



# REPORT OF THE AUDITOR GENERAL

To the House of Assembly



Summary

For the Year Ended  
31 March 2004



Newfoundland and Labrador

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## **Preface**

This document is presented as a summary of the *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies for the Year Ended 31 March 2004*. That Report contains approximately 600 pages of conclusions, commentary, recommendations and auditees' comments. This document contains summary information on each item included in the Report. When readers identify a topic of interest, we encourage them to read the relevant section in the Report.

## **Introduction**

The *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies for the Year Ended 31 March 2004* was prepared in compliance with Section 12 of the *Auditor General Act*. Section 12 requires that the Report outline significant matters noted during the course of examining the accounts of the Province, agencies of the Crown and other entities which, in our opinion, should be brought to the attention of the House of Assembly.

Comments on the audit of the financial statements of the Province are contained in a separate report entitled *Report of the Auditor General to the House of Assembly on the Audit of the Financial Statements of the Province for the Year Ended 31 March 2004* which was submitted to the Speaker of the House of Assembly and released on 30 November 2004.

A report on the operations of the Office of the Auditor General for the year ended 31 March 2004 will be submitted to the Speaker on or before 31 January 2005.

## Chapter 1

### Reflections of the Auditor General

This Chapter provides an introduction to the Report and provides a summary of certain issues identified by the Auditor General. The issues highlighted in this Chapter deal with a number of specific areas - accountability, education, environment, public health and safety, and fiscal issues.

## Chapter 2

### Comments on Audits and Additional Examinations

#### 2.1 Office of the Child and Youth Advocate

The Office of the Child and Youth Advocate was established on 13 May 2002 under the authority of the *Child and Youth Advocate Act* (the *Act*).

The Child and Youth Advocate is an Officer of the House of Assembly and reports to the Speaker of the House. In accordance with its mission statement, the Advocate's Office "*...ensures that the voices and rights of children and youth are respected and valued and their needs are met. The Advocate's Office helps children and youth express their opinions and views, or if they are unable to do so, speaks on their behalf.*"

My audit of the Office of the Child and Youth Advocate identified a number of serious concerns relating to the operations of the Office. These concerns relate to poor management practices at the Office, operating an unauthorized bank account which was sometimes used for inappropriate purposes, non-compliance with the *Public Tender Act*, traveling without authorization, and questionable expenditures relating to such things as travel, personal vehicle mileage claims, entertainment, parking spaces for employees and cellular telephones. There were instances where the Advocate did not comply with direction provided by the Commission of Internal Economy.



Accounting for the Advocate's Office is performed by the Office of the Clerk of the House of Assembly. As a result of numerous accounting errors in the accounts of the Office of the Child and Youth Advocate, the expenditure details in the Province's Public Accounts are not correct. One of the errors resulted in a contravention of the *Financial Administration Act* which prohibits the issue of public money for purposes other than those authorized by the Legislature. Furthermore, the Advocate's Office was not always provided with sufficient information to enable the Office to monitor its expenditures.

## **2.2 Office of the Citizens' Representative**

An Act respecting the appointment of a Citizens' Representative for the Province, having the powers traditionally conferred on an ombudsman, (the *Citizens' Representative Act*) was assented to on 24 May 2001 and came into force on 7 December 2001.

The Citizens' Representative is an Officer of the House of Assembly and reports to the Speaker of the House of Assembly. The Office of the Citizens' Representative mission is "*...to act as an investigating body, ensuring decisions, acts or omissions by the Government of Newfoundland and Labrador are investigated in an analytical, impartial and timely manner for the citizens of Newfoundland and Labrador, when all other avenues of administrative appeal have been exhausted*".

My audit of the Office of the Citizens' Representative identified a number of concerns relating to the operations of the Office. In particular, claims for private vehicle usage appeared excessive, private vehicle mileage was incorrectly claimed between the Citizens' Representative's permanent residence and the Office, there were inconsistencies related to private vehicle usage claims and traveling without authorization. In addition, there were management practice issues relating to such matters as cellular telephones and entertainment. Furthermore, there was an instance of non-compliance with the *Citizens' Representative Act* and another instance of non-compliance with the *Public Tender Act*.

Accounting for the Citizens' Representative Office is performed by the Office of the Clerk of the House of Assembly. As a result of numerous accounting errors in the accounts of the Office of the Citizens' Representative, the expenditure details in the Province's Public Accounts are not correct. Furthermore, the Office of the Citizens' Representative was not always provided with sufficient information to enable the Office to monitor its expenditures.

## **2.3 Creation of Crown Agencies and Borrowing without Authority**

Crown agencies are generally created by the Legislature under some form of legislation to be an instrument for carrying out public policy on behalf of the Crown. This legislation generally provides authority and direction relating to the mandate, purpose, and responsibility of each entity.

On 16 December 2004, a *Transparency and Accountability Act* received Royal Assent. Pursuant to section 24 of the *Act*, it will come into force on a day to be proclaimed by the Lieutenant-Governor in Council. This *Act* provides direction relating to the creation of Crown agencies and borrowing by such entities.

### **Creation of Crown Agencies**

Of the 82 Crown agencies which existed at 31 March 2004, 15 were created under the *Corporations Act* rather than by legislation enacted by the Legislature. If there is to be appropriate legislative control over the creation and operation of Crown agencies and if they are to be held accountable to the House of Assembly, then all Crown agencies should be created under the authority of the Legislature. An act of the Legislature would outline the mandate of a Crown agency and also state its purpose, authority and responsibility. In this way all Members of the House of Assembly would be aware of newly created Crown agencies.

Although the *Transparency and Accountability Act* requires that the Lieutenant-Governor in Council must provide approval for the incorporation of a corporation (Crown agency) under the *Corporations Act*, this does not provide legislative control over the creation and operation of these corporations.

## **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.

As of 5 January 2005, the required audited financial statements had not been received from the private sector auditors for 1 of the 51 entities and the required management letters had not been received for 4 of the 51 entities. Furthermore, the majority of audited financial statements and management letters that were received from the private sector auditors were not received on a timely basis. On average, audits are completed and the auditors' reports signed within three months after the year end. However, in most cases the financial statements and related management letters are not received by our Office until another four months after the audit report date, and often only after follow-up by our Office.

The highlights from our review of audited financial statements and management letters of Crown agencies are presented in Part 2.5 of the *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies for the Year Ended 31 March 2004*.

## **2.6 Monitoring Expenditures of the Consolidated Revenue Fund**

As part of our audit of the financial statements of the Consolidated Revenue Fund (CRF), we perform tests and reviews of the expenditures made by the various departments.

During the past year, we obtained expenditure information from Government's accounting system relating to all expenditures of the Consolidated Revenue Fund. We performed a general review and analysis of amounts paid relating to: grants and subsidies; property, furnishings and equipment; purchased services; professional services; allowances and assistance; and transportation and communications.

The results of our review are presented in Part 2.6 of the *Report of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies for the Year Ended 31 March 2004*.

## **2.7 Corner Brook/Deer Lake/St. Barbe School Board**

District #3 - Corner Brook/Deer Lake/St. Barbe School Board has the fifth largest student population of the 11 school boards in the Province. For the 2002-03 school year the Board provided an educational program to 7,511 students in 29 schools located throughout the western half of the Province from Gallants in the south to Bellburns on the Northern Peninsula and east to Hampden.

At 30 June 2003, the Board had an accumulated deficit of \$10.9 million, including \$9.8 million in accrued severance pay. The Board has incurred annual operating deficits in four of its six complete fiscal years of operation since it was created in 1997; however, it never requested prior approval of the Minister of Education as required by the *Schools Act, 1997*. At 30 June 2003, the Board had a bank indebtedness of \$1.4 million - the highest of any school board.

Contrary to the *Schools Act, 1997*, the Board is paying three of its four executive personnel a total of \$38,702 annually in excess of the pay rates approved by Government. Furthermore, contrary to the *Schools Act, 1997*, the Board has not requested approval of the Minister of Education for the executive personnel employment contracts. As a result, the Board is not complying with government policy, not complying with the *Schools Act, 1997* and is utilizing funds that could be available for other purposes to top-up executive salaries.

The Board has contravened the *Schools Act, 1997* by entering into financing arrangements to purchase photocopiers, computers and telephones totalling \$223,681 without the prior approval of the Minister of Education.

Contrary to Government policy, for 2003 and 2002 the Board spent a total of \$16,400 for teacher and support staff retirement receptions and retirement gifts.

The Board is contravening the *Public Tender Act* in that it does not always call public tenders for purchases greater than \$10,000 and it does not always obtain either three quotes or establish a fair and reasonable price for purchases \$10,000 and less.

A bussing employee of the Board is in a conflict of interest in that the employee has been awarded bussing contracts totalling \$85,544, for the period September 2002 to June 2003, of which only \$43,555 was awarded through a public tender process.

The Board did not always do a good job monitoring payments under tendered contracts. We identified 5 instances of overpayments totalling \$10,958. In one of these instances the Board paid \$2,300 for a computer which it did not receive. We also identified 2 instances of underpayments totalling \$1,837.

The Board's 4 executive staff each receives a mileage allowance of \$252 (800 Kms @ 31.5 cents) per month without any supporting documentation. The allowance is provided in lieu of claims for local travel; however, this practice is not consistent with Government's travel policies. Three of the 4 individuals also receive a car allowance of \$85 per month and all 4 are reimbursed at 31.5 cents per kilometre in accordance with Government policy for travel outside the Corner Brook area including Pasadena and Benoit's Cove.

Travel claims do not always have complete documentation to support the amounts claimed. We identified 10 instances where travel claims did not have all of the required documentation. We also identified 3 instances where one Board member and two teaching staff received duplicate payments totalling \$476 for travel claims - once by the Board and again by another entity.

## **2.8 Lewisporte/Gander School Board**

District #6 - Lewisporte/Gander School Board has the fourth largest student population of the 11 school boards in the Province. For the 2002-03 school year the Board provided an educational program to 7,756 students living in 104 communities through 33 schools located in an area from Norris Arm in Notre Dame Bay to Charlottetown, Bonavista Bay.

At 30 June 2003, the Board had a total accumulated deficit of \$16.1 million. The Board has incurred annual operating deficits in three of its six complete fiscal years of operation since it was created in 1997; however, it has never requested prior approval of the Minister of Education as required by the *Schools Act, 1997*.

The Board is paying its four executive personnel a total of \$37,381 annually in excess of the pay rates approved by Government. Furthermore, although all employment contracts of Board executives are required to have the written approval of the Minister of Education, the four contracts submitted to the Department were never approved by the Minister. As a result, the Board is not in compliance with the *Schools Act, 1997* and is utilizing funds designated for other purposes to top-up executive salaries.

The Board entered into financing lease arrangements relating to photocopiers without the prior approval of the Minister of Education as required by the *Schools Act, 1997*. These lease payments will total approximately \$710,000 over a five year period. The Board also violated the *Schools Act, 1997* in that it did not obtain the prior approval of the Minister of Education when it entered into an agreement to share costs with the Roman Catholic Episcopal Corporation for the demolition of a vacant school owned by the Corporation. The Board proceeded contrary to the position of the Department. The Board's share of the demolition cost was \$92,450.

The Board is contravening the *Public Tender Act* in that it does not always call public tenders for purchases greater than \$10,000 and it does not always obtain either three quotes or establish a fair and reasonable price for purchases \$10,000 and less. Furthermore, the Board is not complying with the *Public Tender Act* in that it does not notify the Minister of Government Services and, therefore, the House of Assembly of any public tender exceptions such as sole source or emergency purchases.

Two of the Board's vehicles were available for the use of two management staff on a 24 hour basis; however, no logs were being maintained to determine the extent of any personal use. Furthermore, neither of these 2 vehicles have markings to identify them as Board-owned vehicles.

## **2.9 Monitoring School Boards**

In 1996 the school system in the Province was reorganized with the dissolution of 27 church run school boards and the creation of 10 new English language school boards and 1 French language school board.



The 27 school boards continued to exist and administer the schools within their jurisdiction until their dissolution on 31 December 1996. As at 31 December 1996, there were approximately 445 schools in the Province with a total enrolment of 110,450 students.

Effective 1 September 2004, 9 of the 11 school boards were dissolved and 3 new boards were created resulting in 5 school boards. For the 2003-04 school year there were approximately 305 schools in the Province with a total enrolment of 81,460 students.

As part of our work we continue to monitor the financial position and annual operating results of the school boards.

As a result of the reorganization, the boards were requested by the Department of Education to prepare audited financial statements for the 14 month period ending 31 August 2004 rather than the 12 month period ending 30 June 2004. Therefore, as at 1 December 2004 the required audited financial statements were available for only 1 of the 11 school boards. As a result we were unable to update our monitoring of the financial position and operating results of the school boards for the year ended 30 June 2004.

In our 2005 Annual Report, we will again provide information resulting from our monitoring of the Province's school boards.

## **2.10 Newfoundland School for the Deaf**

The Newfoundland School for the Deaf (the School) is a residential school operated by the Department of Education. The School provides an educational program for deaf children. In 2004, the School had 54 students, 23 teachers and 46 administration and support staff. Of the 54 students, 21 stay at the School's residence. For the year ended 31 March 2004, the School spent approximately \$3.8 million to deliver the educational program.

There are significant management weaknesses at the School in areas such as teacher allocation, human resources, residence operations, food service and transportation contracts, purchasing and capital assets. Although the Department of Education has been aware of many of these issues for quite some time, it has not taken sufficient action to ensure that these weaknesses were addressed.

Our review indicated the following:

The School has been overallocated a total of 23.3 teaching units at an approximate cost of \$1.5 million over the past five years to 2003-04. Although the Department of Education was aware of this overallocation since 2000-01, they continued to fund the overallocation for 2002, 2003, and 2004.

Officials have not addressed the decline in the number of students staying in residence to determine whether cost savings could be realized. During 2003-04 there were only 21 students in residence. The School has a residence with 5 wings which can accommodate 84 students and also has 4 apartments which can accommodate 16 students, for a total capacity of 100 students. Only 2 students stay in residence on weekends and are cared for by the equivalent of 3 full-time positions. Furthermore, the Department of Education has projected further declines in student enrolment.

The School's administration of overtime and leave is not adequate in that required approvals are not always provided and overtime and leave is not always properly documented and recorded. Employees are earning excessive amounts of overtime, e.g. 23 residential staff earned 782 days of overtime during 2003-04 and used 751 days of this leave. Furthermore, these staff are using this overtime to cover School break periods when they would normally not be needed, i.e. Summer, Christmas, Easter and other School breaks.

The School is not adequately managing its food service contract which for 2002-03 cost \$159,432. The School has not been diligent in requiring the contractor to provide the information required under the food service contract and which would be necessary for the School to properly manage this expenditure.

The School has a transportation contract with a total annual cost of \$62,120, for the daily transportation of 46 students from the St. John's and surrounding area; however, when the contract was entered into, student enrolment was only 37. Furthermore, School officials were aware student enrolment would be declining even further. No provision was included in this contract which would allow the School to adjust costs for changes in circumstances.

The School contravened the *Public Tender Act* in that it did not always obtain the required three quotes or provide documentation that a fair and reasonable price was established.

School officials were unable to explain a shortage of \$157 that we identified during a cash count of the School's \$2,000 petty cash float.

Contrary to the Department of Education's policy, the School is providing textbooks for all students without charge. Furthermore, up to 2002, the School provided supplies to its students without charge.

The School opened a bank account without the required approval by Treasury Board Secretariat to deposit receipts from the rental of the School's theatre, gym and other facilities, as well as donations from religious and other non-profit organizations. Amounts were spent from this account to pay for conference costs, equipment rental, residential supplies, bus transportation and miscellaneous expenses. As a result of not having these expenditures processed through Government's financial management system, they were not subject to approvals and controls applicable to all Government purchases. Instead, these funds are spent at the discretion of School officials.

The School is not adequately controlling its capital assets in that the inventory listing is incomplete and not maintained on a current basis, not all assets have unique identification numbers affixed, and a physical count has not been conducted in the past 10 years. Our testing of capital assets indicated instances where assets on the listing could not be located and assets in various locations could not be traced to the listing.

## **2.11 School Board Executive Compensation Practices**

In contrast to the old *Schools Act* which allowed a board to set remuneration for its staff, the *Schools Act, 1997* states that salaries for directors and assistant directors (executive) will be paid in accordance with scales approved by the Lieutenant-Governor in Council and that a board will not pay remuneration greater than the approved scales.

Our review of school boards' executive compensation practices indicated the following:

### *New Boards*

The Department of Education has created inconsistencies in the salary scales of the newly created boards similar to the inconsistencies created in 1996 and which contributed to former boards contravening legislation and Government policy. For example:

- Effective 1 September 2004, the Province restructured the school board system and reduced the number of boards from 11 to 5. Cabinet approved new salary scales for the three newly established boards while the salary scales for the two unchanged school boards remained the same. In addition, the Department of Education did not adjust the salaries of all executives of the former boards who were taking positions in the new boards to account for salaries which were in excess of that approved by Cabinet.
- Contrary to Government's policy, the Department of Education placed 5 education officers (former associate assistant directors) in the three new boards above step 25 of the Province's management employee (HL28) scale.

### *Former Boards*

As at 31 March 2004, 10 of the 11 school boards had approved salaries for 38 of its 42 executive personnel totalling approximately \$322,000 in excess of salaries approved by Cabinet. From October 2002 to February 2004, the boards approved payment of approximately \$248,000 in retroactive pay to executives for unapproved increases to step 33. As a result, the boards are not complying with the *Schools Act, 1997* or Government policy, and are utilizing operating funds that could be used for other purposes. In addition to the salary top-ups, executives will eventually be eligible to receive higher pensions, severance, redundancy, and accrued paid leave on retirement or termination of their position as a result of the top-ups.

The Department of Education did not ensure that former boards placed employees on the approved scale and step as directed by Cabinet. In fact, the Department approved certain salaries paid to executives above those approved by Cabinet and Government policy. In other instances, the former boards were refused approval to top-up salaries and, as a result, the Department contributed to inconsistencies within the system. These salary inconsistencies were a major argument that the former boards gave when they disregarded the Cabinet directive on executive salaries.

In addition to regular salaries, some former boards contravened Government policy in compensating executive staff in other areas. For example, one former board reimbursed each of its four executives \$252 per month or \$12,096 annually for local travel in lieu of submitting travel claims and other supporting documentation. Another former board paid its Assistant Director of Finance approximately \$34,000 for leave and overtime in contravention of executive compensation practices and is allowing this individual to accrue annual leave and sick leave instead of paid leave as per Government policy.

## **2.12 Student Transportation**

At 31 March 2003, there were approximately 84,000 students enrolled in schools in the Province of Newfoundland and Labrador, of which an estimated 57,000 were transported by school buses. These students are transported over a total of about 37,000 kilometers each day. Under the *Schools Act, 1997*, school boards are required to arrange for the transportation of students to and from schools where deemed necessary. Through budgetary, policy setting and monitoring processes, the Department of Education has a shared responsibility with the school boards for student transportation in the Province.

Department of Education officials indicated that a number of years ago a decision was made in certain school districts to have board-owned buses. The reason given at that time was that it was believed to be cheaper for the board to operate their own buses rather than contract out student transportation to private contractors. This has since been proven to not be the case. Furthermore, a financial report issued by Government in January 2004 indicated that approximately

one third of board-owned buses (i.e. approximately 120 buses) will have to be replaced over the next 3 years. Officials indicated that a new bus costs approximately \$80,000. This would equate to approximately \$9.6 million.

There are no standards specific to school bus drivers included in legislation under the *Schools Act, 1997* in this Province and there is no current policy direction from the Department of Education setting out the employment and training requirements for school bus drivers. Furthermore, the Department of Education does not require the school boards to check for criminal records of all bus drivers. We found that a bus driver in the Avalon East School District who had a number of convictions for such matters as multiple impaired driving charges, multiple break and enter charges and multiple theft charges, was not prevented from driving a school bus.

We identified a situation at the Avalon East School Board where irregularities in the bus contract tendering process resulted in the board paying \$1.8 million more annually than in the previous years contract. Department of Education officials indicated that this issue was being reviewed, in consultation with Treasury Board Secretariat and the Department of Justice.

## **2.13 Solid Waste Management**

The Province has a significant issue to deal with regarding waste management. The problem resulted because historically, we have not recycled, there was no strategy as to either the number of landfill sites or their location, there was little control over access to the sites or what was being dumped, open burning and incinerators were commonly used, and the landfill sites were not lined.

In 1989, at a meeting of the Canadian Council of Ministers of the Environment, Government set a goal to reduce the amount of waste going for disposal by 50% by the year 2000. However, in 2002, Newfoundland and Labrador had a waste diversion rate of only 9%, the lowest rate of waste diversion of any province in Canada. The other Atlantic Provinces in 2002 averaged a diversion rate of 27% (three times the diversion rate in this Province) while the Canadian average for that year was 22%, again significantly higher than the diversion rate in this Province.

This Province has a disproportionate number of waste disposal sites compared to the other Atlantic Provinces. In 2004, the Province had 201 waste disposal sites versus a combined total of 25 disposal sites for the other three Atlantic Provinces.

A report prepared by Government's Waste Management Advisory Committee in October 2001 indicated that incinerators in our Province produce more than one-third of the total volume of dioxins and furans from municipal incineration in Canada. Open burning, which was not measured and is common in more than half of the sites in the Province, produces even more dioxins and furan emissions.

Although the Multi-Materials Stewardship Board (MMSB) has a mandate to develop, implement and manage effective waste management programs, it takes its direction from the Department of Environment and Conservation. However, the Department has not identified programs to adequately address all significant areas for waste diversion (e.g. paper and organic which account for 67% of waste). Furthermore, MMSB is not meeting its beverage recycling program targets and there are issues relating to its used tire recycling program.

In April 2002, a Provincial Waste Management Strategy was issued indicating that a Province-wide modern waste management system would be implemented by 2010. However, the Minister of Municipal and Provincial Affairs has publicly expressed concerns about the amount and source of funding (\$150 - \$200 million) and timelines relating to the 2010 target date and the Minister of Environment and Conservation has publicly indicated that the Strategy is too ambitious. Furthermore, there is no schedule in the Strategy to indicate either when this funding will be required or the source of funding, e.g. Federal, Provincial, and municipal. In addition, the Strategy does not include annual targets to measure progress towards the various initiatives such as diverting waste, closing unlined landfill sites and constructing new lined sites.

Currently, none of the 201 landfill sites in the Province are lined. The use of a liner controls the escape of leachate and provides for its recovery and treatment to minimize potential environmental consequences. While the Strategy did not indicate that all unlined

sites would be remediated, it is likely that some sites will be determined to have contaminants at such a level that the sites will require remediation. As a result, there will likely be significant expenditures for site remediation.

Government does not have complete and accurate information available on its landfill sites to determine the status of each site for use in planning, implementation, and monitoring of these sites. For example, although a number of the waste disposal sites are nearing the end of their useful life, there is no information readily available to identify when these sites will expire or what alternate course of action will be taken when the sites expire. A consultant was engaged in September 2004 to gather information and assess and classify existing waste sites in the Province and a report is expected by December 2004.

## **2.14 Used Tire Recycling Program**

In April 2002, the Multi-Material Stewardship Board (MMSB), on Government's direction, implemented a Used Tire Recycling Program which currently operates under the authority of the *Waste Management Regulations, 2003* of the *Environment Protection Act*. Under these *Regulations*, used tires are no longer permitted to be disposed of in landfills throughout the Province. The goal of the Used Tire Recycling Program is to collect and process used tires in the Province.

The Used Tire Recycling Program since its inception in April 2002 could not be considered a success as it has not met its goal of collecting and processing used tires in the Province. For example, collection sites were not established in all areas of the Province, not all tires were collected from retailers and other sites, not all collected tires were processed, and not all processed tires were marketed and sold.

As at 31 October 2004, there are approximately 1.3 million passenger tire equivalents stored in five locations throughout the Province (including 461,965 in passenger tire equivalents stored and owned by a former MMSB contractor at the contractor's site in Stephenville).



This situation could result in considerable environmental damage if the tires became ignited. While MMSB officials indicated that the tires located at the Placentia storage yard are stored in accordance with guidelines established by the Department of Environment and Conservation and the Fire Commissioner's Office, those stored at Bull Arm and at the former contractor's site at Stephenville are not.

As at 7 June 2004 when the MMSB assumed direct responsibility for the Used Tire Recycling Program, there were approximately 1,015,000 passenger tire equivalents stored at Transportation and Works depots, Municipal Waste Disposal Sites, contractor's collection sites, retailers, Bull Arm, and at the contractor's site in Stephenville (stored and owned by the contractor). MMSB has indicated that the cost of tire recycling has increased as a result of their assuming direct responsibility for the Program. Between 7 June 2004 and 31 October 2004, MMSB collected over 212,000 used tires (551,000 passenger tire equivalents) from Transportation and Works depots, Municipal Waste Disposal Sites, contractor's collection sites, and retailers throughout the Province and stored these tires in designated storage yards.

The cost of collecting and storing these approximately 212,000 used tires was \$672,500 or \$3.17 per tire consisting of \$441,200 or \$2.08 per tire in collection costs and \$231,300 or \$1.09 per tire for storage. While the mix of tires is normally split 92% small tires and 8% large tires, MMSB officials indicated that the 212,000 tires collected are comprised of 60% small and 40% large. As a result, the fee that would have been paid to the former contractor to collect these tires would be \$2.70 per tire. While MMSB's collection cost of \$2.08 per tire is less than the \$2.70 that would have been paid to the former contractor, the interim cost of \$1.09 per tire to store the tires means that the overall cost of \$3.17 per tire is greater than the \$2.70.

In addition to the 1.3 million passenger tire equivalents stored at 31 October 2004, an additional 220,000 (290,400 passenger tire equivalents) in newly generated used tires are expected to be collected from retailers and individuals from 1 November 2004 to 31 March 2005. Although the MMSB has not finalized how it will address processing and disposing of all these tires, it has announced its intention to issue a "call for proposals".

## 2.15 Water Quality Management

In May 2001, Government released a report entitled *Source to Tap - Water Supplies in Newfoundland and Labrador* (*Source to Tap* report). The report was prepared in response to drinking water contamination tragedies in Canada and contained information on the status of public water supplies, presented Government's action plan to enhance the protection of public water supplies, and outlined initiatives to ensure drinking water safety.

The Province indicated in the *Source to Tap* report that it had adopted a “multi-barrier approach” to ensure that public water supplies provide clean and safe water. The main responsibilities for Government under this approach are: source protection; water quality monitoring; water quality reporting; regulatory inspection and mitigation planning; and operator education and training. While the Department of Environment and Conservation is the lead department on water quality issues, other departments have involvement as well.

Our review indicated that while Government is making progress toward its commitments outlined in its *Source to Tap* report, it has not met all these commitments and is not always complying with Provincial standards for monitoring drinking water. Specifically:

*Source protection* - While Government committed in the *Source to Tap* report to continue its efforts to protect the remaining public water supplies, as of October 2003, 256 of the 532 (48%) public water supplies were still not protected. Under the *Water Resources Act*, the Department of Environment and Conservation may designate areas around a public water source as protected, thereby prohibiting or limiting activities within the protected area that have the potential to impair the quality of the water or diminish the amount of water available.

*Water quality monitoring* - The Department of Environment and Conservation is not conducting Trihalomethanes (THM) and other *chemical* water quality testing in accordance with the commitment contained in the *Source to Tap* report or in accordance with Provincial standards. The number of communities and public water supplies in the Province known to have THM levels above the maximum

acceptable concentration (and the number of people exposed) is increasing. THMs are compounds formed in chlorinated drinking water supplies. Their possible adverse health effects have received extensive media attention in recent years.

Of the 25 water supplies we reviewed for *chemical* water quality testing, 4 were not tested with the required frequency. Furthermore, of these 25 water supplies reviewed, 23 were chlorinated and required testing for THMs. Of these 23, 7 were not tested with the required frequency.

As well, the Department of Government Services is not conducting *microbiological* water quality testing in accordance with the *Source to Tap* report commitment or in accordance with Provincial standards. Such testing determines the total coliforms and escherichia coli (E.coli) in water supplies. Of the 10 water supplies we reviewed for *microbiological* water quality testing, 7 were not tested with the required frequency.

*Water quality reporting* - Government has met the commitments made in the *Source to Tap* report regarding reporting of water quality data. These commitments include reporting annually to the House of Assembly, providing drinking water quality data to the public, and reporting annually to the operator of each public water supply system in the Province.

*Regulatory inspection and mitigation planning* - The Department of Environment and Conservation is not inspecting water systems under the *Water Resources Act* in accordance with the commitment contained in the *Source to Tap* report. While the commitment was to conduct these inspections at least once each year, Department officials indicated that inspections are conducted only when operational problems are encountered, relating to a proposed upgrade, or in response to infrastructure funding need assessment.

*Operator education and training* - Progress is being made on the commitments Government made in the *Source to Tap* report regarding education and training of water system operators; however, certification of water system operators is currently on a voluntary basis with mandatory certification being an area which requires further attention.

## 2.16 Gasoline Tax

The Tax Administration Branch of the Department of Finance is responsible for administering the Gasoline Tax program as stipulated in the *Gasoline Tax Act*. Taxes are charged and collected on all gasoline at a rate ranging from 0.7 to 16.5 cents per litre, depending on the grade of fuel used. In the *Act*, gasoline is defined as any and all liquids capable of being used for the purpose of generating power in an internal combustion engine.

The Gasoline Tax program applies to wholesalers, retailers and consumers. Therefore, the Department is required to identify, monitor and audit each group to ensure that there is compliance with the *Gasoline Tax Act* and *Regulations*. We found weaknesses in how the Department performs its identification, monitoring and audit activities.

### *Wholesalers*

We found that the Department does not always review monthly generic returns submitted by wholesalers and does not follow up on issues on a timely basis. Furthermore, the Department has only conducted one audit on 2 of the 16 wholesalers over the last five years.

### *Retailers*

The Department does not do a good job in identifying unregistered retailers, and monitoring and auditing retailers. In particular we found:

- In 2001, the Department conducted its only review of retailer registration and identified 197 unregistered retailers. Before this, the Department had only identified 100 registered retailers. The Department has not conducted a review of retailers and their registration since 2001 to identify unregistered retailers.
- The Department does not follow up on issues identified in monthly exemption reports.

- The Department does not regularly perform audits on retailers as evidenced by the fact that only one audit on 9 of the 212 retailers registered to sell marked diesel in the Province was performed in the past five years.

### *Consumers*

Some consumers are using tax-exempt diesel fuel for purposes other than provided for under the *Act*. The Department does not regularly perform audits of consumers as evidenced by the fact that only 71 audits were performed in the last five years. Thirty-four of these audits resulted in tax assessments ranging from \$471 to \$102,386, with total tax assessed of \$578,870. Therefore, the audits show that consumers are using tax-exempt diesel fuel for purposes other than provided for under the *Act* and significant tax recoveries are available.

### *Reporting*

The Department has not done a good job in documenting its program objectives and performance indicators. Furthermore, the Department does not have an annual operational plan to focus its identification, monitoring and audit activities towards meeting its objectives.

## **2.17 Tax Expenditures**

Programs offered by the Province are normally outlined in the Estimates and approved by the Members of the House of Assembly as part of the annual budgetary approval process. However, the Province offers a number of programs which use various tax revenues that are not part of this annual budgetary approval process. These deductions and exclusions reduce tax revenue otherwise due the Province and are commonly referred to as tax expenditures.

The Province offers a significant number of tax expenditure programs; however, details of the impact of the various tax expenditure programs are not provided to Members of the House of Assembly as part of the annual budget approval process. We identified approximately \$215.5 million of foregone revenue resulting from these tax expenditure programs. Tax expenditures

affect the financial position of the Province in the same way as direct expenditures under normal spending programs. Reporting tax expenditures to the House of Assembly would provide information that the Members require in order to hold Government accountable.

There is currently no process in place to formally set target objectives for tax expenditure programs which would facilitate the measurement and monitoring of the results of the programs against desired objectives. As a result, no information is provided to the House of Assembly on the effectiveness of these programs.

## **2.18 Aquaculture Program**

The Province is not doing a good job supporting the development of the aquaculture industry and there has been no successful development of the industry since 1999. In 2003, a Report of the Federal Commissioner for Aquaculture Development indicated that aquaculture benefits when “*government guides the sustainable development of aquaculture*”.

In March 2000, the Province, the Newfoundland Aquaculture Industry Association (NAIA), the Federal Government and other agencies produced a Strategic Plan. The Province had little involvement in ensuring the Plan was implemented on an overall basis.

The Plan provided recommendations to deal with a number of significant issues that needed to be addressed in order to strengthen the industry. For example, it identified the issues of debt load, lack of capital, and the high cost of production. However, the Provincial Government only carried out a review of debt load relating mainly to mussel farmers who had debts with the Province. Little debt funding was provided to these farmers. The Department did not review the debt load of all aquaculture farmers to determine whether assistance would be required. Furthermore, recommendations to deal with the lack of capital and the high cost of production were not fully addressed.

Total production levels have declined over the last five years. In 2003, production totalled 3,930 tonnes, an 8.2% decline from the 1999 total production level of 4,282 tonnes. During this period, three other provinces (PEI, NB and BC) reported an increase in their total tonnage from 86,255 to 120,879, an increase of 40%.

The Department is issuing new aquaculture licences without always ensuring they have sufficient information to determine whether the applicant has the financial capability to carry out aquaculture operations.

Aquaculture sites are operating without valid licences because the Department is not ensuring aquaculture licences are renewed in a timely manner. The Department is renewing aquaculture licences without always ensuring compliance with requirements of the *Aquaculture Act* and *Regulations*. We found licences were being renewed when no inspections were carried out and when it was not clear whether aquaculture sites were being properly utilized.

The Department is not performing regular inspections to determine whether aquaculture sites are complying with the *Aquaculture Act* and *Regulations*. The Inspection Report being used by inspectors is not adequate to support the inspection activities for which the inspector is responsible as the report does not address all of the key areas that the inspector is responsible for assessing. The aquaculture inspector does not sign the report attesting that all the required procedures were carried out and whether there was compliance with the terms and conditions of the licence, the *Aquaculture Act* and Aquaculture Policy.

The Department is aware that there are four aquaculture sites with improper shore fastened moorings which are a potential public safety hazard. Two of these sites are still operating and two were ordered closed by the Department in 2004. The two sites ordered closed in 2004 continued to operate without a licence despite being ordered closed by the Department. At the time of our review, the Department had not checked the two sites which had been ordered closed to determine whether the moorings had been removed. The Department indicated that there is no authority under the *Aquaculture Act* for it to remove shore fastened moorings in cases of non-

compliance. The Department has indicated that legislative changes are currently being drafted to address this issue.

## **2.19 Elevating Devices and Other Inspections**

The Department of Government Services is responsible for the inspection of amusement rides, elevating devices, boilers and pressure systems. The inspection of amusement rides and elevating devices is conducted under the *Amusement Rides and Elevating Devices Regulations* and the inspection of boilers and pressure systems is conducted under the *Boiler, Pressure Vessel and Compressed Gas Regulations*. Both of these regulations are included under the *Public Safety Act*, which was designed to provide for the safety of the public.

Our review indicated that the Department of Government Services did not conduct all of the inspection activities necessary to ensure the safe operation of elevating devices, amusement rides, boilers and pressure vessels in the Province. Instances were noted where: devices, rides, boilers and pressure vessels operated for a period during 2003 without a certificate; certificates were issued with an expiry date exceeding 12 months; no details were contained in files of deficiencies noted during inspections; and no documentation was on file to indicate whether deficiencies were corrected or that any follow-up was performed.

The Department did not include sufficient consideration of risk when scheduling inspections of elevating devices.

The field inspection reports for elevating devices were inadequate for documenting compliance with the *Regulations*. Furthermore, there was no field inspection report designed specifically for the inspection of amusement rides. Instead, the Department used the same inspection report used for elevating devices which was inadequate for documenting compliance with the *Regulations*.

Information in the databases used for amusement rides, elevating devices, boilers and pressure vessels was inaccurate.



## 2.20 Liquor Licensing and Enforcement

The *Liquor Control Act* provides authority to the Board of Directors of the Newfoundland and Labrador Liquor Corporation to: control the possession, sale and delivery of liquor; appoint officials to issue licenses and permits to sell or distribute liquor; appoint or authorize inspectors; and enforce the *Act* and *Liquor Licensing Regulations* through the cancellation or suspension of licences or through the imposition of fines. The *Regulations* provide further direction regarding the licensing of establishments and the manner in which liquor is to be sold.

In 1995, Government directed the Department of Government Services through its Government Service Centres (GSC) to perform the functions of licensing and inspection. This transfer was completed in 1997 and a Memorandum of Understanding (MOU) between the Corporation and the Department was signed in 1998.

Although we planned to perform a review of the licensing and enforcement functions at the Newfoundland and Labrador Liquor Corporation, we were refused access to the information necessary to complete the review. On 11 March 2004, I forwarded a Special Report to the House of Assembly to explain the situation. As a result of not having access to the Corporation's officials and information, we had to rely on information that was available at the Department of Government Services. In most instances, licensing and inspections are initiated by the Department and therefore documentation supporting these activities were available there. However, the final disposition of certain licensing and inspection issues would only have been available from the Corporation.

The following conclusions, therefore, result from our review of the liquor licensing and enforcement information which was available at the Department:

Some licenses were issued even though the licensing requirements of the *Liquor Control Act* and *Regulations* were not met.

Inspection planning was inadequate. For example, there is no formal risk-based approach for inspections, no inspection frequency has been established for the various licence categories, and information is not maintained on all inspections performed.

There were weaknesses in the performance of inspections. For example, inspectors did not document all violations of the *Act* and *Regulations*, inspectors did not always have access to liquor purchase information necessary to detect contraband, and although overcrowding is a life-safety matter, head counts were not always performed.

Inspectors were not always advised of the final disposition of violations of the *Act* and *Regulations* reported to the Corporation on a timely basis in order to close files and follow-up compliance during subsequent inspections. For example, at the time of our review, details of the action taken by the Corporation on some violations had not been provided to the GSC for up to 29 months after being reported to the Corporation.

Inspectors have not received any inspection and enforcement training since 1997. Furthermore, health inspectors and police force officers who also may participate in inspection activity, have neither received training on the requirements of the *Act* and *Regulations* nor have they been provided with guidance such as a checklist to ensure that inspections cover all the required areas.

## **2.21 School Bus Safety Program**

The Motor Registration Division (MRD) of the Department of Government Services is responsible for administering all activities and legislation respecting vehicles and drivers including driver licensing, vehicle registration, driver examination, and highway safety. The school bus safety program administered by the MRD provides for inspection and enforcement activities in relation to school bus safety.

There were 1,044 licensed school buses in the Province at 30 September 2003. The average age of licensed school buses at that time was 11 years, with 739 or 70 % being 1993 model year or older.

There were 205 Official Inspection Stations licensed in the Province to inspect school buses. Of these, 43 were operated by school bus contractors (including 5 school boards) who have a combined total of 612 school buses (including 335 operated by school boards) or 59% of the total 1,044 licenced school buses at that time.

We are concerned about the high incidence of defects identified during school bus inspections performed by MRD staff and the types of defects being identified. All of these defects relate to brakes, steering, mechanical and safety, and some result in buses being taken out of service. Of the 1,047 inspections performed by MRD during 2002-03, 1,130 defects were identified and 172 school buses (16% of all buses inspected) were taken out of service. The significance of this finding is increased given that MRD does not routinely perform surprise inspections on school buses. Instead, operators are given advance notice of upcoming inspections. As a result, operators are given an opportunity to identify and correct school bus deficiencies before it is inspected. Given the extent of school buses being taken out of service, it is likely that, regardless of MRD's inspection efforts, there are school buses on the Province's highways that do not meet the required safety standards. We note that, although all school buses are inspected by an Official Inspection Station twice a year, the MRD inspections still identify a significant number of serious defects.

There are weaknesses in the inspection and enforcement activities administered at the MRD which could contribute to the presence of unsafe school buses on the Province's roads. In particular: the school bus inspection process is not adequately documented; although the manufacturer of the brake meters used by the MRD to assess braking efficiency on school buses strongly recommends that the meters be recalibrated at least every two years, this is not done; not all school bus inspections were completed by an authorized inspection station in that the Official Inspection Stations were not licensed at the time the inspections were completed; the MRD did not perform the required annual inspection for 8 of the 43 Official Inspection Stations operated by school bus contractors for the 2003 year; and the MRD has not developed a policy and procedures manual to provide guidance to Highway Enforcement Officers relating to school bus safety.

## 2.22 Special Permits and In-Transit Permits

The Motor Registration Division (MRD) of the Department of Government Services is responsible for licensing, registration and operation of all vehicles and equipment operating on the Province's roads. Standards relating to the licensing, registration and operation of vehicles are legislated under the *Highway Traffic Act* and the *Vehicle Regulations*. These *Regulations* provide specific limits relating to vehicle weight, dimensions, configurations and cargo load.

### *Special Permits*

In 2003, there were 165 Special Permits issued to permit mobile cranes and construction equipment, which exceeded the defined limits for weight and/or dimensions, to travel on the Province's roads. However, these vehicles are not required to have an annual inspection performed by an Official Inspection Station. As a result, the issuance of these Special Permits may contribute to the existence of unsafe vehicles on the Province's roads.

Although Highway Enforcement Officers at MRD, from time to time, stop mobile cranes and construction equipment to ensure that these vehicles have the required Special Permit and that they are operating in accordance with the requirements of the permit (e.g. route, lights, escorts, and signage), the vehicles are not subjected to any mechanical inspection.

### *In-Transit Permits*

In 2003, there were 2,817 In-Transit Permits issued for unlicensed and/or unregistered vehicles. However, these vehicles are not required to be inspected; instead, applicants are informed that the vehicle operation is subject to restrictions of the *Highway Traffic Act* (i.e. the vehicle must be safe). Not requiring an inspection is significant in that one of the reasons for which an In-Transit Permit could be issued is to drive the vehicle from one place to another for repairs. Therefore, the type and/or extent of repairs may have safety implications. As a result, the issuance of these permits may contribute to the existence of unsafe vehicles on the Province's roads.

Certain mobile crane operators may be obtaining In-Transit Permits because the cumulative cost of these permits is cheaper than the annual licensing fee. Of the 138 Special Permits issued to mobile cranes in 2003, 73 also required an In-Transit Permit because they weren't licensed.

## **2.23 Gambling Rehabilitation Services**

In 2004 the Province received \$108 million from the Atlantic Lottery Corporation (ALC), an increase of \$38.8 million or 56% from the \$69.2 million received in 1995. Of this amount, \$76 million was from Video Lottery Terminals (VLT), an increase of \$44 million or 137% from the \$32 million received in 1995.

A Statistics Canada report issued in December 2003 indicated that one in four gamblers, whose playing includes VLTs, are at risk to become or are already problem gamblers. The report went on to state that “...VLTs are the ‘crack cocaine’ of gambling.” Furthermore, correspondence from five of the six health boards providing addiction services in the Province indicated that the vast majority of individuals being treated for problem gambling were addicted to VLTs.

There are a number of significant issues relating to Government's involvement with the identification and treatment of gambling addiction. For example:

- Newfoundland and Labrador is the only Province in Canada that has not conducted its own prevalence study to determine the extent of the gambling problem.
- The four health and community services boards and the two integrated boards charged with administering the gambling addiction program are unable to provide complete or comparable statistics on the numbers of clients with gambling addictions who were referred, treated and waitlisted. Furthermore, the boards do not have systems in place to capture information on the costs of providing each of the various addiction programs and the amount of time spent by staff on each program.

- Boards indicated that they did not have sufficient resources to meet the demand for gambling addiction rehabilitation and as a result several boards had waitlists.
- There is no centralized resource at the Department of Health and Community Services to assist the regional boards in developing standard programs for gambling rehabilitation including a strategy for the delivery of a Provincial education and awareness program.
- Although Government is required to match a 1% VLT fee received from retailers, officials at the Department of Health and Community Services were not aware of this requirement.

## **2.24 Grenfell Regional Health Services Board**

The Grenfell Regional Health Services Board was incorporated on 1 April 1981. In November 1994, as a result of the restructuring of health boards in the Province, health services formerly under the Board in Happy Valley-Goose Bay, Churchill Falls and coastal Labrador north of Black Tickle were transferred to the newly constituted Health Labrador Corporation. Also, the Board assumed responsibility for the St. Anthony Interfaith Home.

The Board has incurred an annual operating deficit in four of the past five years and at 31 March 2003 had an accumulated deficit of \$12.1 million. Contrary to the requirements of the *Hospitals Act*, the Board did not obtain the approval of the Minister of Health and Community Services to incur any of the annual deficits. At 31 March 2003, the Board had total liabilities of \$23.5 million including net bank indebtedness of \$1.1 million.

Although the Board has incurred annual deficits and has bank indebtedness, it has either spent money contrary to Government policy, its own internal policy or has not collected amounts owed to it.

The Board is contravening the *Public Tender Act* in that it does not always call public tenders for purchases greater than \$10,000 and it does not always obtain either three quotes or establish a fair and reasonable price for purchases \$10,000 and less. We also found instances where purchases to the same supplier and on the same day were split in an apparent attempt to avoid the requirement to call a public tender. In addition, requests for proposals did not receive the prior approval of the Lieutenant-Governor in Council. Furthermore, the Minister of Government Services and therefore the House of Assembly were not always informed of *Public Tender Act* exceptions as required.

## **2.25 Monitoring Health and Community Services Boards**

There are four health and community services boards in the Province comprised of St. John's, Eastern, Central and Western Regions. Each of these boards has local offices throughout the Province. Health and community services in Northern Newfoundland and Labrador are administered as separate components of the Grenfell Regional Health Services Board and the Health Labrador Corporation, respectively.

Effective 1 April 2005, the four health and community services boards will combine with the eight hospital boards to establish four regional health authorities throughout the Province.

As a part of our audit work, we continue to monitor the financial position and annual operating results of the four community services boards.

The combined financial position of the four health and community service boards at 31 March 2004 shows total unfunded liabilities of \$31.1 million, a 57% increase from the \$19.8 million reported in 2000-01. These net unfunded liabilities will eventually have to be funded by Government.

The St. John's Health and Community Services Board had total unfunded liabilities of \$13.1 million and accounts for 42% of the \$31.1 million total reported for 2003-04. The St. John's Health and Community Services Board's unfunded liabilities have increased by 68% from \$7.8 million in 2000-01 to \$13.1 million in 2003-04. The unfunded liabilities of the other three boards also increased during the year.

Provincial funding has increased from \$165.3 million in 2000-01 to \$209.0 million in 2003-04, an increase of \$43.7 million (26%). During this period, program costs increased from \$160.2 million to \$197.4 million, an increase of \$37.2 million (23%). Therefore, annual operating deficits have decreased from \$11.6 million in 2000-01 to \$7.5 million in 2003-04. For 2003-04, all boards reported an annual operating deficit higher than the previous year.

At 31 March 2004, two of the health and community services boards were in contravention of the *Financial Administration Act* in that they had long-term debt totalling approximately \$983,000 to entities outside of the government reporting entity without legislative authority. The \$983,000 was comprised of \$915,000 in long-term debt for the St. John's Regional Health and Community Services Board and \$68,000 in long-term debt for the Eastern Health and Community Services Board.

## **2.26 Monitoring Hospital Boards**

From 1 November 1994 to 1 January 1996 the Government of Newfoundland and Labrador established eight regional health care institutions boards to administer health care facilities in Newfoundland and Labrador. These boards took over the facilities previously administered by many small local boards.

Effective 1 April 2005, the eight hospital boards will combine with the four health and community services boards to establish four regional health authorities throughout the Province.

As a part of our audit work, we continue to monitor the financial position and annual operating results of the eight hospital boards.

The combined financial position of the eight hospital boards at 31 March 2004 shows total unfunded liabilities of \$442.7 million, a 21% increase from the \$366.1 million reported in 2000-01. These net unfunded liabilities will eventually have to be funded by Government.



Seven out of the eight hospital boards reported increases in the total unfunded liabilities for 2003-04. In particular, the total unfunded liabilities for the Health Care Corporation of St. John's was \$239.7 million and accounts for 54% of the \$442.7 million total reported by all eight boards for 2003-04. The total unfunded liabilities of the Health Care Corporation of St. John's have increased by 13% from \$211.6 million in 2000-01 to \$239.7 million in 2003-04.

Provincial funding has increased from \$692.7 million in 2000-01 to \$885.8 million in 2003-04, an increase of \$193.1 million (28%). During this period, program costs increased from \$579.5 million to \$714.3 million, an increase of \$134.8 million (23%). Therefore, annual operating deficits have decreased from \$60.1 million in 2000-01 to \$24.5 million in 2003-04. All boards reported an annual operating deficit during the year. Only two boards had deficits which were less than those reported in 2002-03 (Central East and Central West).

## **2.27 Income Support/Case Management Information System**

The Department of Human Resources, Labour and Employment is responsible for providing a range of programs and services directed to low-income individuals and families to help meet their financial needs. One of its main activities is providing income support to eligible individuals and families.

Since 1988, the Department has made two attempts to complete the development of a comprehensive management information system for its income support program and case management. However, at the time of our review in November 2003, no such system was in place.

The latest attempt to develop a new system commenced in October 1999 and was estimated to cost \$4.3 million and be fully functional in October 2002. As at November 2003, thirteen months after the original estimated completion date, only one of the expected seven modules was fully functional across the Province. Furthermore, as a result of a change in the project scope and expenditures not included in the original estimate, in November 2003 the Department indicated that the project development cost was expected to be \$7.9 million;

however, officials indicated that additional costs associated with the implementation of the system and the final date of completion had not been determined.

As at November 2003, the estimated additional annual cost to operate the new system would be \$1.15 million. When the project was initially approved, it was estimated that the additional annual costs to operate the system would be \$700,000. This represents an annual increase in operating costs of \$450,000 or 64% over the original estimate.

The Department contravened the *Public Tender Act* when it purchased software licences costing approximately \$105,000 without calling a public tender. The Department also contravened the *Public Tender Act* by not informing the Minister of Government Services of the exception. Therefore, the House of Assembly was not informed of this exception.

Government announced a departmental reorganization in February 2004; however, Departmental officials indicated that there would be no delays in system implementation resulting from this reorganization.

## **2.28 EDGE Program**

The *Economic Diversification and Growth Enterprises Act* became effective on 1 January 1995. The creation of this *Act* was to encourage new businesses to start or expand in Newfoundland and Labrador. The *Act* is administered by the Department of Innovation, Trade and Rural Development, with tax incentives administered in conjunction with the Department of Finance.

The Department of Innovation, Trade and Rural Development's objective for the EDGE program is to encourage new businesses to start or expand in Newfoundland and Labrador. However, since the Department has not established specific targets for the program, it cannot determine whether the program objective is being met or whether the EDGE program is a success. Our review indicated the following:

- As of June 2004, 53 (43%) of the 122 EDGE corporations which were approved under the EDGE program since it began in 1995 had their EDGE status revoked by Cabinet for failing to meet the requirements of the program. The remaining 69 approved EDGE corporations reported employment and capital investment for 2004 far below the total amounts projected.
- While employment and capital investment by EDGE corporations are two of the main EDGE program performance indicators, these indicators have shown a significant decrease between 2001 and 2004. The estimated employment declined from a projection of 3,850 jobs in 2001 to a projection of 2,777 in 2004, with actual reported employment for 2004 of only 1,473. The estimated amount of capital investment declined from a projection of \$1.12 billion in 2001 to a projection of \$187.9 million in 2004, with actual reported investment for 2004 of only \$70.3 million.

The Department of Innovation, Trade and Rural Development is not adequately monitoring program activity. As a result, neither the Department nor the House of Assembly can determine whether the program has been successful in meeting its objective.

EDGE applications are not always approved on a timely basis and in accordance with the *Economic Diversification and Growth Enterprises Act*. The average time delay between the receipt of the application and the approval by Cabinet was 7 months. One application was not approved until 11 months after the application was received. These delays are in large part due to infrequent meetings of the EDGE Board and the fact that Cabinet is not providing its decision within the 30 day timeframe set out in the *Act*.

Corporations that qualify for EDGE status are provided certain tax incentives and prior to 2003 were provided with wage grants. Our review indicated that incentives provided to some EDGE corporations were not adequately supported.

## **2.29 Mining Company Investment**

The Department of Innovation, Trade and Rural Development (the Department) provides funding and assistance to businesses operating in the Province in its efforts to strengthen and diversify the economy on a Provincial and regional basis.

In June 2003, the shareholders of a mining company approached the Department, requesting a grant or loan guarantee from the Provincial Government to address its working capital deficiency.

Contrary to the conclusion of the Department and the recommendation of Treasury Board Secretariat, the Department was directed by the Premier's Office to provide an investment in a mining company. In September 2003, a letter of offer for a \$400,000 equity investment was issued to the company. Details of issues relating to this investment are as follows:

- The Department's review was not as thorough as is normally performed on funding requests. The Department did, however, have an independent credit risk analysis which suggested that the new mining company had a high credit risk with a high probability of severe delinquency in meeting its financial obligations.
- In 2000, the Province wrote off a \$2.8 million investment in a previous mining company owned by the same major shareholder who created the new mining company.
- On 7 August 2003, Treasury Board Secretariat recommended that the proposal be rejected and forwarded the matter to Treasury Board which deferred the matter to Cabinet for consideration. Officials could not find any record of a Cabinet decision on this matter.
- Although the original request from the company in June 2003 indicated that the funding was required on an urgent basis to fund operations from June 2003 to December 2003, the funding was not made available in trust to the company until 31 March 2004, with the last amount not being drawn down until November 2004.

## **2.30      xwave Contracts**

Our review of the Amended and Restated Service Level Agreement and the Amended and Restated Industrial Benefits Agreement between Government and xwave Solutions Inc. identified a number of issues as follows:

- Although xwave did not meet its obligation to contract out \$2,000,000 in work to local IT businesses for 2002, Government did not charge any liquidated damages as allowed in the Agreement.
- xwave did not meet its obligation to create 55 new jobs by 31 March 2004, and has indicated that it will not meet its overall employment commitments by 2007.

Although there is a remedy under the Agreement to charge 15% of the dollar value of the shortfall in jobs in each year, which would represent \$209,522 for 2003 and \$204,649 for 2004, Government did not impose these liquidated damages. Instead, Government has negotiated a settlement for a single lump sum payment of \$2.4 million which represents the liquidated damages resulting from xwave's employment shortfalls and discharges xwave from its employment creation commitments.

- Government is not monitoring the IT sector to determine progress towards its original goal of stimulating growth in innovative technologies and information industries in the Province by privatizing NLCS in 1994. In March 2002, Operation ONLINE ceased operation and therefore, no new work has been done to identify performance indicators or monitor growth in the IT sector.

## **2.31 Board of Commissioners of Public Utilities**

The Commissioners of the Public Utilities Board, the Directors of Newfoundland and Labrador Hydro and consumer advocates are all appointed by Cabinet and are accountable to Government. The appearance, therefore, is that Cabinet could be seen as being in a position to influence all parties in matters relating to Hydro rate regulation. While it is not suggested that the Board carries out its duties and responsibilities with anything but the utmost good faith, the perception of impartiality is paramount and necessitates a strong system of accountability to ensure public confidence.

As the administrative body that regulates such matters as utility rates and service, matters which directly impact the daily lives of consumers in Newfoundland and Labrador, it is important that the Board be, and be perceived as, independent from the executive branch of Government in its functioning. In order to strengthen and enhance the public perception of independence and impartiality of the Board, we recommend the accountability to the House of Assembly should be strengthened. In particular, there should be a legislative provision which requires that the Board must prepare an annual report and provide it directly to the Speaker of House of Assembly for tabling. The legislative provision should also clearly outline the information required by Members of the House of Assembly to hold the Board accountable for its activities and should provide for a reasonable review of the Board's performance.

The consumer advocates do not prepare any form of annual report for the House of Assembly outlining details of their expenses and the work performed for the expenses incurred. These costs, which totalled approximately \$500,000 per year in each of the last three years, are ultimately passed on to the people of the Province.

The Board has not updated the Strategic Plan it developed in 1998 to reflect changes since that time. Furthermore, the Board does not prepare an annual operational plan to focus its activities towards achieving its strategic goals and objectives.

The Board's assessment revenues are exceeding its expenses resulting in a significant accumulated surplus of \$1.2 million as at 31 March 2004. Although the *Act* has a provision which allows the

Board to reduce future assessments and eliminate any surpluses, the Board has decided not to take this action. As a result, consumers in the Province have paid for this surplus through the rates the utility and insurance companies charge.

The Board has contravened the *Public Tender Act* and the *Public Utilities Act*, and its travel and entertainment expenditures are not consistent with Government's policies.

## **2.32 Fines Receivable**

Collection efforts at the Department of Justice relating to fines receivable require improvement. The fines receivable balance has increased in each of the last five years and at 31 March 2004 totalled \$23.4 million, an increase of \$5.3 million (32%) since 2000. The Department has determined that only \$4.6 million (19.6%) is expected to be collected while \$18.8 million (80.4%) was considered uncollectible.

Of the \$23.4 million in fines receivable, \$21.9 million is recorded in the Department's Ticket Management System (TMS) while the majority of the balance of \$1.5 million is still in the Provincial Court. Many of the accounts comprising the \$21.9 million in fines receivable recorded in the TMS are quite old - 80,134 accounts totalling \$18.9 million (86.4%) of the receivables had been outstanding for more than one year with 38,599 accounts totalling \$11.2 million (51.4%) outstanding for more than five years. Some of the accounts had significant balances.

Although the Office of the High Sheriff has a Judgement Enforcement Registry, the Department is currently registering accounts with balances greater than \$1,200; therefore, 83,870 accounts with balances less than \$1,200 and totalling \$9.4 million are not registered. Furthermore, at 31 March 2004, although there were 3,434 accounts greater than \$1,200 registered, action to collect the amount due had been initiated against only 117 accounts.

## 2.33 Newfoundland and Labrador Legal Aid Commission

The Newfoundland and Labrador Legal Aid Commission provides legal representation to financially eligible persons, where legal merit exists, in criminal (both adult and young offender), civil, family and immigration matters.

Our review of legal aid applications indicated that the decision to provide legal aid was not always supported. In particular:

- Individuals who indicated that they were in receipt of income support received legal aid even though there was no documentation to indicate that they were in receipt of income support.
- Individuals not in receipt of income support received legal aid even though they did not provide all information on income and expenses required to assess whether they were eligible. Furthermore, there was no documentation supporting whether the Commission obtained information on liquid assets (cash, etc.) as required by the *Regulations*.
- The Commission is not consistent in applying basic living and transportation allowance rates to applications for individuals in similar circumstances and who have not provided any documentation to support increases in these allowances.
- Legal merit assessments are not typically documented.

The accounts receivable balance from clients for the year ended 31 March 2004 totalled \$369,082 (2003 - \$394,575) with an allowance for doubtful accounts of \$202,373 (2003 - \$207,273). These receivables represent situations where a client is able to contribute to the cost of legal aid provided to them. Many of these accounts have been outstanding in excess of ten years and have had little collection activity.

The Commission does not have a system in place to monitor the costs of providing legal aid services to various legal aid clients.



## **2.34 Royal Newfoundland Constabulary Firearms Review**

The Royal Newfoundland Constabulary is responsible for policing three regions of the Province - the Northeast Avalon, Corner Brook and Labrador West. The population of these regions is approximately 201,000 (2001 census). In providing these services, the RNC currently employs 308 police members and 84 civilian staff.

In 1998, members of the Royal Newfoundland Constabulary were permitted to wear firearms as part of their regular uniform. The Select Committee of the House of Assembly which recommended the new arming policy also recommended that a firearms audit be performed annually and submitted to the House of Assembly. As a result, this is our sixth annual firearms audit.

Although the RNC has adequate systems in place to record, monitor and secure its firearms, each year we identify instances of non-compliance with policy. Given the serious repercussions that could result from the use of firearms, it is critical that the RNC continue efforts to improve compliance with established policies and procedures.

Our review identified a number of issues which should be addressed. For example:

- The firearms and ammunition inventory system is not accurate because not all required adjustments, including additions, dispositions or internal re-assignments of firearms and ammunition, are made on a timely basis. We found 9 firearms which were in a location other than that recorded in the system and for 3 types of ammunition, the physical count did not agree to what was recorded in the inventory system. In particular 23,484 rounds of 38 calibre training ammunition could not be accounted for.
- Members are not always complying with the Firearms Policy. Information identified during our review and information obtained from inspections performed by the RNC indicated a total of 46 infractions during 2003-04. Furthermore, we found that not all infractions are being referred to the RNC's Professional Standards Bureau for investigation as required.

- The required monthly inspections of firearms storage lockers are not always performed. No monthly inspections were performed in St. John's in 2004 for the months of July, August, and September.
- The RNC is not complying with its policy for use of force training as 185 members have not re-qualified in the use of firearms (module 1) in the required one year time frame (7 of the 185 have not received this training since 2002) and 7 members have still not completed module 4 training which was required to have been provided in 2003. Furthermore, it is unlikely, based on the prior year's performance, that all of the 123 members still requiring module 2 training will receive this training by 31 December 2004 as required.

Information in the training database is neither complete nor accurate. Of particular concern is that, as the system is used to determine what use of force training has already been provided and what training is left to be provided, inaccuracies may result in a situation where a member may not receive all of the necessary use of force training.

- Although the Use of Force Review Board is required to review all instances of use of force, the Board has not met since October 2002. Furthermore, although all Board members used to receive copies of the use of force reports, this practice was discontinued after May 2002. Instead, only one member of the Board, the Firearms and Use of Force Instructor, receives the reports. There were 743 use of force incidents reported between 1 September 2003 and 30 September 2004. Of these 743 incidents, 52 related to firearms, 43 of which involved drawing and/or pointing a firearm at a person while the remaining 9 involved the discharge of a firearm regarding animals.

On 2 December 1997, a Select Committee of the House of Assembly was appointed to enquire into the arming policy of the RNC. The Committee tabled its report to the House of Assembly on 31 March 1998 and included the recommendation that the arming policy be reviewed at the end of five years, i.e. March 2003.

As at November 2004, no Select Committee had been established to review the arming policy of the RNC.

### **2.35 Fire Commissioner's Office**

The Fire Commissioner's Office needs to do more in inspecting and evaluating the firefighting capabilities of the 297 fire departments throughout the Province and in providing training to the approximately 6,100 firefighters. In particular:

- Over the last five years, only 5 of the 297 fire departments had been formally inspected. The Office does not have a schedule to ensure all fire departments are inspected over any particular period of time. Officials at the Fire Commissioner's Office indicated that inspections performed at 5 fire departments were considered to be representative of many fire departments in the Province and had serious deficiencies relating to breathing apparatuses, vehicles, number of firefighters responding, and training.
- Since 1991, only 700 firefighters have received training to the level of Firefighter I. The Office does not keep information as to how many of the current 6,100 firefighters are trained and how many of the 700 trained firefighters are still in the system.

The Office's database was not Y2K compliant and therefore, data and information could not be captured. As a result, no annual report has been prepared since 1999 and the Commissioner does not have all of the information necessary to monitor fires in the Province including an assessment of the firefighting capabilities of fire departments.

## **2.36 Municipal Inspections**

The *Municipalities Act* 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 and Provincial Affairs.

Our review of municipal inspections by the Department of Municipal and Provincial Affairs indicated that the Department does not always receive budgets and financial statements of municipalities within the deadlines established under the *Municipalities Act*. Furthermore, the Department was not performing the annual municipal inspections in accordance with the *Act*. Although the Department implemented a new computerized Municipal Information Management System in 2002, not all information required for monitoring municipalities has been input into the system.

## **2.37 Inland Fish and Game Licences**

The Wildlife Division of the Department of Environment and Conservation is responsible for the administration of inland fish and game licences in the Province. While the Division has overall responsibility for licensing, the Government Service Centres of the Department of Government Services, through an arrangement with the Division, distribute licences to vendors, receive payments from vendors for licences sold, and collect unsold licences from vendors for forwarding to the Division.

Over the eight years covered by our review, weaknesses in control have existed over the administration of inland fish and game licences. As well, licence fees due to the Province during that time have not been properly accounted for and amounts due from vendors have not been collected on a timely basis. While the Division has recently made some progress in dealing with these issues, I am concerned they had not been dealt with for such a significant period of time. I note that over this eight year period, both my Office and the Office of the Comptroller General have recommended several times that action be taken to address issues such as the increasing receivable balance, weaknesses in controls over receivables, and the absence of reliable information.

Our current review indicated that: documented policies and procedures were not in place and those informal policies which were in place were not always followed; licences were not issued in accordance with existing Departmental policy; responsibilities and accountabilities for the Government Service Centres were not documented; weaknesses in controls over recording accounts receivable from vendors have resulted in the Department being unable to determine accurate receivable balances for collection purposes; information on vendors and the details of the number and type of licences sold from year to year has not been maintained; and collection activity has been minimal. In June 2003, due in part to the lack of information supporting accounts receivable balances, the Department wrote off \$130,000 in receivables.

Effective 1 April 2004, Government implemented a prepayment system for issuing licences and directed the Department of Environment and Conservation to report back on the results of this change.

## **2.38 Government Owned Buildings and Properties**

Government owned buildings are in need of significant repairs. In January 2004, the Department of Transportation and Works projected that it needed \$261 million over 20 years in order to keep Government's buildings maintained and to extend their useful life. Furthermore, the Department indicated that it needs \$173 million of the \$261 million within the next five years.

Officials at the Department have expressed concern about the lack of funding provided to maintain Government's buildings. These concerns date back as far as April 1998 when a Departmental review indicated that *"...the current dilemma is that there is insufficient money in the present budgets to perform the normal level of maintenance and improvements required, particularly on the exterior envelopes of buildings."* The review concluded that *"...40% of the buildings will encounter premature failure of major components or the building itself and will require replacement at an earlier time than the normal predicted economic life."*

Over the past five years the Department has requested a total of \$25.3 million for maintenance funding and it has received \$23.4 million. Also over this period the Department has requested a total of \$55.0 million for capital alterations and improvements and has received only \$21.9 million. As a result, the required work is not being performed and therefore the condition of the Government buildings is deteriorating.

The Department's database of buildings is not complete in that the age of the building is not always indicated. As a result, it is not possible to calculate the overall average age of the buildings.

The Department does not use a risk based system to identify and prioritize its maintenance work. Instead, each of the four Regional Directors sets the priorities for the allocation of the maintenance funding within their Region. As a result, there is no Province-wide risk or priority basis for what work is performed with the funding provided.

Although the Department has started to assess the condition of Government buildings, the process is far from complete. As a result, the Department does not have the information necessary for a comprehensive plan to address the nature, amount and timing of future capital expenditures.

Government has a number of significant vacant buildings, e.g. the old Janeway, the Grace General, and the Miller Centre. The Department does not have a plan to devolve Government of its vacant buildings. Government's vacant buildings have a total area of 66,500 square metres and an estimated replacement cost of \$149 million.

## **2.39 Hull 100**

The Department of Transportation and Works is responsible for the Province's ferry operations. For the year ended 31 March 2004, the Province spent \$48.7 million on ferry operations and collected \$24.9 million in revenues. In previous years we have reported on expenditures related to the refit of Hull 100. For the year ended 31 March 2004 the refit of Hull 100 represented 8% (2003 - 5%) of the Department's ferry operations expenditures.

In May 1999, the Ahelaid (subsequently named the Hull 100 and currently named the Nonia) was purchased and delivered for \$1.2 million. The Department estimated the total cost after refit to be \$2.9 million and that the vessel would be available for service in 2001. However, after five years and \$11 million (three years and \$8 million or 276% over the original estimate), officials indicate that the vessel is now ready for service.

## **Chapter 3**

### **Update on Prior Years' Report Items**

This year we continued a process whereby our recommendations are monitored and the results reported within two years of the original report date. This Chapter provides the results of this monitoring process relating to the recommendations contained in 2002 and prior *Reports of the Auditor General to the House of Assembly on Reviews of Departments and Crown Agencies*.

## **Chapter 4**

### **Special Reports**

#### **Newfoundland and Labrador Liquor Corporation**

Section 12(1) of the *Auditor General Act* requires that we report to the House of Assembly on whether, in carrying out the work of the Office, we received all the information including reports and explanations the Auditor General required.

On 11 March 2004, we reported to the Speaker of the House of Assembly relating to the refusal of the Newfoundland and Labrador Liquor Corporation to provide information necessary for us to complete our review of the Liquor Licensing and Enforcement Program. For additional information, see item 2.20.