the Auditor General, after completion of the audit, a copy of the auditor's report, audited financial statements and recommendations to management. These financial statements and management letters along with our Office's audits of Crown agencies provide the basis for our monitoring of all Crown agencies.

Of the 84 entities required to prepare annual financial statements, 31 (2003 - 29) were audited by our Office while 51 (2003 - 51) were audited by private sector auditors. Contrary to their governing legislation, the remaining 2 entities, the Memorial University Foundation and the Newfoundland and Labrador Occupational Therapy Board have never submitted audited financial statements.