REPORT OF THE AUDITOR GENERAL

To the House of Assembly

On Reviews of Departments and Crown Agencies

Summary

For the Year Ended
31 March 2011

Office of the Auditor General
Newfoundland and Labrador

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

VISION

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

Head Office Location

15 Dundee Avenue
Suite 201
Mount Pearl
Newfoundland and Labrador
Canada

Mailing Address

P.O. Box 8700
St. John's
Newfoundland and Labrador
Canada
A1B 4J6

Telephone: (709) 729-2695
Fax: (709) 729-5970
Email: oagmail@oag.nl.ca
Website: www.gov.nl.ca/ag

Regional Office Location

1 Union Street
Corner Brook
Newfoundland and Labrador
Canada

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Introduction

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 2011*. That Report contains approximately 526 pages of conclusions, commentary, recommendations and auditees' comments.

The Report 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.

This document contains summary information on each chapter included in the Report. Information for Chapter 2 has been copied verbatim from the Commentary or Executive Summary section that is located at the beginning of each Part in that Chapter. When readers identify a topic of interest, we encourage them to read the relevant section in the Report.

Chapter 3 provides comments relating to the audit of the Province's financial statements (commonly referred to as the Public Accounts) for the year ended 31 March 2011. The Chapter provides additional information on the financial condition of Government measured by using indicators issued by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants. The Public Accounts provide an important link in an essential chain of public accountability. They are the principal means by which Government reports to the House of Assembly and to all Newfoundlanders and Labradorians on its stewardship of public funds.

Access to Reports

Reports issued by the Office of the Auditor General are available on the Office's web site at: http://www.gov.nl.ca/ag/reports.htm.

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Chapter 1 – Reflections of the Auditor General

The Office of the Auditor General is committed to promoting accountability and encouraging positive change in the stewardship, management and use of public resources. To this end, each year the Office conducts reviews of Government departments and Crown agencies which result in findings and recommendations. Our recommendations are designed to address weaknesses and/or improve processes and, therefore, it is important that Government consider them and take corrective action.

This Report provides findings and recommendations resulting from our reviews for the year ended 31 March 2011. The Report covers a variety of matters and is provided to the Members of the House of Assembly for their consideration.

Under the *Auditor General Act*, the Auditor General is required to report at least annually to the House of Assembly on the results of work performed during the year. This work includes reviews of Government departments and Crown agencies, and the audit of the Province's financial statements.

Chapter 2 of this Report first provides commentary relating to two instances where we were refused access to information required to conduct our work. These two instances related to the Office's attempt to review information maintained at the departments of Health and Community Services, and Justice in relation to the Province's infrastructure strategy and our attempt to review the Canada-Newfoundland and Labrador Offshore Petroleum Board. Chapter 2 then provides findings and recommendations resulting from our reviews of Government departments and Crown agencies for the year ended 31 March 2011. There are twelve items covering a variety of matters, with each item starting with an Executive Summary. The Executive Summary is intended to make it easier for readers to quickly identify what was reviewed, the work performed, and what was found. As in prior reports, in order to provide a balance to our findings and conclusions, the verbatim response from the auditee is included at the end of each item. The following is a listing of the twelve items. Readers are encouraged to go to each section of the Report to obtain further details.

Temporary Employees (section 2.3)

Western School District (section 2.4)

Industrial Compliance (section 2.5)

Royal Newfoundland Constabulary - Firearms (section 2.6)

Growing Forward Program (section 2.7)

Mineral Incentive Program (section 2.8)

Provincial Commodity Boards (section 2.9)

Provincial Lottery Licensing (section 2.10)

Workplace Health and Safety Inspections (section 2.11)

Marble Mountain Development Corporation (section 2.12)

Building Maintenance (section 2.13)

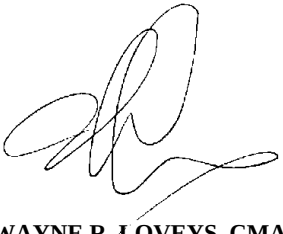
Trans Labrador Highway (section 2.14)

Chapter 3 of this Report provides comments relating to the audit of the Province's financial statements (commonly referred to as the Public Accounts) for the year ended 31 March 2011. The Chapter provides additional information on the financial condition of Government measured by using indicators issued by the Public Sector Accounting Board of the Canadian Institute of Chartered Accountants. The Public Accounts provide an important link in an essential chain of public accountability. They are the principal means by which Government reports to the House of Assembly and to all Newfoundlanders and Labradorians on its stewardship of public funds.

Each year the Office reports on the status of the implementation of recommendations made in prior Reports to the House of Assembly on Reviews of Departments and Crown Agencies (Annual Reports). Monitoring commences approximately two years after a Report is published and continues until we are reasonably satisfied that recommendations have been adequately addressed or are no longer applicable. As was the case last year, details on progress by various Government departments and Crown agencies relating to past

recommendations will be made available on the Office's website at www.ag.gov.nl.ca/ag/priorupdates.htm. Information resulting from our most recent review will be available by 29 February 2012.

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



WAYNE R. LOVEYS, CMA
Auditor General (A)

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Part 2.1
Refusal of Access to Required Information
Infrastructure Strategy

In the 2004 Speech from the Throne, Government announced that it "*...will develop a comprehensive infrastructure strategy to guide investments in public infrastructure in a manner that promotes growth.*" The 2006 Speech from the Throne further elaborated that "*Existing infrastructure, including roads and public buildings, has been eroding throughout Newfoundland and Labrador for decades. Addressing the wide assortment of costly needs responsibly over time requires expert information and careful fiscal balancing. For this reason, My Government initiated a comprehensive infrastructure strategy to evaluate the needs and identify ways and means of meeting them.*"

Since 2004, Government has continued to reference its Infrastructure Strategy in Budget documents. In its Budget for the year ended 31 March 2007 Government indicated that its Infrastructure Strategy was valued at $2 billion; while in its Budget for the year ended 31 March 2011 Government indicated that its Infrastructure Strategy was valued at $5 billion.

The $5 billion infrastructure investment includes spending directly undertaken by Government departments, as well as funding provided to Crown corporations and agencies, and municipalities, to undertake capital projects.

The Province's infrastructure consists of physical capital assets instrumental in the provision of public services. It consists of such things as roads, bridges, ferries, aircraft, buildings, vehicles, major software programs and various other categories of tangible capital assets. Such assets are used to provide services to residents and visitors to the Province.

No Formal Infrastructure Strategy

When we commenced our review, we requested a copy of the "Infrastructure Strategy" that was being referred to in the Speech

from the Throne and various Government media releases. We were told by the former Deputy Minister of Transportation and Works that there was no formal, documented infrastructure strategy. The former Deputy Minister was Chair of an Infrastructure Committee established by Government.

We did find that an Infrastructure Strategy working group had been struck to undertake a review the Province's infrastructure, and that one of the working group's primary objectives was to prepare a strategy to prioritize future infrastructure investments. While no formal, documented strategy was developed, the working group did prepare a draft report, dated November 2004, which indicated in part that:

- the Province's current approach to infrastructure asset management does not provide decision makers with an appreciation of the significance of the approval of a particular level of funding;

- responsibility for the planning, acquisition, and maintenance of infrastructure is not centralized but is spread out among numerous Government departments and Crown agencies;

- the planning processes used amongst the various departments and Crown agencies were not consistent;

- a planned and dedicated approach over the long term, with an increased, and multi-year funding commitment was necessary; and

- an appropriate asset management system should involve consideration of the asset value, life cycle costs, long term affordability, risk management and assessment, performance management, operational plans, and integration of technical and financial plans.

While the draft report would not constitute an infrastructure strategy, work undertaken for the report may have been useful in developing such a strategy. The draft report was never finalized; however, the working group did highlight the benefit of developing an overall integrated long term strategy for capital investment.

Refusal by Departments to Provide Access to Required Information

When we determined that there was no formal, documented Infrastructure Strategy, it was decided to determine what processes existed at the departmental level to identify, evaluate and rank potential infrastructure projects. To make this determination we contacted the five departments which had the largest budgeted expenditures related to infrastructure for the 2010-11 fiscal year, as outlined in information provided to us by officials of the Department of Transportation and Works. These five departments were: Transportation and Works; Health and Community Services; Education; Municipal Affairs; and Justice.

Officials from our Office met with officials from each of the five departments to obtain a preliminary understanding of the process each department used to identify, analyze and manage infrastructure needs. We also discussed the nature and scope of our review and the type of information that we would require from them.

While we did receive some preliminary information, it soon became apparent that we would not be receiving all the information required to complete our review. In particular, the Department of Health and Community Services, and the Department of Justice expressed significant concern with providing the requested information. We were informed by officials at the departments that the Department of Justice would be assessing our request on behalf of all departments we had contacted, to determine whether we should be provided with the information requested.

On 5 July 2011, the Deputy Minister of Health and Community Services informed us that: *"With respect to your inquiry regarding what documentation is available for repairs and renovations, capital equipment and major infrastructure projects, there would be various documentation available for each category as prepared during the annual budget process and which can vary from year to year depending on the Budget Guidelines provided by the Department of Finance, any direction from Cabinet and/or Treasury Board, and any other documentation that is necessary to support budget requests. As to your questions related to what was specifically provided to members of TB* [Treasury Board] *and/or Cabinet, it is the Department's position that this entire body of information ultimately informs Cabinet deliberations and decision making as part of the budget process and, as I previously indicated to you, the disclosure*

of this information would reveal Cabinet confidences which is protected from disclosure under section 18 of the Access to Information and Protection of Privacy Act*."*

On 30 September 2011, the Deputy Minister of Justice informed us that "*…it is the Department's position that all documentation either obtained or generated by Departmental officials, supporting assessments and rankings of proposed infrastructure projects whether forwarded to Budget Division/Cabinet Secretariat or not, ultimately informs Cabinet deliberations and decision making as part of the budget process. As a result, this information cannot be released under section 18 of the* Access to Information Act and Protection of Privacy Act *as it would reveal the substance of deliberations of Cabinet.*"

At this point it became clear that it was not worthwhile proceeding with any further requests to the departments.

My view is that I am entitled to unrestricted access to the information required to conduct my work. The requirement to provide my Office with unrestricted access comes from section 17 of the *Auditor General Act* which states that, *"Except as provided by another* Act *that expressly refers to this section, every department of government, every agency of the Crown and every Crown controlled corporation shall furnish the auditor general with information regarding its power, duties, activities, organization, financial transactions and methods of business as the auditor general requires, and the auditor general shall be given access to all books, accounts, financial records, reports, electronic data processing records, explanations, files and all other papers, things or property belonging to or in use by the department, agency of the Crown or Crown controlled corporation and necessary to the performance of the duties of the auditor general under this* Act*."*

Under section 19 of the *Auditor General Act*, there are only two types of information in the *Access to Information and Protection of Privacy Act* which a public body shall not provide access to the Auditor General – matters where the disclosure would reveal the substance of deliberations of Cabinet (defined as including a committee of Cabinet), or matters where disclosure could reasonably be expected to be harmful to law enforcement. In this case, the departments claimed that all of the information available related to our request was being restricted as it would reveal the substance of deliberations of Cabinet.

Section 18 of the *Access to Information and Protection of Privacy Act* states that: *"The head of a public body shall refuse to disclose to an applicant information that would reveal the substance of deliberations of Cabinet, including advice, recommendations, policy considerations or draft legislation or regulations submitted or prepared for submission to the Cabinet."*

I interpret the "substance of deliberations of Cabinet" as referring to such things as: individual documents, or parts thereof, if the disclosure of information contained in the documents would likely permit my Office to draw accurate inferences about the substance of Cabinet deliberations; audio and / or video recordings of Cabinet meetings; notes made during the course of Cabinet meetings; and interviews with persons present at Cabinet meetings regarding the exact details of events and discussions that occurred during the meetings.

In my opinion, the departments' interpretation of section 18 of the *Access to Information and Protection of Privacy Act* is a much broader interpretation of the *Act* than has been seen in recent memory. It is highly doubtful whether "*... all documentation either obtained or generated by Departmental officials, supporting assessments and rankings of proposed infrastructure projects whether forwarded to Budget Division/Cabinet Secretariat or not ...*" would reveal the substance of deliberations of Cabinet.

The position taken by the departments is of significant concern, not only for this particular review, but for the precedent setting nature of the refusal. Furthermore, in my opinion the position is not in keeping with the purposes of the *Access to Information and Protection of Privacy Act*, as outlined in section 3(1), which states that: *"...the purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy…."*.

Given that access to the information required to conduct my work was not provided, my recourse under section 12 of the *Auditor General Act* is to report the denial of access to the House of Assembly. Section 12 provides that *"The auditor general shall as he or she considers necessary but at least annually report to the House of Assembly on…(b) whether, in carrying out the work of the office, the auditor general received all the information including reports and explanations the auditor general required."*

I further note that:

- The position taken on this request is inconsistent with previous decisions that Government has made. Since we have been provided with similar information for audits conducted in past years, it is surprising that we are now being advised that all of the information being requested is subject to restriction under section 18 of *Access to Information and Protection of Privacy Act.*

- The Province's Information and Privacy Commissioner has issued reports related to other situations brought to that Office's attention where section 18 of the *Access to Information and Protection of Privacy Act* was used as the basis for Government's refusal to provide requested information. The Information and Privacy Commissioner has found that the exemption claimed by Government may not apply or may be too broad.

  To determine whether information can be exempted under section 18 of the *Access to Information and Protection of Privacy Act*, the Province's Information and Privacy Commissioner applies the following test, adopted from one set out by the Nova Scotia Court of Appeal in *O'Connor v. Nova Scotia*, 2001 NSCA 132:

  "…Is it likely that the disclosure of the information would permit the reader to draw <u>accurate</u> inferences about Cabinet deliberations? If the question is answered in the affirmative, then the information is protected by the Cabinet confidentiality exemption …".

Part 2.2

Refusal of Access to Required Information

Canada-Newfoundland and Labrador Offshore Petroleum Board

The Canada-Newfoundland and Labrador Offshore Petroleum Board (C-NLOPB) was created in 1985 to administer the relevant provisions of the Canada-Newfoundland Atlantic Accord Implementation Acts as enacted by the Parliament of Canada and the Legislature of Newfoundland and Labrador. The C-NLOPB is comprised of 7 members, 3 of whom are appointed by the Federal Government and 3 of whom are appointed by the Provincial Government. The Chairman is jointly appointed by both the Federal and Provincial Governments. The C-NLOPB is funded equally by both Governments. The Provincial contribution for the year ended 31 March 2011 was approximately $7.7 million, and contributions since 1985 totalled approximately $78.9 million.

On 21 January 2008, the former Auditor General notified the Chairman and Chief Executive Officer of the C-NLOPB that he was planning a review of the operations of the C-NLOPB. The review was to include all of the following four functional areas of the C-NLOPB - safety, environmental, resource management and industrial benefits.

In the four years since January 2008, several attempts were made by the former Auditor General (to 31 July 2011) and me (since 1 August 2011) to conduct the planned review. This has been a lengthy and often frustrating process, with varying responses by C-NLOPB officials to our attempts. The following are highlights of the actions taken and correspondence exchanged since 21 January 2008, relating to our attempts to conduct the intended review:

- On 30 January 2008, the former Auditor General was advised by the Chairman and Chief Executive Officer of the C-NLOPB that the intended review could not be conducted as the C-NLOPB was not a Crown agency for purposes of the *Auditor General Act*.

- On 8 February 2008, the former Auditor General replied to the Chairman and Chief Executive Officer that he rejected the position held by the C-NLOPB, indicating that in his view the C-NLOPB was within the jurisdiction of the *Auditor General Act*, and requested that the C-NLOPB reconsider its position and allow the review to proceed as intended.

- On 14 February 2008, the former Auditor General was advised by the Chairman and Chief Executive Officer that any audit should be conducted jointly by the Auditors General of the Province and the Government of Canada.

- On 26 February 2008, the former Auditor General issued a special report to the House of Assembly indicating that, as a result of the restricted access, he could not complete the planned review, and that regardless of whether a joint review could be arranged with the Auditor General of Canada, it still remained that the C-NLOPB had not provided the access required under the *Act*.

- At a meeting held on 10 June 2008, the Chairman and Chief Executive Officer indicated that we would be "invited" to conduct a review.

- On 19 January 2009, the Office commenced its review of the C-NLOPB; however, it soon became apparent that C-NLOPB officials would not be willing to provide access to the information required to complete the review.

- In March 2009, we requested assistance from the Department of Natural Resources in obtaining the required information; however, Department officials informed us that, on the advice of legal counsel, they would not be able to provide such assistance, and suggested we again attempt to obtain the information from the C-NLOPB.

- On 6 October 2009, we provided a list of required information to the C-NLOPB. C-NLOPB officials indicated that given the privileged nature of much of the information required, they would have to request and obtain consent from the offshore operators.

- On 15 December 2009, we were provided with copies of operator responses, wherein five of the six operators indicated they would not consent to providing access to the Auditor General.

- On 11 December 2009, we contacted officials at the Department of Natural Resources to advise of the operator responses and to ascertain whether the Department would provide any assistance regarding our request for information.

However, the Department again confirmed that, based on legal advice, they would not provide the requested assistance.

- On 3 December 2010, the then Auditor General of Canada wrote the Chairman and Chief Executive Officer to advise that a joint audit with our Office was being planned, to be led by the Commissioner of the Environment and Sustainable Development. It was anticipated that the Commissioner would focus on environmental and emergency preparedness activities as well as governance, and that our Office would primarily focus on the other functional areas of the C-NLOPB.

- On 6 July 2011, the Chairman and Chief Executive Officer wrote the former Auditor General requesting confirmation that any privileged information provided would not be disclosed in any way in reports by the Auditor General.

- On 18 August 2011, I met with the Chairman and Chief Executive Officer to discuss our Office's past attempts to audit the C-NLOPB. At the meeting, I indicated that while I would be very cognizant of the confidential and privileged nature of the information, I could not provide absolute assurance that the information would not, under any circumstances, be used in a report.

- In September 2011, the Chairman and Chief Executive Officer wrote the operators indicating that the C-NLOPB was of the view that the audits proposed by the Auditors General of Canada and Newfoundland and Labrador were for the administration of the Atlantic Accord Implementation Acts and were in the public interest, and that access to the required information would be provided. However, it was also indicated that the C-NLOPB had interpreted undertakings from the Auditors General of Canada and Newfoundland and Labrador to mean that privileged information would not be disclosed in their respective reports.

- On 13 September 2011, I wrote the Chairman and Chief Executive Officer, again indicating that while I would be very cognizant of the confidential and privileged nature of the information, I could not provide absolute assurance that the information would not, under any circumstances, be used in a report.

- On 28 September 2011, I wrote the Chairman and Chief Executive Officer to confirm my intention to conduct a concurrent audit of the C-NLOPB with the Office of the Auditor General of Canada, to request confirmation of free and full access to the information contained in a list attached to the letter by 7 October 2011, and to request that the information listed be provided as soon as possible, but no later than 21 October 2011.

- On 30 September 2011, the Chairman and Chief Executive Officer responded to my 28 September 2011 letter and indicated that the C-NLOPB may not be able to provide full access to privileged information. However, the Board indicated: *"We will request Operator's consent to provide you with their privileged information, but we cannot ensure, in the absence of your assurance not to release this information, that they will agree to do so."*

- On 24 October 2011, I wrote the Chairman and Chief Executive Officer indicating that *"As neither the requested confirmation of free and full access, nor the information contained in the listing, have been provided as of 21 October 2011, I consider this to be denial of access to the information required to conduct my audit work, and will prepare a report on this matter for submission to the House of Assembly."*

As indicated above, and as reflected by these highlights of actions taken and correspondence exchanged since 21 January 2008, this has been a lengthy and often frustrating process.

I cannot accept the C-NLOPB's condition that they will provide unrestricted access to what they deem to be privileged information, only if I agree not to report any findings related to that information. My concern with accepting such a condition is heightened, given the extent of information identified by the C-NLOPB in the past as being privileged, and the significance of that information to any potential findings identified in a review of the four main functional areas – safety, environmental, resource management and industrial benefits.

I have therefore decided not to proceed with the planned review. In my opinion, had I proceeded under the C-NLOPB's condition, any attempt to report on findings in the safety or other functional areas would have been challenged by the C-NLOPB on the grounds that the findings were somehow supported by privileged information.

The inability to complete the planned review is regrettable, as the C-NLOPB will not be held accountable in the same manner as other entities within the jurisdiction of the *Auditor General Act* operating in the Province, i.e. through an audit by the Provincial Auditor General.

With respect to the issue of access to privileged information, the C-NLOPB advised that it had obtained legal opinions indicating that access to privileged information could not be provided to my Office. I do note however, that when the C-NLOPB was under the assumption that I would not report anything considered to be privileged, the Chairman and Chief Executive Officer had indicated, in a letter to the operators in September 2011, that the audits proposed by the Auditors General of Canada and Newfoundland and Labrador were for the administration of the Accord Acts and were in the public interest, and that access to the required information would be provided. The reference to the administration of the Accord Acts relates to the sections contained in both the Federal and Provincial Atlantic Accord legislation which provide that privileged information shall not be disclosed without the written consent of the person who provided it "except for" the purposes of the administration or enforcement of that *Act*. After I clarified the Office's position on reporting, the C-NLOPB again denied access to the required information.

My view is that I am entitled to unrestricted access to the information required to conduct a review of the C-NLOPB. The requirement to provide my Office with unrestricted access comes from section 17 of the *Auditor General Act* which states that, *"Except as provided by another* Act *that expressly refers to this section, every department of government, every agency of the Crown and every Crown controlled corporation shall furnish the auditor general with information regarding its power, duties, activities, organization, financial transactions and methods of business as the auditor general requires, and the auditor general shall be given access to all books, accounts, financial records, reports, electronic data processing records, explanations, files and all other papers, things or property belonging to or in use by the department, agency of the Crown or Crown controlled corporation and necessary to the performance of the duties of the auditor general under this* Act*."*

I note that there are many types of information under the Province's *Access to Information and Protection of Privacy Act* which public bodies may not or shall not disclose to various applicants, one of

which is information the disclosure of which would be harmful to the interests of third parties, including information that is supplied, implicitly or explicitly, in confidence. However, under Section 19 of the *Auditor General Act*, there are only two types of information in the *Access to Information and Protection of Privacy Act* which a public body shall not provide access to the Auditor General - matters where disclosure would reveal the substance of deliberations of Cabinet, or matters where disclosure could reasonably be expected to be harmful to law enforcement.

Given that access to the information required to conduct the review of the C-NLOPB was not provided, my recourse under section 12 of the *Auditor General Act* is to report the denial of access to the House of Assembly. Section 12 provides that *"The auditor general shall as he or she considers necessary but at least annually report to the House of Assembly on…(b) whether, in carrying out the work of the office, the auditor general received all the information including reports and explanations the auditor general required;…"*

At the time this report item was prepared, the Commissioner of the Environment and Sustainable Development of the Office of the Auditor General of Canada was proceeding with an audit of the C-NLOPB.

Part 2.3
Department of Advanced Education and Skills
Temporary Employees

The mission of the former Department of Human Resources, Labour and Employment (the Department) was to *"…enhance supports and services to individuals to increase their participation in the labour market and to employers to ensure they have the human resources required to compete and contribute to a prosperous future for the province.*" Prior to the restructuring of Government in late October 2011, the former Department had 796 employees. Of these, 602 were permanent employees and 194 were temporary. The total gross expenditure of the Department for the year ended 31 March 2011 was $482.2 million, of which $46.0 million was allocated to salaries.

Section 13 of the *Public Service Commission Act* (the *Act*) provides that *"Recommendations for appointments to and promotions within the public service shall be based on merit principles and made by the commission through competitive written examination or by other processes of personnel selection designated to establish the merit of candidates that the commission considers are in the best interests of the public service."* Merit principles require that candidates be assessed with fairness and equity so that the job will be awarded to the candidate most suitable for the position. These principles are the primary means to avoid any form of bias or influence over such appointments and promotions.

The Public Service Commission (PSC) is responsible for the recruitment and selection process of positions that fall under their jurisdiction as per the *Act*. The departments are responsible for the initiation of temporary hires and assignments, which can be done without the application of a competitive process, as per the Personnel Administration Procedures Manual.

Under the General Service Collective Agreement between the Province and the Newfoundland and Labrador Association of Public and Private Employees, a permanent employee is defined as *"…a person who has completed his or her probationary period and is employed on a full-time basis to hold office without reference to any specified date of termination of service."*, while a temporary employee is defined as *"…a person who is employed for a specific period for the purpose of performing certain specified work and who may be laid off at the end of such period or on completion of such*

work." A similar definition of temporary employee is outlined in the *Act*.

While the *Act* does not apply to temporary employment situations, the PSC does have a policy on the length of time a temporary employee that was hired without a competition can be employed before a competition must be held, and the length of time an existing employee can be temporarily assigned to another position, through temporary placement or promotion, before a competition must be held.

If departments do not assign an existing public service employee to a position, the permanent head of the department has the authority to hire an employee external to Government to fill a position on a temporary basis. In such cases, the employee can only be employed in a bargaining unit position for periods up to 13 weeks before a competition must be held, and for management and non-bargaining positions for periods not to exceed six months before a competition must be held. In cases where departments do assign an existing public service employee to a position, PSC policy provides the same periods as outlined for temporary employment, i.e. the employee can only be assigned to a bargaining unit position for periods up to 13 weeks before a competition must be held, and for management and non-bargaining positions for periods not to exceed six months before a competition must be held. In the case of management or non-bargaining positions, an extension can be authorized by the PSC.

Our review of temporary employees at the former Department of Human Resources, Labour and Employment during the period 31 March 2010 to 26 October 2011 indicated that the Department was not complying with PSC policy in that temporary hires and temporary assignments exceeded the maximum period without a competition being held.

Of the 62 temporary employee files reviewed, we found that:

- 42 were hired as a temporary employee (temporary hires), including 3 summer student positions and 3 contractual employees, i.e. without a job competition; and

- 20 were hired through a temporary appointment, i.e. with a job competition.

In 41 of the 42 files reviewed, where no job competition was held upon initial employment, the Department could not demonstrate on what basis individuals were initially selected for temporary employment or assignment, or whether the merit principles were followed. This brings into question whether the merit principles were being considered by the Department when temporarily employing or assigning individuals to positions within the Department, including whether the most suitable candidates were selected for the positions and whether there was any form of bias or influence over such employment or assignments.

Of the 42 temporary employee files reviewed, where no job competition was held upon initial employment, we found the following:

- For 32 (76.2%) of the 42 temporary employment files where the individual was initially hired in a bargaining unit position, the Department did not conduct a competition before the maximum 13 week period ended. All 32 received an extension by the Department, without a job competition, ranging from seven weeks to 11 years beyond the maximum 13 weeks. For example, an individual was hired by the Department in November 2000, was granted extensions to that position as well as to other temporary assignments, and had breaks in service totalling approximately three years over the course of their 11 years of employment. At the time of our review, this individual was still employed with the Department and had not yet participated in a job competition.

  Of these 32, there were 17 instances where the same employee was temporarily assigned to another position within the Department (15 bargaining unit and 2 management or non-bargaining unit), and all these temporary assignments were extended by the Department beyond the 13 week or six month period, without a competition being held. The length of extensions ranged from approximately four months to five years for the 15 bargaining unit positions, and ranged from approximately six months to two years for the two management or non-bargaining unit positions. For example, one employee was hired with the Department in January 2009, and was temporarily assigned five times to bargaining unit

positions before being successful in a job competition in January 2011.

- For 3 (7.1%) of the 42 temporary employment files, the individual was initially employed as a contractual employee. For two of the three individuals, they were later assigned to a temporary position, and the Department did not conduct a competition before the maximum 13 week or six month period ended. Both were extended by the Department, without competition, for an additional 12 month period beyond the initial assignment.

- For 7 (16.7%) of the 42 temporary employment files, there were no issues with the temporary hire or assignment terms.

As indicated by PSC officials, the PSC monitors bi-weekly payroll reports to assess compliance with its staffing policies. In cases where prescribed deadlines for temporary hires or temporary assignments are approaching, the PSC notifies departments of the approaching deadlines (either 13 weeks or six months, depending on the nature of the position) through the Strategic Human Resource Management Division, indicating that the positions should be addressed in a timely manner, i.e. to advertise the position.

While our current review was limited to the former Department of Human Resources, Labour and Employment, officials at the PSC indicated that, based on the results of their monitoring activities, and on complaints received, this issue is prevalent in other departments as well, i.e. situations where individuals are temporarily employed or assigned within the public service without a job competition being held within the specified time periods. For example, one temporary employee file that was reviewed showed that an employee was working with Government for 21 years before they were appointed to a position through a job competition. Only a portion of the 21 years was spent working with the Department, the majority of it, approximately 20 years, occurred when the employee was employed with another department.

Part 2.4
Department of Education
Western School District

The Western School District (the District) is responsible for the delivery of primary, elementary, intermediate and secondary educational services to approximately 12,500 students in 71 schools. For the 2009-10 school year the District had 1,458 teachers, and 770 administrative and support staff, with annual salary and employee benefits costs of approximately $132.1 million. For the fiscal year ended 30 June 2010, the District had total expenditures of $156.8 million.

Our review identified significant issues relating to the District's human resource practices, including in relation to recruitment, compensation, and monitoring and control of leave and overtime. There were also instances of non-compliance with the *Public Tender Act*. Furthermore, we found weaknesses in the management and control of expenditures relating to employee travel, cell phones and the District's vehicle fleet. Issues were also identified with the monitoring and control of capital assets. In particular:

Human Resources

We identified the following issues with regard to recruitment, compensation and monitoring and control of leave and overtime:

Recruitment

- None of the 11 competition files reviewed had complete documentation on the competition process, including 2 files which did not contain adequate documentation to support why the District had rehired retired teachers instead of other candidates.

- In 7 of 24 personnel files reviewed, there was no documentation present to indicate that a competition had been held when the individual had been appointed to the non-teaching position.

- 3 teaching positions were filled for the 2009-10 school year without a job competition although the District was aware of the vacancies prior to 1 August of the particular year.

- 2 teaching positions were filled without any documentation in the competition file to indicate that a competition had been conducted for the 2010-11 school year. Although District staff indicated the vacancies occurred after 1 August, there was no documentation in the file to support this.

- In 7 instances, the District created and filled positions without the required Treasury Board classification approval being requested. In 4 other instances, the District filled positions that had not been classified until after employees had been appointed to the positions. Time periods ranged from 1.5 to 51 months after the position was created and filled.

Compensation

- In 2 instances, there was no documentation that the required approval of the Director of Education or the Board of Directors of the Western School District (the Board) was obtained for upscale hiring.

- The District did not follow the direction of the Department of Education in compensating a former Assistant Director of Finance when the school districts were reduced from 11 to 5 districts. As a result, the employee was overpaid $97,308 for the period September 2004 to December 2010.

- In 2 instances, employee salaries were adjusted retroactively after the positions were classified by Treasury Board but the change was incorrectly applied before the effective date resulting in an overpayment of $10,590.

- In 6 instances, employees were not provided salary increases or step progressions for periods from 11 to 23 months after the employees were entitled to the increase.

- In 1 instance, a salary differential was not correctly applied resulting in an underpayment of $3,740 up to 31 March 2011.

- In 2 instances, pay increases for apprentice electricians were not correctly calculated resulting in an overpayment of $6,094.

Leave and Overtime

- Employee leave was not always recorded accurately. The leave database was not accurate and, as a result, leave balances had to be determined manually when required. Furthermore, leave carry forward balances were not always calculated in accordance with Government policies and collective agreements.

- Overtime was not always adequately controlled. Overtime reports were not always completed and approved as required and some staff were permitted to track the accumulation and use of their own overtime.

Expenditures

We identified the following issues with regard to District expenditures:

Public Tender Act

Our review of 34 purchases greater than $10,000 and 21 purchases under $10,000 identified the following:

- The District did not comply with the *Public Tender Act* in that required public tenders were not called for 5 purchases totalling $444,658 including 3 regular bus contracts, 1 special needs bus contract and a recycling contract.

- The District did not comply with the *Public Tender Act* in 2 instances where the required Form B was not completed for expenditures the District determined were sole source purchases. Therefore, the Government Purchasing Agency was not notified as required and consequently the House of Assembly was not informed. These instances included garbage collection totalling approximately $50,000 per year and the purchase of an annual software license with support totalling approximately $14,700 per year.

- There was insufficient information on file for 7 of 13 contractors who were required to provide the information as part of their contracts. Examples included letters of good standing from the Workplace Health, Safety and Compensation Commission and proof of insurance.

Travel

- One senior executive did not submit travel claims but had all travel expenses directly billed to the District and paid by purchase orders. Our review indicated that this employee routinely charged meals to the hotel invoice and as a result, District staff could not readily determine whether expenses were within the proper per diem rates. In certain instances, the hotel invoices indicated that meals were provided to two or more people; however, there was no evidence that meals were provided for a legitimate business purpose.

Cell Phones

Our review of cell phones indicated that the District was not adequately monitoring the cost and usage of cell phones. We identified the following issues:

- The District maintained a list of individuals who were assigned cell phones; however, the listing was not up-to-date and did not include all information such as cell phone plan information, serial number of phone and issue date.

- 4 cell phones were either not used or not used enough to warrant the purchased plans which cost $1,256 for a total of 62 minutes.

- A senior executive was provided with two cell phones. One of these cell phones (a Blackberry) was provided in January 2010 in order for the executive to access business e-mail and calls while on vacation. The cost during the vacation period was $518; however, since that time the phone had not been used. Until the plan was cancelled in May 2011, the cost to the District was $798 for 14 months for which there was no usage.

- Employees were not always requested, as required by the District's cell phone policy, to reimburse the District for personal cell phone usage included on bills. One maintenance employee incurred costs totalling $178 above the monthly plan during a vacation to the United States in November 2010, without any documentation of a review or reimbursement for personal costs. Another maintenance employee incurred costs totalling $256 for the period from 15 August to 14 September 2010 with 1,522 minutes above the monthly plan of 600

minutes, without any documentation of a review or reimbursement for personal costs. A manager incurred costs totalling approximately $350 for the period from August to October 2010 with 1,922 minutes above the monthly plan of 1,200 minutes, without any documentation of a review or reimbursement for personal costs.

Other

Our review also identified the following:

- The District paid a municipal tax bill two weeks after the discount date resulting in an additional $750 expense.

- In November 2010, the District was billed and paid $500 plus HST for a rented telephone company router that was left at the school by the company when the school, where it was located, was closed. As a result of our inquiries in February 2011, the router was located at the District office in Corner Brook. District staff indicated they were not aware that the District had been charged for the missing router. In May 2011, the District received a refund for returning the router in March 2011.

- One snow clearing contractor was overpaid by $2,674 due to HST being paid in addition to the HST already included in the contract price.

- A review of one school's expenditures by an external consultant identified the following issues and inappropriate expenditures over six fiscal years:

    - 11 instances of liquor purchases totalling approximately $700 for school functions;

    - 9 instances totalling $4,200 for purchases without any invoices;

    - $760 for gift certificates, donations and memberships for staff;

    - $400 for payments to the Principal's son to perform routine tasks at the school;

- Personal cell phone costs paid from September 2005 to June 2009 for the Principal; and

- 1 TV, 3 VCRs, 3 DVD players, 1 digital camera, 1 desk, 1 laptop computer, 1 artificial Ficus tree, 1 storage cube, 2 LCD HDTVs and a wicker chair set were purchased but could not be located at the school. The cost of these items totalled approximately $3,500.

Capital Assets

Our review indicated that the District was not adequately monitoring and safeguarding its capital assets. We identified the following issues:

- The District had not documented the procedures for the control of capital assets including proper recognition for financial statement purposes, safeguarding, and write-downs.

- Except for computers and smart boards, physical identification methods, such as tagging, were not used to identify furniture and equipment as District property.

- There was no capital asset ledger maintained for furniture and equipment.

- There was no physical examination of capital assets to verify the existence of all furniture and equipment.

- The District could not readily identify what land was included in the land cost of $2.0 million reported on its 2010 financial statements. As a result, the District could not readily identify what land it specifically owned, what land was in excess of the District's needs, and whether any excess land should be disposed of.

- A review of the District's January 2011 listing of insured buildings identified 9 buildings which had been sold and one leased building (Board office) at a total replacement cost of $74.1 million that were still included on the listing. As the buildings were still included on the insurance listing it would be assumed that a portion of the insurance premiums paid by Government on behalf of the District related to these buildings.

- A leased building owned by the District was not included on the District's building asset listing and financial statements. The listing also included buildings the District did not own.

  Furthermore, in regards to the leased building, the lease agreement with the current tenant had expired in August 2004 and no new agreement had been in place since that time. The District received rent revenue of $5,000 per month for the leased space which was identified at a Property and Finance Committee meeting as being below market value. In addition, the District was not collecting HST on the annual lease rent of $60,000. Since September 2004, the District had not invoiced, collected and remitted approximately $52,500 in HST.

Vehicle Expenses

Our review identified issues with how the District monitors and controls vehicle usage and expenses. We identified the following:

District-owned Vehicles

- The District did not formally monitor each vehicle's operating cost and kilometres driven to determine if utilization issues were present that required follow-up.

- Mileage log books were not always completed as required. For example, one of the 3 log books reviewed was not completed for the period July 2009 to December 2010 and another log book was not completed for the period September 2010 to December 2010**.** None of the log books were signed as reviewed by the employees' supervisor.

- Operating costs for each vehicle were not accurately recorded in the financial records. For example, expenditures were attributed to two vehicles in the 2010 fiscal year even though the vehicles had been sold in 2006 and 2008 respectively. In addition, for the period 1 July 2009 to 31 December 2010 expenditures for two service vehicles were charged to one vehicle account in error. Without the accurate recording of vehicle expenses, the District cannot adequately monitor its vehicles costs and usage.

- Two service vehicles and one bus were sold in previous years but the vehicles were not removed from the District's financial records.

Personal Vehicles

- Cost and usage of personal vehicles was not evaluated. For example, for the 2009 and 2010 calendar years, two maintenance employees used their personal vehicles for work purposes for 69,858 kilometres and 75,728 kilometres respectively. The District reimbursed these 2 employees approximately $20,000 each for the fiscal year 2010; however, it did not perform an assessment to determine whether it would be more feasible to purchase or lease maintenance vehicles.

Fuel Credit Cards

- The District did not always adequately review fuel credit cards and transactions to ensure the reasonableness and legitimacy of fuel purchases. For example, one fuel credit card slip for $100 in July 2010 identified the transaction as "cash back"; however, there was no notation on the slip or statement to indicate any follow-up as to its appropriateness. In July 2010, the District removed two buses from the vehicle fleet; however, as of January 2011 the associated fuel credit cards had not been cancelled.

- Vehicle number or license plate number and employee signature were not always recorded on fuel card receipts as required by District policy.

Part 2.5
Department of Environment and Conservation
Industrial Compliance

The Department of Environment and Conservation (the Department) is responsible for the protection, enhancement, and conservation of the quality of the natural environment, including water, air, and soil quality.

The Department's Pollution Prevention Division (the Division) is responsible for the prevention of environmental degradation by industrial operations, and to ensure their compliance with the *Environmental Protection Act* and *Regulations*. The industrial sectors that the Division works with include pulp and paper, petroleum, mining, and power generation.

The Division's Industrial Compliance Section (the Section) is responsible for preventing the degradation of the environment by industrial facilities and ensuring facility compliance with environmental legislation. Section officials provide services to assist and regulate industrial facilities in the Province in the reduction of emissions of air pollution, discharge of wastewater and disposal of solid waste. The Section has five environmental engineers - four located in the St. John's office who are responsible for the industrial facilities east of Gander and certain facilities in Labrador, and one located in the Stephenville office who is responsible for industrial facilities west of Gander and two industrial facilities in western Labrador. At the time of our review, there were 20 industrial facilities for which routine inspections were conducted and 5 industrial facilities for which complaint-based or follow-up inspections were conducted.

The measures used by Section officials to monitor and enforce environmental legislation include: issuing Certificates of Approval (CoA) which provide terms and conditions to satisfy various *Environmental Protection Act* requirements related to the construction and/or operation of industrial facilities; reviewing monthly environmental monitoring reports of industrial data submitted by facility operators, to ensure the operators are complying with Provincial environmental requirements; conducting site inspections, discussions with industry representatives, and review of records; providing technical advice to industry and public members on various issues; and investigating environmental complaints.

Our review identified concerns with how Section officials conducted inspections, tracked monthly environmental monitoring reports submitted by the facility operators, recorded information relating to Section activities, and documented complaints. In particular, we found that:

- there was no documented risk-based approach for determining inspection frequency;
- no formal training was provided to environmental engineers in performing inspections;
- no documented policies and procedures were in place for inspections;
- inspections were not being adequately documented;
- monthly monitoring reports that were received from the facility operators were not being reviewed in a timely manner by Section officials;
- complaints were not being formally tracked; and
- no information was readily available to demonstrate whether any required follow-up action from inspections and complaints had been taken.

In addition, information systems were not in place to track inspection and monitoring information relating to industrial facilities, and to enable officials to demonstrate whether their activities were successful in meeting Section responsibilities for preventing the degradation of the environment by industrial facilities and ensuring facility compliance with environmental legislation.

Inspections

Inspection frequency was not being determined using a documented risk-based approach and there was no inspection plan developed based on priority. Department officials indicated that while inspections are generally expected to be conducted for each facility at least once per year, the number and timing of inspections were determined by the environmental engineers. The Industrial Compliance Manager may also direct engineers to conduct an inspection should they identify the need.

Our review of inspection activity between 1 April 2010 and 31 March 2011 indicated that 6 of the 25 facilities that required industrial inspections did not have inspections completed, and of the remaining 19 facilities, inspection data entry forms for 8 of the 52 inspections completed were not evidenced as being approved by the Manager.

In addition, the Department: did not have documented policies and procedures to guide the inspection process; did not provide formal training to environmental engineers on performing inspections; and did not have a standard inspection form that inspectors could use to complete their inspections. Furthermore, documentation that was compiled by the inspectors relating to completed inspections was not always approved by the Industrial Compliance Manager.

Without policies and procedures, formal training, standard inspection completion forms and approval of inspection documentation, the Department cannot ensure that inspections are performed consistently.

Monitoring Reports

Of the 20 industrial facilities requiring routine inspections, 17 were required to submit monthly monitoring reports.

Our review of the monthly monitoring reports received from the 17 industrial facilities between 1 April 2010 and 1 December 2011 indicated the following:

- 2 of the 494 monthly monitoring reports were not received within a 30 day timeframe; and

- Of the 492 monthly monitoring reports that were received, 94 had not been reviewed by Section officials at the time of our review, with 18 of these reports having been received over 12 months prior to our review.

The lack of review of monthly reports increases the risk that there could be violations of the Province's environmental legislation that have not been identified by the Division and/or followed up on.

Information Management

While the Department maintained various spreadsheets to list CoAs and to track inspections, receipt of monthly environmental monitoring reports, and complaints, there was no centralized database for storage of all information relating to the industrial facilities. Such a database would improve data security and integrity, provide central data access to users, and enable officials to more readily identify and follow-up on issues identified. It would also provide the information necessary for officials to demonstrate whether their activities were successful in meeting the Section's responsibilities for preventing the degradation of the environment by industrial facilities and ensuring facility compliance with environmental legislation.

Complaints

There were no documented policies and procedures for handling complaints, and complaints received were not formally tracked. The lack of formal policies and procedures and the absence of a formal means to track complaints may lead to inconsistent handling of complaints, as well as an inability for the Department to readily track the number and/or type of complaints received, or to cross-reference complaints and related action taken to other information available for a particular facility. Such information could be used if the Department were to conduct inspections using a documented risk-based approach.

Inspection Follow-up

We found that although follow-up actions were identified on inspection forms, the action taken and follow-up completed to confirm required action was taken was not documented and therefore we were unable to determine that this follow-up had occurred.

Part 2.6
Department of Justice
Royal Newfoundland Constabulary - Firearms

The Royal Newfoundland Constabulary (RNC) was established in 1871 and operates under the authority of the *Royal Newfoundland Constabulary Act, 1992* and *Regulations*. The RNC is responsible for police services in three regions of the Province - the Northeast Avalon, Corner Brook, and Labrador West. The population of these regions was approximately 222,360 (Newfoundland and Labrador Statistics Agency – 1 July 2010). In providing these services, as at 18 October 2011, the RNC employed 415 police officers and 129 civilian staff.

In a report tabled on 31 March 1998, a Select Committee (the Committee) of the House of Assembly recommended that the arming policy of the RNC be amended to permit members on operational duty to wear side arms as part of the regular uniform. Based on this recommendation, the RNC provided side arms to their members and issued a Firearms Policy. As of November 2011, a total of 734 firearms were included in the RNC inventory system, consisting of 536 hand guns, 143 rifles and 55 shotguns.

The Committee also recommended that a firearms audit acceptable to the Minister of Justice (the Minister) be performed annually and submitted to the House of Assembly. To comply with this recommendation, the Chief of Police requested that the Office of the Auditor General (the Office) complete the required annual firearms audit for the seven year period from 1999 to 2006. In November 2007, the Department of Justice confirmed that the annual firearms audit, being conducted internally at that time by the Royal Newfoundland Constabulary, was acceptable to the Minister. As a result, the Office agreed to cease the annual review of firearms at the RNC.

The findings from our 1999 to 2006 firearms reviews included the following:

- firearms and ammunition inventory not accurate;
- non-compliance with Firearms Policy;
- Firearms Policy infractions not being properly followed up;

- inspections of firearms storage lockers not performed;
- personnel and equipment inspections not properly reported;
- training not being completed as required and training database not accurate;
- Use of Force Review Board not active; and
- no Select Committee formed to review arming policy.

Given these findings, and that five years had passed since our last review, it was decided to again review firearms and other use of force equipment along with use of force training at the RNC during 2011.

Our current review was completed in December 2011 and covered the period from November 2009 to November 2011. The review included an assessment of the systems, policies and procedures relating to the inventory, storage and control of firearms and other use of force equipment at the RNC, as well as the training and reporting policies related to the use of force by members.

Our review identified concerns with controls over firearms, ammunition and other use of force equipment, non-compliance with the Firearms Policy and how firearm use is monitored. Furthermore, RNC officials could not provide documentation demonstrating that the annual internal firearms audits agreed to by the Minister of Justice had been completed for 2007, 2008 or 2009. Given the serious repercussions, i.e. the increase in risk to workplace and public safety that could result from issues related to firearms and other use of force equipment, it is critical that the RNC continue efforts to improve compliance with established policies and procedures. We found the following:

Controls over Firearms and Ammunition

As part of our review, we conducted inventory counts of firearms, ammunition and other use of force equipment at the armories in the Northeast Avalon, Corner Brook and Labrador West regions. Based on the results of these inventory counts, we concluded that officials at the Corner Brook and Labrador West armories could not account for all items under their control. Examples included: seven firearms listed on the Labrador West inventory report that could not be

located in the armory, one of which could not be located anywhere at the Labrador City office; two firearms located at the Corner Brook office which were not listed on the inventory report; three instances where there were differences between the amount of ammunition located within the Corner Brook armory and the inventory report, e.g. 525 rounds of 12 gauge ammunition listed in the inventory system could not be located in the armory; and three instances where there were differences between the amount of ammunition located within the Labrador West armory and the inventory report, e.g. 266 rounds of .40 calibre operational ammunition listed in the inventory system could not be located in the armory.

We also found that quarterly firearms storage locker inspections were not being conducted as required by the RNC Firearms Policy. Without such inspections, significant infractions of the policy could go undetected. Our review of documentation supporting the completion of the quarterly inspections of firearms and firearms storage areas for the period November 2009 to November 2011 indicated that of a total of eight possible quarterly inspections during that period, the Northeast Avalon region could provide support for only two inspections being conducted, the Corner Brook region could provide support for only one inspection being conducted, and the Labrador West region could not provide support that any of the eight required quarterly inspections had been completed.

Furthermore, the inventory system is not accurate because not all required adjustments, including additions, disposals or internal re-assignments of firearms and other use of force equipment, were made on a timely basis. For example, we found that even though a member had transferred to a different region in September 2011, the inventory system, as of November 2011, had not been updated to reflect the transfer.

The 2011 firearms audit completed internally by the RNC's Audit Manager found serious issues with regards to firearms locker security. The report stated that while each locker has a key, there have never been controls in place that would have prevented the duplication of keys and/or ensured the returning of keys when a locker change occurs. It was also found that when keys are missing and no spares are known to exist, the lock cylinder is replaced by cylinders that are sometimes duplicates of other firearms storage lockers held at the RNC. RNC officials indicated that there was one instance when a member could not locate their firearm because it had been removed from their firearms storage locker by another member

on a different shift because the two lockers were in close proximity and had identical keys.

Non-compliance with the Firearms Policy

During our inspection of firearms storage lockers, we observed three infractions of the Firearms Policy at the Northeast Avalon region: two members had stored their firearms loaded; and one of those two members had also stored their firearm in their personal locker instead of in their approved firearms storage locker. We also observed two infractions at the Corner Brook region where members who were off duty did not have the correct amount of ammunition, as assigned to them per the firearms locker report, located in their firearms storage locker. The Firearms Policy states that every member is responsible for the safe storage of service firearms and ammunition and that the unloaded firearm, along with the issued ammunition and Oleoresin Capsicum (OC) spray, should be secured in the member's firearms storage locker at RNC facilities or in another approved location when the member is not on duty.

An additional 12 infractions were noted where firearms (6) or other use of force equipment (6), assigned to one member per the firearms locker report, were found in another member's firearms storage locker.

How Firearm Use is Monitored

RNC officials provided 1,034 use of force reports to support the 1,115 use of force incidents reported between November 2009 and November 2011. Of the 1,034 use of force reports that were available, we found that 17 were not signed as evidence of the required review by the District Inspector/Divisional Commander and none of the 1,034 reports evidenced the required review by the Firearms and Use of Force Instructors. Given that some use of force reports could not be provided and the lack of review of available reports, the RNC may be missing opportunities to identify inappropriate uses of force.

We also found that the Use of Force Training Database is neither accurate nor complete. As a result, we could not rely on the information contained within the database to demonstrate whether members were in compliance with the RNC's Use of Force Policy, or whether they had received all required training. We reviewed

information entered into the database for 2010 and 2011, and found the following:

- 45 instances where the date for training was entered incorrectly; and

- 413 instances where training was completed but not entered into the database.

During our review of the Use of Force Training Database, it was found that the RNC is at risk of not complying with its policy on use of force training. For example, as at 24 November 2011, a total of 114 members had not yet completed the required Module 2 training (defensive tactics/handcuffing techniques and baton) in the 2011 calendar year, and 16 members had not yet completed the required Module 1 training (annual firearms training).

Annual Firearms Audit Reports

RNC officials could not provide audit reports or other documentation to suggest that the annual internal firearms audits for the years 2007, 2008 and 2009 had been completed, or that the results of any audits had been communicated to the Department of Justice. As a result, the RNC could not demonstrate that the internal firearms audits, deemed to be acceptable to the Minister, had been conducted to provide assurance that members complied with the RNC's Firearms Policy for those three years.

Furthermore, the five-year review of the RNC arming policy, recommended by the Select Committee and expected to be completed covering the five years to 31 March 2003, has never been completed.

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Part 2.7
Department of Natural Resources
Growing Forward Program

The Growing Forward Program (the Program) is administered by the Agrifoods Development Branch of the Forestry and Agrifoods Agency within the Department of Natural Resources (the Department). The objective of the Program is to promote *"a profitable and innovative… industry that seizes opportunities in responding to market demands and contributes to the health and well-being of Canadians."*

The Program is expected to provide $29.58 million in total funding for the five years ending 31 March 2013, and is jointly funded by the Federal and Provincial governments at 60% and 40% respectively. Applicants are eligible for a non-repayable contribution of up to $500,000 subject to Program demand and availability of Program funds. As at 31 March 2011, a total of $15 million had been approved for 360 projects.

Our review identified concerns as to how the Department was administering the Program. We found that applications were not always assessed and approved in accordance with the Program Guide, payments were sometimes made without adequate documentation, and projects were not adequately monitored to determine whether project deliverables were met.

Assessment and Approval

We reviewed 30 approved projects (27 for producers/processors and associations, and 3 administered by the Department) and found the following issues with the assessment and approval process:

- A total amount of $1.306 million was approved and paid to three related parties ($500,000, $500,000 and $306,000). In cases where related parties are involved, the Implementation Committee (IC) is required under the Program Guide to consider the benefit to the industry, the amount of funding previously received, and the availability of existing funds; however, there was no documentation to indicate that these factors were considered.

- A total of $1.08 million was approved for three producers/processors and associations' projects which did not meet eligibility requirements for funding under the Program. One of the three applicants was approved for funding of $500,000 even though they did not meet the requirement of operating a commercial farm or an agricultural processing facility. There was no documentation to indicate why the IC approved the funding when three different departmental staff had recommended that the application be rejected. Reasons given by the Department staff for the recommended rejection included that: the company was ineligible for funding under the Program because it was a land clearing company and did not generate farm sales; the company was in a weak financial position; and that the funding would create unfair competition.

  For the other two applicants that did not meet the eligibility requirements for funding, one producer had not completed the required Environmental Farm Plan (EFP) within the five years before being approved, and another did not have the required environmental certificate of approval for farm operations. There were 6 other approved projects where confirmation that the EFPs had been completed was not on file at the Department at the time of our review.

- A total of $830,145 was approved for 5 projects even though required information was missing from the application, such as ownership in related companies (3), information related to an Environmental Farm Plan (1) or whether there were arrears owing to Government (1).

- A total of $1.34 million was approved for 5 projects even though the documentation to support expected project costs of $272,779 was inadequate. Examples include the absence of quotes (3), and the inclusion of HST and an incorrect application of exchange rates, both of which are ineligible costs (2). Although included in approved funding, the HST and incorrect exchange rate amounts were not paid out when the funding was disbursed.

- A total of $1.97 million was approved for 9 projects even though the required checks were not completed by the Department to determine whether the applicants or related entities had arrears owing to Government.

The decisions of the IC and the discussion as to how these decisions were reached were not documented in the Committee minutes. Although a Record of Decision (ROD) was prepared from meeting notes and signed by the chairperson, the ROD was not reviewed by the Committee to identify and correct any discrepancies.

Payments

Our review of payments made relating to approved projects indicated the following issues with the timing of payments and the documentation required to support payments:

- Holdbacks totalling $84,732 were not deducted from payments for 3 projects. Contrary to the Program Guide and the contribution agreement, a holdback was not deducted from a claim payment for 1 project. In addition, holdbacks were not deducted for 2 projects where the required project reports were not provided to the Department prior to the disbursement of the final payment.

- An amount of $6,750 was paid to 1 applicant for site development and video production before the work was completed. This should not have been paid as it was a pre-payment and therefore, was not in compliance with the contribution agreement. Furthermore, the required on-site inspection for these activities was not completed until after the payment had been made, and the Department did not receive a copy of the video until more than one year and five months after the funding was paid.

- An amount of $27,117 to cover third party labour costs was paid to one applicant even though there was no proof of payment provided.

- Although inspections are required prior to payment, there was inadequate documentation to support the completion of inspections for 5 of the 23 projects which required such inspections. There was one inspection certificate not completed for 1 project and the other 4 projects had information missing on the inspection certificate, such as serial numbers of equipment or sizes of the buildings.

- Payments totalling $47,128 were made for three claim forms that were submitted after the submission deadline. The Program Guide indicates that claim forms must be submitted within 30 days of project completion or by 10 April for projects with a 31 March completion date. Invoices received after this date may not be processed for payment. Claim forms for the three projects were submitted 67 days, 13 days and 6 days later than the date required.

Monitoring

Our review indicated that projects were not always well monitored and that the Department did not determine whether project deliverables were being achieved. Our review identified the following:

- Although the Department sometimes requires applicants to submit project reports, the reports submitted for 2 of the 3 projects administered by the Department contained errors and were not adequate in that there was no comparison of actual expenses to budgeted amounts, little comparison of actual results to targets for performance indicators, and a lack of adequate explanation for any variances. Of the remaining 5 project reports required to be submitted, 1 was not submitted and another was submitted over 5 months late.

- Monitoring activity was not always adequate to determine whether project deliverables were met. Project reports or follow-up on 15 projects could have provided beneficial information had they been completed. Applicants for 3 of the 15 projects offered to provide final reports in their application; however, the Department did not require such reports in the contribution agreements, and reports were never submitted.

- The Department's database of projects was not up to date. The database indicated that 9 of the 30 projects reviewed were incomplete; however these projects had been completed.

- The Department's Performance Report submitted to the Federal Government for 2009-10 indicated that 26 of 34 Program targets were not met. Only 3 of the 26 targets had comments to indicate why they were not met.

- The Department did not claim the full amount eligible from the Federal Government under the Bilateral Agreement for the year ended 31 March 2011. The Department received $465,046 less than the amount eligible for funding from the Federal Government due to a difference in the Federal/Provincial allocation percentages used.

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Part 2.8

Department of Natural Resources

Mineral Incentive Program

The Mineral Development Division (the Division) of the Department of Natural Resources (the Department) is responsible for: the approval and permitting of mining operations through the *Mining Act*; the administration of the Mineral Incentive Program; the collection, analysis and publication of mineral production data; and the assessment and remediation of abandoned mine sites across the Province. The Division has a staff of 19, with Division expenditures for the year ended 31 March 2011 accounting for $10.3 million, or 58.9% of the total $17.5 million in expenditures for the Department's Mines Branch.

The Mineral Incentive Program provides funding for mineral exploration activities through the Junior Exploration Assistance Program (the JEA Program), the Natural Stone Assessment Program and through the provision of grants and training for prospectors under the Prospectors Assistance Program.

In 2010-11, grants totalling $2.75 million were provided under the Mineral Incentive Program to assist in mineral exploration and production. Of this total, $2.37 million in grants were provided under the JEA Program, $109,000 under the Natural Stone Assessment Program and $270,000 under the Prospectors Assistance Program. As the JEA Program represents 86% of all grants provided, our review was primarily focused on that aspect of the Mineral Incentive Program. We selected 14 projects with grants totalling $1,392,000. These grants represented 51% of the total Mineral Incentive Program grants provided during 2010-11.

The JEA Program was established to encourage companies and local prospectors to conduct advanced exploration in the Province and carry mineral prospects to a more advanced stage. Funding under the JEA Program is designed to defray 50% of approved eligible costs, to a maximum grant of $100,000 per undertaking on the island and $150,000 for Labrador-based projects. Applications are assessed on a "first come, first served" basis, with grants to be paid after a final report, acceptable to the Minister, is received.

Our review identified concerns with how the Department was administering the JEA Program. We found that: applications were not being properly completed and assessed; progress and final reports

were not being properly received, monitored and reviewed; on-site inspections, and audits and examinations were not being performed; and project evaluations were not being prepared.

We also found that: while work plans were in place for the Division for 2009-10 and 2011-12, no work plan was in place for 2010-11; performance measures and reporting requirements for the Division and for the Mineral Incentive Program were, in general, not well defined; the Division's database was not adequately tracking information to facilitate project monitoring and reporting; and policies and procedures for the administration of the Mineral Incentive Program were inadequate.

Application Assessment and Approval

The application process for the JEA Program begins with the receipt of an application. The application must then be reviewed and assessed by the JEA Selection Committee (the Selection Committee), comprised of three Departmental geologists. Applications must be recommended by at least two Selection Committee members and each member is required to complete an application assessment form which includes a recommendation as to whether to accept or reject the application. A Selection Committee checklist is completed by the Program Manager to document assessment of the applicant's eligibility, project activity and project funding.

Our review of assessment and approval for the selected 14 projects approved under the JEA Program indicated the following:

Applications not properly completed

- 3 instances where the applicant did not provide all required information in their application - 1 applicant did not specify the proposed work schedule; 1 applicant did not have the required application check list; and 1 applicant did not have the proposed work schedule or completed application checklist;

- 1 instance where the required declaration was not signed by the applicant certifying that all information in the application package was, to the best of their knowledge, complete, true and accurate; and

- None of the 14 applications had the section of the application completed by the Department indicating that the application had been properly assessed, and that all required documentation had been received.

Application assessments not properly performed

- 5 instances where only two of the three members of the Selection Committee completed the required assessment of the application;

- 4 instances where at least one Selection Committee member raised concerns on the application assessment form and recommended approval pending resolution of various issues, with no indication of how the issues were resolved;

- 9 instances where Selection Committee members had not indicated, on the application assessment form, the date the application was reviewed;

- 11 instances where Selection Committee checklists were not being properly completed, including 10 instances where the omissions were in the funding portion of the checklist;

- 3 instances where the Selection Committee checklist indicated that required information was pending, and 2 instances where the checklist indicated that the information was missing or incomplete, with no indication on file of how the issues were resolved; and

- 2 instances where the Selection Committee checklist only included a small description of the project and the remainder of the checklist was blank, with no evidence that an assessment had been completed of applicant eligibility, activity and funding.

We also found that no terms of reference were in place for the Selection Committee, indicating the framework within which the Selection Committee should function, its roles and responsibilities, and its objectives and expected outcomes.

Project Monitoring and Evaluation

Once a project has been approved within the JEA Program, a contribution agreement is signed between the applicant and the Department containing provisions to assist the Department in assessing the success of the project and providing assurance that the requested funding has been appropriately utilized. Provisions include the requirement for progress reports by applicants, the authority for the Department to conduct site visits and to examine and audit applicant records, and a requirement for the applicant to submit a final report for approval.

Our review of project monitoring and evaluation for the selected 14 projects approved under the JEA Program indicated the following:

On-site inspections, audits or examinations not performed

- Although the contribution agreements allow for site visits that would assist the Department in assessing the progress of projects, none of the 14 projects had evidence that site visits were conducted; and

- Although the contribution agreements allow for examinations or audits which would assist the Department in evaluating whether approved funding is being spent as intended, none of the 14 projects had evidence that examinations or audits of applicant records were conducted.

Contribution agreements signed after projects were completed

- 4 instances where applicants were approved for funding near the end of the fiscal year and the effective date of the contribution agreement was back-dated to the date of the original application - in 3 of these 4 instances, the project was already completed before the applicants were notified that they had been accepted for funding, which brings into question whether the grant provided was a factor in the applicant's decision to continue with the project and whether it had a significant effect on exploration activity for the funded projects.

Progress reports not properly submitted

- progress reports were not being submitted in accordance with the contribution agreements - of the 10 instances where contribution agreements required progress reports to be submitted, a total of 15 reports were required to be submitted, and of these, 8 were not submitted and 5 of the 7 that were submitted were not received by the date required; and

- the 7 progress reports received contained very limited information on project progress, e.g. 1 progress report consisted of just an e-mail received from an applicant indicating that the proposed drill program had just started and that it would be 1,300-1,500 meters in length, and stating that the budget would be in excess of the spending required to receive the full amount of the grant.

Final reports not being properly reviewed

- 7 instances where no report evaluation checklist had been prepared or other evidence present to indicate that Department officials had reviewed final reports received. While there was some indication of review of the other 5 reports received, there was no report evaluation checklist prepared.

- 1 instance where approved expenditures were reimbursed by the Department, even though a final report submitted stated that the project was not complete; and

- 2 instances where approved expenditures were reimbursed by the Department, even though the invoice dates were outside of the period covered by the agreements.

Final reports not submitted within contribution agreement deadlines

- 2 instances where final reports were on file; however, they were not date-stamped to document whether they had been received within the contribution agreement deadlines; and

- 9 of the 12 final reports that were received and date-stamped were not received by the project completion date and 4 of the 9 were not received by the final deadline date.

Project evaluations not prepared

- 12 instances where there was no evidence on file of a project evaluation being completed to summarize the overall results and future potential of the project, and to determine the success of individual projects which could ultimately serve to measure the success of the overall JEA Program.

Performance Measurement and Monitoring

Performance measures for the Mineral Incentive Program and mineral development, in general, were not well defined. Measures which could be used include: expected application processing time; frequency of site visits and project evaluations; and frequency and content of management reports.

There was also no work plan in place in 2010-11 to enable the Division to focus its activities towards achieving strategic goals and objectives. While work plans were in place for 2009-10 and 2011-12, performance measures were not well defined.

Database Management

The Division's Mineral Incentive Plan Central Approval Control Program (the Control Program) was not always used to track project information which could be used to facilitate project monitoring and reporting. Information which could be tracked includes information relating to the status of progress reports and final reports, site visits and project evaluations. Also, the Division had not been updating spreadsheets that had been intended to track certain monitoring information.

In addition, an operations manual for the Control Program had never been prepared by the Division to ensure the system was understood by staff and that procedures were properly complied with.

Furthermore, there were no regular reconciliations of payment information between the Control Program and Government's Financial Management System, which could be used to highlight any differences in payment information recorded in the two systems.

Policies and Procedures

Although application and related guidelines for the Mineral Incentive Program are on the Department's website, policies and procedures relating to the administration of the Mineral Incentive Program were not developed or communicated to staff. Such policies and procedures would provide assistance to staff and the Department in the consistent administration of the Mineral Incentive Program, including in the areas of application assessment and approval, project monitoring and evaluation, performance measurement and monitoring, and database management.

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Part 2.9
Department of Natural Resources
Provincial Commodity Boards

The *Natural Products Marketing Act* provides the Minister of Natural Resources with the authority to establish schemes (plans) for the promotion, control, regulation or prohibition of the production and marketing of a natural product. Under the authority of the *Act*, the Minister established three schemes which provided for the establishment of commodity boards and also provided for the powers, functions, and duties of each commodity board for the application and enforcement of the scheme.

Regulations were established under each scheme which applied to all producers and processors engaged in the production and marketing of their respective natural product (i.e. milk, eggs and chicken). The regulations governed such things as licensing, production quotas, production levies, production pricing and inspections.

The Minister established three commodity boards - the Dairy Farmers of Newfoundland and Labrador (DFNL), the Egg Producers of Newfoundland and Labrador (EPNL), and the Chicken Farmers of Newfoundland and Labrador (CFNL). The Minister also established the Farm Industry Review Board (FIRB) to control and direct the operations of the three Provincial commodity boards.

Our review of the Farm Industry Review Board and the three commodity boards identified concerns relating to how the three boards were operated and how the Department, through the Farm Industry Review Board, controls and directs the activities of the commodity boards. In many instances, expenditures by the three commodity boards for such things as board remuneration, employee compensation and leave entitlements, travel and entertainment, and other discretionary expenses were inconsistent between the three boards, inconsistent and above the amounts provided for in Government policy, and in our opinion, in some cases, were not an appropriate use of board funds.

Farm Industry Review Board (FIRB)

Although the Farm Industry Review Board (FIRB) was established to control, direct and monitor the operations of the three Provincial commodity boards, it has not had an active role in the operations of the commodity boards, and in informing commodity boards of

Government policy. The lack of meaningful monitoring and supervision of the three boards has contributed to the inconsistent expenditure and personnel policies of the three boards and presents an increased risk of financial loss within the commodity boards.

In September 2008, the Department of Natural Resources requested that the Office of the Comptroller General (OCG) perform a financial review of the CFNL's 2006 fiscal year. The review was requested as a result of identified financial inconsistencies. A report, resulting from the review, was provided to the Department in March 2009, and was followed up with a forensic assessment of the CFNL's 2005 fiscal year by an external accounting firm, the findings from which were reported in May 2010. The review identified a number of issues including: a serious lack of oversight by the CFNL's board of directors; an overall lack of effective controls including untimely deposits, cheques with only one signature and no support or inadequate support for certain expenses; personal items charged to the board; excess mileage claims; and various payroll, leave and overtime issues.

Although a FIRB employee indicated that, where necessary, a FIRB representative may attend annual meetings and regular board meetings of commodity boards, a review of each commodity board's meeting minutes indicated that a FIRB representative rarely attended these meetings. Regular attendance at the meetings would increase the level of FIRB's involvement in the financial and operational affairs of the commodity boards.

Although commodity boards submit annual audited financial statements to FIRB for review, FIRB officials did not perform financial reviews or inspections of commodity boards to determine if adequate controls were in place or that financial transactions were appropriate.

Dairy Farmers of Newfoundland and Labrador (DFNL)

The Dairy Farmers of Newfoundland and Labrador (DFNL) is the regulatory body for the production and marketing of milk in the Province. DFNL regulates the operations of 34 registered milk producers and two registered milk processors. DFNL charges producers a $0.024 administration levy for every litre of milk produced to fund its operations. DFNL expenditures for the year ended 31 July 2010 totalled $16.9 million, of which $850,000 related to operating expenditures.

In accordance with the *Milk Scheme, 1998* the Dairy Farmers of Newfoundland and Labrador (DFNL) consisted of 6 directors; however, no member was appointed by the Minister as required by the *Scheme*. Furthermore, as DFNL was not deemed to be a public body under the *Transparency and Accountability Act*, it was not required and therefore, did not submit its annual report or its strategic plan to the House of Assembly.

Our review identified the following DFNL expenditures which were inconsistent with the other two commodity boards, inconsistent with and above the amounts provided for in Government policy, and in our opinion, in some cases, were not an appropriate use of DFNL funds.

- DFNL paid Board members per diems at a rate of $115 per half-day, $230 for a full-day, or $50 for conference calls. These amounts were not consistent with Government per diem rates of $70 per half-day and $145 per full-day for board members and $95 per half-day and $190 per full-day for the board chairperson. DFNL paid its chairperson an additional $800 per month honorarium ($9,600 annually), while Government policy does not provide for such payments.

- Salary increases paid to employees were inconsistent between Board employees and inconsistent with Government salary increases. For the 2009 calendar year, two employees received increases of 3% while one employee received 5%. For 2010, two employees received a salary increase of 3.5%, one employee received a $1 per hour increase to a wage rate of $15 per hour (approximately 7%) and one employee received an increase of 24%.

- Christmas bonuses of $800 were paid to three employees in December 2009 and $800 was paid to three employees and $400 to two employees in December 2010, where Government policy does not provide for such payments.

- Employees are entitled up to 20 weeks of severance pay after five years of service, where Government policy requires nine years of service prior to entitlement for severance pay.

- Employees are entitled to annual leave of two weeks after one year of service, three weeks after four years and four weeks after 10 years of service, where Government policy provides unionized and non-management staff with three weeks up to 10 years, four weeks after 10 years of service and five weeks after 25 years of service.

- Employees are entitled to two days per month of sick leave up to a maximum of 90 days, where Government policy provides unionized and non-management staff one day of sick leave per month up to a maximum of 240 days (or if hired before 4 May 2004 - two days of sick leave per month up to a maximum of 480 days).

- Employees are provided with health insurance coverage under which DFNL pays 70% of the health plan costs, where Government's policy has premium costs shared 50-50 between the employer and employee.

- Employment contracts provide each employee with an annual RRSP contribution of 6% of their annual salary; however, we were unable to confirm that the contributions were made to a RRSP as the contributions were made payable to the employee and not to a financial institution.

- Employees on travel status are entitled to a meal allowance at a rate of $35 per day in the Province or $55 per day out of Province and receipts are not required, where Government travel rules allow $36.50 per day for meals within the Province or $43 for outside the Province and within Canada/United States for non-executive employees, and $44 per day within the Province or $49 outside the Province and within Canada/United States for executive employees and board members.

  Although these meal rates were in effect, DFNL reimbursed travel expenses for its employees and Board members based on meal receipts claimed on expense claims, amounts charged to DFNL's corporate credit cards, or amounts directly billed from the vendor (e.g. hotel or restaurant). Approximately $13,340 in meals were charged to the corporate credit cards, and $1,249 in meals were included on hotel bills which were directly billed to DFNL.

Many of the amounts either did not have receipts attached or the receipts were not adequate to support the charge.

- DFNL policy states that mileage will be reimbursed at the rate of $0.44 per kilometre, where, during the period reviewed, the highest basic automobile reimbursement rate allowed under Government's policy was $0.37 per kilometre.

- In 61 instances, no documentation was provided on receipts to document the purpose of meal and other restaurant charges or whether the charges were for more than one person. Government's policy requires that the purpose of the meal and identification of attendees should be documented to determine whether the expense is a legitimate entertainment expense and that business is being conducted with non-Government employees.

- DFNL spent $5,435 on its 2010 semi-annual meeting and $16,072 on its 2009 annual general meeting, and spent $5,162 on its 2011 semi-annual meeting and $11,593 on its 2010 annual general meeting. The annual general meetings included dinner receptions costing $8,426 for 2009 and $3,808 for 2010, where Government policy restricts such events to $2,500.

  Furthermore, employees and Board members in attendance at these meetings charged meals, and other amounts to their hotel bills or their corporate credit cards that were either in excess of the meal rates allowed or for more than one individual, with no details provided as to who was in attendance at the meal.

- DFNL and the School Milk Foundation host an annual Christmas social for their employees, Board members, spouses and guests. DFNL pays for the social and recovers 50% of the costs from the School Milk Foundation. The 2009 social was attended by 62 people (based upon meals charged) and cost $2,360 of which $1,179 was recovered. The 2010 social was attended by 54 people (based upon meals charged) and cost $3,792 of which $1,896 was recovered. Government policy does not provide for such socials.

- DFNL purchased liquor for semi-annual and annual general meetings. Liquor was also charged to hotel bills directly billed to DFNL for various meetings and socials, and included with meals charged to DFNL's corporate credit cards. For example, $1,102 in liquor was purchased for the 2010 Christmas social. Although Government policy does not prohibit the provision or purchase of alcohol in its entertainment policy, in our opinion, given the number and extent of these purchases by DFNL, these expenditures were not an appropriate use of DFNL funds.

- DFNL pays for personal travel expenses, with any charges to be subsequently recovered. For example, a total of $4,872 was paid for five flights for a Board member's spouse and one hotel night, and a total of $8,741 was paid for seven flights for an employee and their spouse, one flight change fee and a restaurant charge. Although these expenses were recovered by DFNL, this practice is not consistent with Government policy.

- From April 2011 to July 2011, DFNL paid for an employee's spouse's cell phone plan which cost DFNL $331 or approximately $83 per month for the plan rate and usage charges as part of a shared plan with the employee. There was no documentation that the Board approved this personal benefit to the employee, and the provision of such a benefit is not consistent with Government policy. As of October 2011, costs for the phone were still being paid by DFNL.

- DFNL paid $638 towards 50% of a retirement gift for a former employee of a milk processing company who was also a former board member of the School Milk Foundation, and paid $113 towards 50% for a lunch and gift for an employee of the School Milk Foundation going on maternity leave. Government policy does not provide for such expenditures.

Egg Producers of Newfoundland and Labrador (EPNL)

The Egg Producers of Newfoundland and Labrador (EPNL) is the regulatory body for the production and marketing of eggs in the Province. EPNL regulates the operations of seven registered egg producers and one registered egg processor. EPNL charges an

administration levy of $0.035 per dozen eggs produced to fund its operations. EPNL expenditures for the year ended 31 December 2010 totalled $3.0 million, of which $344,000 related to operating expenses.

In accordance with the *Egg Scheme, 2000* the Board consisted of seven directors; however, no member was appointed by the Minister as required by the *Scheme*. Furthermore, as EPNL was not deemed to be a public body under the *Transparency and Accountability Act*, it was not required and therefore, did not submit its annual report or prepare and submit a strategic plan to the House of Assembly.

Our review identified the following EPNL expenditures which were inconsistent with the other two commodity boards, inconsistent with and above the amounts provided for in Government policy, and in our opinion, in some cases, were not an appropriate use of EPNL funds.

- EPNL paid Board members per diems at a rate of $75 per half-day, $150 for a full-day, or $75 for conference calls. These amounts were inconsistent with Government per diem rates of $70 per half-day and $145 per full-day for board members and $95 per half-day and $190 per full-day for the board chairperson. EPNL paid its chairperson an additional $1,000 per month honorarium ($12,000 annually), while Government policy does not provide for such payments.

- Salary increases paid to employees were inconsistent between Board employees and inconsistent with Government salary increases. For the 2009 fiscal year, one employee received an increase of 11.8% while one employee received 3%. For the 2010 fiscal year, one employee received a 3.8% salary increase and one employee received a 3% increase. For the 2011 fiscal year both employees received a 2.5% increase.

- Christmas bonuses totalling $1,450 were paid to four employees in December 2009 and bonuses totalling $1,100 were paid to two employees in December 2010, where Government policy does not provide for such payments.

- EPNL policy entitles employees to vacation leave of two weeks after completion of one year of employment, three

weeks after five years and four weeks after 10 years of service, or in the case of one employee three weeks of vacation with no increase, where Government policy provides unionized and non-management staff with three weeks up to 10 years, four weeks after 10 years of service and five weeks after 25 years of service.

- Employees are entitled to one and one-half days per month of sick leave up to a maximum of 85 days, where Government policy for unionized and non-management staff allow one day of sick leave per month up to a maximum of 240 days (or if hired before 4 May 2004 - two days of sick leave per month up to a maximum of 480 days).

- Employees are provided with health insurance coverage under which EPNL pays 100% of the health plan costs, where Government's policy has premium costs shared 50-50 between the employer and employee.

- Employees on travel status are entitled to a meal allowance at a rate of $60 per day and receipts are not required, where Government travel rules allow $36.50 per day for meals within the Province or $43 for outside the Province and within Canada/United States for non-executive employees, and $44 per day within the Province or $49 for outside the Province and within Canada/United States for executive employees and board members.

- Board members were paid a $60 meal per diem a total of 62 times while attending eight Board meetings even though EPNL paid for nine luncheons and one dinner on behalf of the Board members in attendance at these meetings.

- Employees and Board members are entitled to claim $50 per night for private accommodations while on travel status, where Government policy provides $25 per night for non-executive employees and $53 for executive employees.

- EPNL policy states that mileage will be reimbursed at the rate of $0.53 per kilometre, where, during the period reviewed, the highest basic automobile reimbursement rate allowed under Government's policy was $0.37 per kilometre.

- For 2009 and 2010, EPNL cost-shared Christmas socials for its employees, Board members, spouses and guests with three other agriculture organizations. The 2009 social cost EPNL $609 plus HST for its share of the Christmas social and the 2010 social cost EPNL $1,207. Government policy does not provide for such socials. As well, for 2009 and 2010, EPNL spent a total of $220 on turkeys as Christmas gifts for its employees.

- A $25 per month communication allowance is provided to Board members in lieu of claiming telephone and other communication expenses while on Board business. EPNL paid $2,100 during 2009, $1,750 in 2010 and $1,500 up to October 2011 for these allowances. Government policy does not provide for such an allowance.

Chicken Farmers of Newfoundland and Labrador (CFNL)

The Chicken Farmers of Newfoundland and Labrador (CFNL) is the regulatory body for the production and marketing of chickens in the Province. The Province has only one registered producer which is also the only processor. This company contracts out chicken production to seven farmers (contract growers) throughout the Province. CFNL imposes a levy of $0.015 per kilogram of chickens (live weight) marketed to fund its operations. CFNL expenditures for the year ended 31 December 2010 totalled $316,000, of which $199,000 related to operating expenses.

Our review identified the following CFNL expenditures which were inconsistent with the other two commodity boards, inconsistent with and above the amounts provided for in Government policy and, in our opinion, in some cases were not an appropriate use of CFNL funds.

- CFNL paid Board members per diems at a rate of $150 per day ($250 for Chairperson) and $75 for conference calls. These amounts were inconsistent with Government per diem rates of $70 per half-day and $145 per full-day for

board members and $95 per half-day and $190 per full-day for the board chairperson. CFNL paid its chairperson an additional $1,000 per month honorarium ($12,000 annually), while Government policy does not provide for such payments.

- Salary increases paid to the CFNL's employee were inconsistent with Government salary increases. The employee received an increase of 12.5% in 2009, an increase of 9.1% in 2010 and an increase of 3% in January 2011.

- The employee is entitled to severance pay for each year of service up to a maximum of 20 years, with no minimum established years of service, where Government policy requires nine years of service prior to entitlement for severance pay.

- CFNL policy entitles the employee to vacation leave of three weeks after completion of one year of employment, four weeks after five years and five weeks after 10 years of service, where Government policy provides unionized and non-management staff with three weeks up to 10 years, four weeks after 10 years of service and five weeks after 25 years of service.

- The employee is entitled to one day per month of sick leave up to a maximum of 90 days, where Government policy for unionized and non-management staff allow one day of sick leave per month up to a maximum of 240 days (or if hired before 4 May 2004 - two days of sick leave per month up to a maximum of 480 days).

- The employee was provided with a car allowance of $5,000 annually for the use of the employee's personal vehicle. Government policy does not provide for the payment of car allowances to its employees, instead, personal vehicle travel for Government business purposes is reimbursed at specified rates.

- The employee was provided with health insurance coverage under which CFNL pays 100% of the health plan costs, including 100% coverage of basic healthcare, dental expenses and long-term disability benefits, where

Government's policy has premium costs shared 50-50 between the employer and employee for basic health and life insurance.

- The employee, while on travel status, was entitled to a meal allowance at a rate of $60 per day and receipts were not required, where Government travel rules allow $36.50 per day for meals within the Province or $43 for outside the Province and within Canada/United States for non-executive employees, and $44 per day within the Province or $49 for outside the Province and within Canada/United States for executive employees and board members.

- The employee and a Board member claimed and were paid for meals even though the meals were already paid for, for example while attending a national conference where meals were provided.

- CFNL policy states that mileage will be reimbursed at the rate of $0.525 per kilometre, where, during the period reviewed, the highest basic automobile reimbursement rate allowed under Government policy was $0.37 per kilometre.

- For 2009 and 2010, CFNL cost-shared Christmas socials for its employee, Board members, spouses and guests with three other agriculture organizations. The 2009 social cost CFNL $675 plus HST for its share of the Christmas social and the 2010 social cost CFNL $864. Government policy does not provide for such socials. Furthermore, for 2009 and 2010, the employee was reimbursed $500 towards the purchase of a Christmas gift each year. As well, CFNL spent $600 in 2009 and $670 in 2010 for Christmas gift cards provided to chicken farmers and a Board member, and for door prizes at the Christmas social.

- Since January 2009, CFNL spent $3,819 (approximately $109 plus HST per month) reimbursing a Board member for home phone, fax and internet services. Government policy does not provide for such payments.

- CFNL spent $1,320 including taxes (2009- $450, 2010 - $386 and 2011 - $484) for an Air Canada lounge pass for its employee.

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Part 2.10
Service NL
Provincial Lottery Licensing

The Consumer Affairs Division (the Division) within the Consumer and Commercial Affairs Branch of Service NL (the Department) is responsible for administering consumer affairs legislation to: ensure a fair and equitable marketplace; protect the interests of consumers; mediate and adjudicate disputes between residential landlords and tenants; and regulate charitable and non-profit organizations' lottery fundraising activities. It also licenses and regulates collection agencies, private investigations and security guard industries. These services are provided throughout the Province through offices in St. John's, Gander and Corner Brook. The Division has a total staff of 18, with Division expenditures of $0.9 million for the year ended 31 March 2011 accounting for 21% of the total of $4.2 million in expenditures for the Department's Commercial and Consumer Affairs Branch.

Specific to lottery fundraising activities, the Division is responsible for issuing lottery licences to applicants for fundraising purposes, and for monitoring those lotteries. These activities are guided by the *Lottery Licensing Regulations* (the *Regulations*) under Canada's *Criminal Code*. The *Regulations* contain the terms and conditions for applying for a lottery licence, the general rules that govern the issuance and monitoring of licences, and the specific rules for each of the different types of lotteries.

In 2009-10, the Division issued a total of 3,249 licences, with gross proceeds generated by those resulting lotteries of $54.1 million, and net proceeds, after prize payouts and expenditures, of $11.2 million. Licences issued include: 242 bingo events; 68 breakopen ticket events; 167 bingo/breakopen ticket events; 2,335 ticket events; 377 games of chance events; 13 monte carlo events; and 47 sports events.

Our review identified concerns with the application approval process within the Division. We found that: licence applications were not being approved by the appropriate people; applications with incomplete or outdated information were approved; licences with unapproved intended uses of proceeds were approved; and required business plans were not received with applications.

In addition, we found that licence monitoring was inadequate in that: required financial reports were being submitted late or not at all; licensee reporting requirements did not fully address legislation; the licensing auditor position was vacant for more than four years, and, therefore, financial reports were not being properly reviewed and financial audits were not occurring; on-site inspections were not being performed; the Division has not made a determination of in what circumstances audited financial statements should be required; and there were instances where lotteries had operated without a licence.

Furthermore, performance measurement and reporting was inadequate, policies and procedures were not well defined, and improvements were required in the use of the Division's database system and the administration of the Division's lottery files.

Application Approval and Processing

The Division is responsible for the approval and processing of lottery licence applications. Applications are submitted by organizations wishing to conduct a lottery for fundraising purposes. The *Regulations* outline requirements pertaining to such things as: the purpose of the lottery; intended use of proceeds; signing officers; and the location of the lottery. Applications are accepted at six Service NL locations in the Province. Once received, applications are reviewed for completeness by one of nine lottery staff members in these locations.

Our review of the application approval and processing for a sample of 55 licences approved by the Division indicated the following:

Approval of licence applications by those not designated

- There were nine employees who review and approve licence applications; however, these employees were not designated by the Minister to approve licences. Such designation is required under the *Regulations.*

Incomplete and outdated information on applications

- An application that had been approved for licensing contained outdated information that had been included with an application for a sports lottery.

Licences approved with unapproved intended uses of proceeds

- Three applicants had unapproved uses of proceeds noted on their applications. The unapproved uses were: operational expenses of the applicant in two instances; and maintenance of the applicant's service club in the third instance.

Business plans not received

- Two of three applicants who were required under the *Regulations* to submit business plans with their applications, did not provide the required business plans.

Licence Monitoring

The *Regulations* have a number of requirements regarding lotteries which require monitoring by the Division to ensure that the *Regulations* are being followed.

Monitoring by the Division to ensure licensees are following the *Regulations* would include such things as: the tracking and reviewing of required financial reports from licensees; the inspection of licensees' premises; and the audit of the financial records and trust accounts of the licensees.

Our review indicated the following issues with licence monitoring:

Financial reports submitted late or not at all

- Of 1,709 total licences that required financial reports to be submitted within the fiscal year ended 31 March 2011, 349, or 20.4%, had not been received by their due date. Of these 349 financial reports, 85, or 24.4%, were not received by the Division as at 30 November 2011. Delays in receiving the financial reports resulted in delays in the Division's assessment of completed lotteries, and in the collection of fees associated with the lotteries.

  Of the sample of 55 licences reviewed and requiring financial reports to be submitted within the fiscal year ended 31 March 2011, financial reports were not received by their due dates for four of the licences. One licensee who had an overdue financial report had not yet submitted it as of 30 November 2011, at

which time it was 13 months overdue. During these 13 months, the Division had issued 10 new licences to this licensee.

Licensee reporting requirements do not fully address legislation

- The required financial report from licensees addresses the financial aspect of the lottery. However, the *Regulations* include a number of other requirements that must be followed during the lottery process, including: a separate designated lotteries trust account must be opened and maintained at a financial institution; a licence number must be shown on all advertising; and a media bingo must be conducted in the presence of two witnesses who will then sign a confirmation of their presence. These requirements were not included in required licensee reporting to the Division at the time of our audit and were, therefore, not being monitored by the Division.

Licensing auditor position vacant

- The Division has a Licensing Auditor position within its organizational structure. However, this position is currently vacant and has been vacant for more than four years. The Licensing Auditor position is responsible for reviewing submitted financial reports of licensees, as well as performing financial audits of licensees. In the absence of a Licensing Auditor, the Division has been significantly behind in its review of financial reports and has periodically used the help of a work-term student to review some of the submitted financial reports. Also, there were no financial audits performed pertaining to the year we reviewed.

On-site inspections not performed

- On-site inspections are not a requirement of the *Regulations*; however they would assist the Division in ensuring that licensees were following the *Regulations*. There was no evidence on file of inspection visits performed for any of the 55 lotteries reviewed, and Divisional officials indicated such inspections had not been performed since 2002.

No audited statements required of licensees

- The Division indicated that they did not have established guidelines as to under what circumstances a licensee would be

required to provide audited statements. The Division also indicated that they did not require any licensees to submit audited financial statements. The lotteries licensed by the Division range significantly in terms of gross and net proceeds, tickets sold and volume of events. For those larger lotteries, established guidelines would ensure that audited financial statements would be required in appropriate circumstances.

Lotteries operating without a licence

- Of the 55 licences reviewed, three lotteries operated during the year ended 31 March 2011 without a licence - one bingo lottery and two bingo/ breakopen lotteries. These instances of operating without a licence are offences under Canada's *Criminal Code*. However, rather than treating them as such, the Division, instead, issued back-dated licences to each of the organizations to cover the periods of unlicensed activity.

Performance Measurement and Monitoring

No performance measures or reporting requirements

The Department had not established performance measures or reporting requirements for lottery licensing, and for the Division in general. There were no performance reports for the Division in 2010-11. The annual report of the Department for 2010-11, tabled in the House of Assembly, did not include any information on lottery licensing activities of the Division. There was also no operating plan in place for the Division to enable the Division to focus its activities towards achieving strategic goals and objectives.

Information Management

The Division tracks lottery licensing information through its database system, AMANDA (the System). The System tracks licensing information such as: organizations applying for licences; lottery licence applications; financial information and other details pertaining to licensee financial reports received; and lottery fees receivable. The System tracks organizations and licences issued by assigning reference numbers to them.

The Division uses information from the System to compile statistics relating to the lottery licensing process. These statistics are reported on the Department's website.

During our review, Departmental officials advised of significant errors in prior years' charitable gaming statistics presented on the Department's website. Statistics reported for each year prior to 2009-10 contained errors. Errors in the 2008-09 statistics were as follows:

- Gross proceeds: understatement of $16.2 million, or 30.9% of total actual gross proceeds of $52.5 million for that year;

- Expenses and prize payouts: understatement of $34.5 million, or 85.4% of total actual expenses and prize payouts of $40.4 million for that year; and

- Net proceeds: understatement of $2.8 million, or 22.9% of total actual net proceeds of $12.2 million for that year.

Statistics are currently being re-compiled for years earlier.

Other Findings

Policies and procedures not well defined

The Department does not have any written policies and procedures to help ensure compliance with the *Regulations*.

File Completeness

During our review, we found that applicant/licensee files were incomplete. For example, we noted one file of the 55 reviewed did not contain a copy of the issued licence. Our review also found three documents that were not date stamped to indicate the date of receipt; and a licensee file which contained numerous completed applications that did not note the assigned application reference numbers.

Part 2.11
Service NL
Workplace Health and Safety Inspections

Service NL (the Department) through its Occupational Health and Safety (OHS) Branch (the Branch) has a mandate to maintain and improve health and safety standards in the workplace through the administration of the *Occupational Health and Safety Act* and *Regulations* and related legislation. The Branch is responsible for, among other things, developing and enforcing occupational health and safety legislation, carrying out compliance inspections of Provincially regulated workplaces and investigating workplace accidents, incidents and complaints. As at 31 December 2010, there were approximately 217,000 workers employed at the workplaces of approximately 19,600 employers registered with the Workplace Health, Safety and Compensation Commission (WHSCC).

Inspection and investigation activities are carried out by 32 inspectors located throughout the Province in St. John's (19), Corner Brook (8), Grand Falls - Windsor (3) and Wabush (2). Inspection and other activities in connection with specific occupational areas such as radiation control, ergonomics and industrial hygiene are carried out by 8 other officers located in St. John's. During the five year period ending 31 December 2010, the Branch carried out an average of 3,990 inspections at the workplaces of an average of 1,296 employers per year.

An inspector may issue either a compliance order or a stop work order when a health and safety hazard or potential hazard has been identified at the employer workplace. A compliance order legally binds employers to eliminate or control identified hazards or potential hazards within the time frame that has been provided by the inspector. A stop work order must be issued by an inspector when a hazard identified at the workplace poses an immediate risk to the health and safety of workers. Inspectors issued a total of 36,694 orders during the five year period ending 31 December 2010 (33,611 compliance orders and 3,083 stop work orders).

Our review of the Branch's workplace inspection program identified issues with regard to: how the Branch identifies workplaces for planning and scheduling workplace inspection activity; how such inspection activity is planned and scheduled; how inspection activity is monitored by Branch management; and how orders issued by an

inspector are enforced when a health and safety hazard or potential hazard has been identified.

Workplace Identification

At the time of our review, the Branch could not readily determine the number of workplaces that were included in the Branch's Central Information System (CIS). However, Branch officials estimated there were approximately 35,000 workplaces which were operating throughout the Province.

Workplace information contained in the CIS is obtained when the workplace is inspected by the Branch. The CIS does not contain workplace information that is available from the WHSCC as Branch officials indicated that the WHSCC workplace information was incomplete and inaccurate.

Without information identifying all workplaces in the Province, the Branch cannot adequately plan and schedule workplace inspection activity.

Inspections

Our review indicated that the work plan developed by the Branch to guide its inspection activity for 2010 did not include all industries in the Province and did not use a comprehensive risk based approach to determine inspection frequencies. In particular:

- The work plan did not include all of the industries in the Province. The work plan included only those industries with workplaces the Branch considered higher risk and/or had fewer inspections in previous years. Furthermore, inspectors were responsible for identifying workplaces in each of the industries that were listed in the work plan, and not all of those workplaces had been identified.

- Officials indicated that rather than base inspection activity on an identification and assessment of health and safety risk (risk assessment) at employer workplaces, inspection activity was based on the number of inspections that could be achieved given the number of inspectors that were available to the Branch, with inspectors identifying and scheduling workplaces for inspection activity.

Having inspectors schedule their own inspection activity may result in the inspection activity not being representative of the number and nature of workplaces in each inspector's geographic area. The use of a risk based approach to inspection planning would be expected in order to meet the Branch's mandate of maintaining and improving health and safety standards in the Province's workplaces. For example, it would be expected that an employer that has workplaces in a high risk industry, has a poor health and safety program, has a history of numerous injury claims paid by the WHSCC, and has a poor inspection history would be inspected more frequently.

- The Branch did not know whether the majority of employers in the Province had the required OHS policies and programs in place to reduce workplace health and safety risk, as there is no system in place to capture such information. Furthermore, workplace injury claims information available from the WHSCC was not used to assess risk for inspection planning purposes.

- During 2010, the Branch did not inspect 115 or 61.8% of the 186 employers with the highest WHSCC assessment rates. Furthermore, 92 or 80% of the 115 employers were also not inspected during 2009 or 2008. The 186 employers with the highest assessment rates were operating in industries such as nursing homes, roofing and sawmills.

  The annual assessment paid to the WHSCC by employers is based on the size of the employers' payroll, the industry group in which the employer is conducting business, and the claims cost history for that industry. Higher assessments are associated with the increased risk that claims will be paid out as a result of injuries sustained in an industry.

- During 2010, the Branch did not inspect 160 or 47.9% of 334 employers that had ten or more lost time claims in the five year period ending 31 December 2010. Furthermore 73 or 45.6% of the 160 had one or more claims related to workers that were seriously injured at the workplace, and 96 or 60% of the 160 employers were also not inspected during 2009 or 2008.

Claims made as a result of injuries sustained at the workplace include costs associated with lost work time and medical treatment.

Inspection Monitoring

Branch Managers are not meeting their responsibilities for monitoring inspections scheduled and completed by inspectors to ensure that the targets established in the work plan are achieved. Furthermore, some of the targets contained in the 2010 work plan had not been achieved.

Our review also identified that 2,614 or 59.8% of the 4,371 inspections carried out in 2010 were not part of the 2010 work plan, but were conducted based on inspectors' knowledge.

Enforcement

Our review indicated that inspectors did not always carry out follow-up inspections when required to ensure that employers complied with orders that were issued. Furthermore, when follow-up inspections were carried out, orders were not effectively enforced. The health and safety risk to workers is increased when inspectors do not ensure that employers comply with the orders that have been issued within the required timeframe.

The Branch Central Information System indicated that as at 9 February 2011, 33,236 or 90.6% of the 36,694 orders issued in the five year period ending 31 December 2010, had been complied with, 2,722 or 7.4% of the 36,694 orders issued had not been complied with, and 736 or 2.0% of the 36,694 orders issued were rescinded or no longer relevant. We found that:

- For 16,409 or 49.4% of the 33,236 orders that had been complied with, the inspector did not ensure there was compliance with the order until after the date compliance was required.

    - For 3,744 or 22.8% of the 16,409 orders, the inspector did not ensure there was compliance by the employer until more than 3 months after the date compliance was required. For example, on 25 September 2006 an inspector ordered an electric power corporation to properly train and certify

mine rescue teams in basic firefighting, standard first aid, and mines rescue. The inspector found the employer did not have sufficient personnel or equipment in place to adequately carry out a mines rescue operation. However, the inspector did not ensure that the employer complied with the order until 4 December 2008, more than 19 months after the required compliance date of 30 April 2007.

- For 1,088 or 6.6% of the 16,409 orders, the inspector had extended the timeframe for compliance and still did not ensure there was compliance with the order until after the extended date of compliance. For example, on 15 March 2006, an inspector found that the workers at a post-secondary dining facility did not understand and had not implemented the fire escape plan that was in place. Fire drills were not being carried out and exit doors were blocked by snow. The inspector ordered the employer to train workers in fire evacuation procedures and in handling fire prevention materials by 30 April 2006. On 26 October 2009, following two inspections over a period of three and one half years, the employer still had not complied with the orders and the inspector extended the date for compliance to 6 November 2009. It was not until 17 December 2009 that the inspector ultimately determined the employer had complied with both orders.

- Branch officials indicated that, without first consulting with the inspectors, they could not readily provide an explanation as to why there were 2,722 open orders in the CIS that were not complied with. It took the Branch approximately 4 months to complete this process and provide the information we required. Branch officials indicated that:

  - 1,277 or 46.9% of the 2,722 open orders had in fact been complied with. In the majority of these cases, the inspector had failed to close the order in the CIS. For the remaining orders, inspectors carried out inspection activity as a result of our

inquiry and determined that the orders had been complied with.

- 803 or 29.5% of the 2,722 open orders had not been subject to a follow-up inspection to determine whether the employer had complied with the order issued. We found that 166 or 20.7% of the 803 orders had been outstanding for more than two years beyond the required compliance date established by the inspector. For example, on 26 February 2008 an inspector ordered an all grade school to repair or replace fire pull stations and emergency lighting by 5 March 2008 as numerous units throughout the school were not working properly. No evidence was provided to indicate that an inspector had carried out a follow-up inspection to determine whether this order had been complied with.

- 488 or 17.9% of the 2,722 open orders had evidence that the inspector had performed one or more follow-up inspection(s) and determined that the employer had still not complied with the order issued. We found that 121 or 24.8% of the 488 orders had been outstanding for more than two years beyond the required compliance date established by the inspector. For example, the Branch carried out an inspection on 15 April 2008 in response to a complaint received regarding the poor condition of floors at a nursing home. During the inspection, the inspector obtained a consultant's report from the employer regarding the condition of the floors. The report, dated 3 July 2003, indicated that *"Cracks and irregularities in the flooring represent a tripping hazard for elderly residents and for busy staff members."* and that *"The cracks and irregularities impede efficient and proper cleaning, increasing the risk of infections."*

  On 26 February 2009, approximately 10 months after the 15 April 2008 inspection, and after receiving an update to the 2003 consultant's report, the inspector ordered the nursing home to

repair the floors by 30 April 2009. At the time of our review, the inspector had carried out 14 follow-up inspections at the nursing home and found that the floor repairs did not commence until October 2010 and that the order was still not complied with as a number of floors had not been repaired.

- 154 or 5.7% of the 2,722 open orders were rescinded or were no longer relevant.

- The Branch has no documented procedures or tools to guide and support inspectors in enforcing orders when there are less serious violations of the legislation (no immediate health and safety risk), such as an employer's failure to establish an occupational health and safety program and/or policy at the workplace. We noted numerous instances where inspectors carried out multiple follow-up inspections in connection with these types of orders and were unable to enforce employer compliance.

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Part 2.12

Department of Tourism, Culture and Recreation

Marble Mountain Development Corporation

The Marble Mountain Development Corporation (the Corporation) was established in April 1988 to develop the Marble Mountain ski facility into a year-round resort. The Corporation is a 100% Provincially-owned corporation incorporated as a "Non-Profit Development Corporation" under the *Corporations Act* of Newfoundland and Labrador.

The Corporation's office is located in Steady Brook. Its affairs are managed by a Board of Directors appointed by the Lieutenant-Governor in Council. The Corporation employs 6 management staff (4 full-time and 2 part-time) and approximately 140 staff on a full or part-time basis.

Our review identified issues with: the Corporation's financial position; compensation; tendering of goods and services; travel, cell phones and other issues; and control over capital assets.

Financial Position

For each of the last five years, the Corporation has had an operating deficit before applying the Provincial operating grant. These deficits ranged from $126,587 in 2008 to $563,059 in 2011. To help finance its operations, the Corporation received an annual operating grant of approximately $400,000 from the Province and had an approved line of credit of $2.1 million guaranteed by the Province. At 30 April 2011, the Corporation had drawn down $1.9 million of the maximum $2.1 million line of credit available.

The Corporation's bank indebtedness has resulted in interest expenses and bank charges totalling $164,115 for the three years ended 30 April 2011. In addition to the interest charges related to the Corporation's bank indebtedness, the Corporation paid substantial finance charges related to other items as well. For example, the obligations under capital leases have been in excess of $100,000 for the past number of years resulting in interest costs of $75,484 for the three years ended 30 April 2011. In 2010-11, the Corporation financed the purchase of two snowmobiles costing $22,469, with interest costs of $10,236 over a three-year period. In addition, for the year ended 30 April 2011, the Corporation paid $4,200 to finance payment of its $100,000 insurance premiums and was re-assessed

$27,000 for failing to remit all of its Health and Post Secondary Tax to the Province for the period 2005 to 2009. As of April 2011, this amount totalled $47,000 due to accumulated interest and penalties of $20,000.

The Corporation's ski lift operations incurred a deficit in each the last three years, with a total deficit over the three years of $1,359,224. A major expense related to the ski lift and other outside operations has been a contract for the management of these services. Our review of this contract identified the following:

- The management contract was first awarded in September 2000, for a five-year period, based on a request for expressions of interest. Since the contract expired in 2005, it was replaced with a new three-year contract and then subsequently renewed for three two-year periods which will expire in September 2014. From September 2005 to October 2011, $658,600 has been paid in management contract fees without any further request for proposals or public tender. As a result, the Corporation could not demonstrate whether this continues to be the most economical means of providing this service.

- No weekly invoices were submitted as required by the contract. The contract provides for weekly payments to the contractor based on a minimum of 16 weeks. In May 2005, the Board Chairperson stipulated that normal winter operations required operation management services for 32 weeks. However, for each of the last six years, the contractor was paid in excess of normal winter operations; in 2010-11 for 40 weeks and in 2009-10 for 39 weeks.

- In addition to the base contract fee, from May 2010 to October 2011 the Corporation also paid other expenses of the contractor including vehicle repairs ($2,808), cell phone charges ($2,481), automobile insurance ($856), vehicle rental ($7,232), ATV rental ($3,164), snow gun rental ($5,650), flood lights (12) purchased ($3,390) and excavator rental ($3,390). These expenses were not covered by the contract and there was no assessment to determine whether the Corporation was getting the best value for the funds being spent.

- From May 2010 to October 2011, the Corporation contravened the *Public Tender Act* when it paid two companies related to the contractor a total of $36,829 for excavation and other

maintenance services without any request for quotes or a call for a public tender as required under the *Public Tender Act*. As well, for the fiscal years ended 30 April 2006 and 2007, the Corporation rented a tube park lift from another company owned by the same contractor at a cost of $40,000 plus HST, again without a call for a public tender.

In each of these cases, there were no tenders, quotes obtained or other means to demonstrate that a fair and reasonable price was obtained for these services.

- The contract states that the main employee of the contractor named in the contract "… *shall perform the services outlined in the Management Contract as amended herein and (*Name) *does hereby covenant and agree to do all things necessary to cause the Contractor to comply with the provisions."* However, for the period 26 April 2010 to 1 May 2010, the Corporation paid the contractor the weekly rate of $3,164 including HST, although documentation indicated that the main employee and owner of the contracted company was on vacation and did not perform the services as required under the contract.

The Corporation purchases diesel fuel for its three snow groomers in bulk; however, it did not monitor usage of this fuel. As a result, the Corporation could not determine if the fuel was being used by vehicles other than the snow groomers. Diesel fuel cost a total of $51,000 for the fiscal year ended 30 April 2011. In addition, costs to operate Corporation vehicles such as snowmobiles and all-terrain vehicles were not recorded and monitored separately for each vehicle.

In 1999, the Corporation constructed 31 condominiums at a cost of $3.1 million. Initially these condominiums were marketed for sale; however, no units were sold and the units were rented, beginning in July 2000. Although overall, the condominiums were profitable in each of the last five years, the occupancy rate for the condominiums ranged from just 17% in 2007 to 25% in 2009.

Compensation Practices

For the year ended 30 April 2011, the Corporation incurred a total cost of approximately $1,090,000 for salary and employee benefits related to its 6 management staff (4 full-time and 2 seasonal) and

approximately 140 other full or part-time staff. Our review of the Corporation's Compensation Policies identified the following:

- The Corporation paid severance amounts to resigning employees during the period of our review; however, we found that the basis for severance was inconsistent and in some cases the amount paid was either calculated incorrectly or there was no requirement for the Corporation to make the payment. In addition, although in November 2007, the Board directed that a severance policy be developed, no policy was in place at the time of our review. It was noted that the amounts paid were inconsistent with Government's severance policy.

- Leave was not adequately monitored and controlled. As well, our review identified errors in the recording of leave and also in the payment of leave balances on retirement or resignation.

- The Corporation pays an amount to the employees for contribution to an RRSP; however, the amount paid was not always calculated correctly.

- A total of $1,135 was paid to four management employees for statutory holidays to which they were not entitled. The four employees had not worked the 20 days prior to the holiday as required by Corporation policy.

- In three instances, vacation pay was not calculated correctly resulting in underpayments, and in one instance, salary was not calculated correctly resulting in an overpayment.

- There was no "Certificate of Conduct" found in personnel files for seven of the eight management staff reviewed, and only one of the four employees working at the Children's Centre provided the required "Certificate of Conduct".

Tendering of Goods and Services

Our review identified that six purchases totalling $119,295 were not tendered as required by the *Public Tender Act.* These included two snowmobiles costing $32,705 and ski rental equipment costing $15,491.

In addition, one sole source purchase for a touch screen costing $18,744 did not have the required Form B completed. Therefore, the

Government Purchasing Agency was not notified as required and consequently the House of Assembly was not informed of this instance.

Our review identified 14 other purchases totalling $65,906 where the Corporation did not obtain the required three quotes or provide other documentation to demonstrate that a fair and reasonable price was obtained.

We also found that 9 of the 34 purchases reviewed did not have receiving reports or an indication on the invoices or purchase orders that goods or services were received. Furthermore, 17 of the 34 purchases did not have a purchase order issued. Approvals were not evidenced for 16 of the 17 purchase orders that were issued.

Travel, Cell Phones and Other Issues

Travel

Our review of travel policies, corporate credit card statements and travel claims identified the following:

- Claims submitted and paid were not always supported by official receipts and amounts claimed were not consistent with Government rates.

- The Corporation did not use journey authorizations or other forms of approval for travel outside the Province.

- Instances were noted where travel expenses were charged directly to a Corporation credit card with no travel claims or other support for why the expenses were incurred.

- The Corporation reimbursed staff for ineligible expenses, including instances where hotel charges were claimed and paid twice, and meals claimed and paid for travel within the headquarters area.

- Although the Corporation paid $21,900 for relocation expenses for a new management employee, there was no return of service agreement signed which would be typical of Government relocation situations.

Cell phones

Our review identified that the Corporation did not adequately monitor the usage and costs of cell phones. For example; there was no documentation that cell phone invoices were reviewed monthly by those to whom a phone was issued. In addition, the Corporation had not analyzed its cell phone services to determine if cell phones were being properly utilized. Our review of 4 of 14 cell phones identified instances where cell phone plans were either exceeded or not warranted, or usage was not appropriate.

Other issues

Our review identified a number of other issues as follows:

- The Corporation spent $1,200 on a staff function in April 2011; however, there was no Board approval for the expenditure.

- The Board minutes were not signed as approved and the terms of appointment for eight Board members had expired. These members continued to serve on the Board without the required approval of the Lieutenant-Governor in Council to extend their terms.

Control over Capital Assets

The Corporation had not documented all of its procedures for the control of capital assets, including proper recognition for financial statement purposes, safeguarding, and write-downs.

The Corporation did not maintain an accurate and up-to-date capital asset ledger. There were still assets listed that were no longer in use at the Corporation but were still recorded as assets on the financial statements. For example, disposed of snowmobiles costing $31,448 and obsolete/damaged ski rental equipment dating back to 2002 were not removed from the listing of capital assets. As well, the Corporation had recorded a tube park lift costing $9,582 that it did not own.

There was no physical examination of capital asset items within the base lodge buildings since May 2009 to verify the existence of all furniture, equipment and computers.

Part 2.13
Department of Transportation and Works
Building Maintenance

The Department of Transportation and Works (the Department) is responsible for the management and administration of Government-owned buildings and properties. As of 31 March 2011, this portfolio consisted of 644,000 square metres of floor space in 854 buildings on 385 sites across the Province. The total replacement cost of these buildings is estimated to be $1.94 billion.

The Department's Works Branch has the responsibility for the facility management of these buildings. This is accomplished primarily through the four Regional Works Divisions. The Department's Engineering Support Services Division (the Division) aids in this effort through initiatives that include an inventory of the buildings and overseeing the energy management and preventative maintenance programs.

The 2004 Report of the Auditor General to the House of Assembly included a review of Government-owned buildings and properties. At that time, there were 851 buildings on 397 sites consisting of 649,000 square metres of floor space, with a total estimated replacement cost of $1.03 billion. The conclusions contained in our 2004 Report were that:

- Government-owned buildings were in need of significant repairs;
- Department officials had expressed concern about the lack of funding provided to maintain Government buildings;
- the required maintenance and capital alterations and improvements work was not being performed and the condition of Government buildings was deteriorating;
- the Department's database of buildings was not complete;
- the Department did not use a risk-based system to identify and prioritize its maintenance work;
- the Department did not have the information necessary for a comprehensive plan to address the nature, amount and timing of future capital expenditures; and

- the Department did not have a plan to devolve Government of its vacant buildings.

Although our review indicated that the Department had taken some action on the concerns raised in our 2004 Report, we found that some of the concerns identified still existed. These concerns included the condition of Government-owned buildings, how the Department tracks information related to these buildings, how building condition is assessed and reported, the energy efficiency of Government-owned buildings, an increase in deferred maintenance, the lack of a formal process for monitoring and managing preventative maintenance, and the presence of 25 vacant properties which required maintenance services, 8 of which required utility resources despite being unoccupied - several for significant periods of time.

Condition of Government-Owned Buildings

Government-owned buildings are deteriorating. These buildings vary widely in age, with the majority (450 of 854 or 52.7%) being over 30 years old, with the oldest operational (non-historic) building being over 80 years old. The annual cost of maintaining and improving these buildings has steadily increased since our 2004 Report, from $23.2 million in 2004 to $50.6 million in 2011 (an overall increase of $27.4 million or 118.1%).

Information Management Systems

In 2010, the Department adopted a new computerized tracking system, the Renewal Capital Asset Planning Process (ReCAPP); however, the new system is not complete or consistent. Our review identified the following issues:

- information on 67 buildings located in Labrador had not been entered into ReCAPP;

- information contained in ReCAPP was not complete, e.g. 55 buildings did not possess any floor space measurements and 478 buildings did not contain information on maintenance events;

- information between ReCAPP and other information management systems designed for tracking actual expenditures and for recording insurance coverage, was not always consistent; and

- the Departmental personnel who handle building maintenance were not fully trained in the use of ReCAPP.

Building Condition Assessments

The ReCAPP system allows the Department to directly compare the condition of buildings using the Facility Condition Index (FCI). This index is calculated by dividing the cost of expected maintenance events by the estimated replacement cost. Values below 100% have repair costs below replacement value while values above 100% indicate that the repairs are above the replacement cost.

Although the Department considers the FCI to be an effective measurement tool, we found that no FCI rating was available for 478 (54.7%) of the 874 building entries in the ReCAPP system. Furthermore, 44 buildings in the Government portfolio had ratings above 100% and required more money in repairs than it would cost to replace the buildings, e.g. an electrical shelter at the Botwood Airstrip had an FCI of 3,812% based on $468,930 in needed repairs with a replacement value of $12,300.

Condition Reports

In 2004, the Department commenced a project to have condition assessments performed on Government buildings. These assessments were used to create condition reports using the ReCAPP software so that the condition of buildings and their components could be tracked individually. We found that:

- 67 of the 94 buildings located in Labrador did not have a condition report completed;

- 7 of 20 (35%) condition reports we reviewed were incomplete or unavailable; e.g. one condition report only included details on the roof and parking lot; and

- 10 of 20 (50%) condition reports we reviewed included overall assessments of “good condition” where notes appeared inconsistent as they indicated significant issues with the components. For example, one building’s exterior brick walls were assessed in the condition report as being in good condition, but the condition note on the assessment indicated that they were in poor condition, with cracking, loose bricks, and were fracturing.

Energy Efficiency of Government Buildings

The Department's *2011-2014 Strategic Plan* reiterated a major strategic objective that the Department had identified in its *2008-11 Strategic Plan* - to enhance the energy efficiency of Government buildings. We found that:

- some older buildings do not possess energy saving components, resulting in buildings that are not as efficient as possible. For example, one building constructed in the 1940s still had its original windows;

- none of 20 building condition reports we reviewed mentioned insulation, a fundamental component in energy efficiency, as a distinct component. Insulation is an important energy saving component as it minimizes heat loss in winter and heat penetration in the summer;

- 3 of the 20 building condition reports we reviewed noted deficiencies that allowed air and water to enter buildings; and

- the ReCAPP system was not designed to capture detailed energy efficiency information, limiting the ability of the software to be used for tracking energy efficiency in Government-owned buildings.

Deferred Maintenance

We found that overall deferred maintenance increased sharply since our 2004 Report. During our current review, the Department estimated that it will need $549.9 million over the next 20 years in order to keep Government buildings maintained and to extend their useful life. This represents an increase of 110.5% from the $261.2 million estimated during our 2004 review. Approximately $306.0 million (55.6%) of the $549.9 million in deferred maintenance work is due in the next five years, representing an increase of $133.0 million or 76.9% over the $173.0 million indicated in our 2004 Report as being due in the following five years.

Officials indicated that the Department's focus has been to use available funding in reacting to more immediate problems. It was noted that for the year ended 31 March 2012, a projected total of $156.2 million had been identified by the Department for deferred

maintenance work; however, only $25.1 million had been spent during the previous year on maintenance and capital.

Preventative Maintenance

In our 2004 Report, it was noted that the Department did not have a consistent, centralized means of tracking preventative maintenance across buildings in the inventory. Prior to 2000, the Department was using a Federal Government Preventative Maintenance Support System. The system was not Y2K compliant and its use was discontinued prior to 2000.

Our current review indicated that there was still no formal means at the Department to track preventative maintenance. Officials indicated that the Federal Government Preventative Maintenance Support System had not been updated or replaced by the Department since it was discontinued. It was also indicated that there was no formal process for monitoring and managing preventative maintenance on buildings. Tracking was done manually by Building Managers, which was time consuming and prone to error.

Vacant Properties

A significant component of building and property management involves the disposal of properties that are no longer in use. We found that Government still possessed 25 vacant properties that were not in use, several for significant periods of time. These properties often require utility and maintenance resources despite being unoccupied.

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Part 2.14
Department of Transportation and Works
Trans Labrador Highway

In a November 1996 news release, the then Minister of Works Services and Transportation (now Transportation and Works) and the then Minister responsible for Labrador explained their vision for a highway which integrated Labrador into Canada's national highway system. They indicated that the existing highway infrastructure in Labrador was inadequate and in many cases non-existent. The people of Labrador had expressed the need for an all-weather Trans Labrador Highway which would upgrade the route from Labrador West to Happy Valley-Goose Bay, link southern coastal communities with the highway at Red Bay and connect Cartwright to Happy Valley-Goose Bay.

At that time, the Province had begun negotiations with the Federal Government. The Province would accept responsibility for Labrador marine services operated by the Federal Government in return for a funding settlement to be used for a Trans Labrador Highway (the Highway) as well as the operation of the Labrador marine services. The Ministers indicated that upon completion of the agreement, construction on the Highway could commence and would continue until a complete system of paved roads was in place in Labrador.

In March 1997, the Federal and Provincial Governments entered into an agreement whereby the Province would assume responsibility for operating marine freight and passenger services on and to the coast of Labrador in exchange for $340 million plus interest. The Province received $347.6 million in December 1997 as a cash settlement, together with related ferry service infrastructure.

Construction of the Highway was planned to start in 1997 and was designed in the following three phases, with road work in these phases connecting to existing roadways in western Labrador and the southern coast of Labrador:

- Phase I - 537 kilometre route to extend from Labrador West to Happy Valley-Goose Bay (171 kilometres (32%) paved as at 31 March 2011);

- Phase II - 237 kilometre route to extend from Red Bay in southern Labrador to Cartwright Junction (route completed in 2003, with no paving as at 31 March 2011); and

- Phase III - 287 kilometre route to extend from Cartwright Junction to Happy Valley-Goose Bay (route completed in 2009, with no paving as at 31 March 2011).

In 1998, Government estimated that it would cost $190 million to construct phases I and II of the Highway and that construction would be completed in 2002-03. In 2002, Government announced planned construction of Phase III at an estimated cost of $100 million, with construction of that phase to be completed, subsequent to an environmental assessment, over a six-year period. This meant that the original estimate to construct all three phases was $290 million.

During our current review, Department of Transportation and Works (the Department) officials were not readily able to provide information on the actual capital costs to date of individual road projects on the Highway. Therefore, we could not compare the actual costs to date for each phase to the original estimated costs, or determine the cost of any changes in construction plans.

Officials were; however, able to provide summary information showing that capital expenditures relating to the Highway totalled $501.3 million over the fiscal years 1998-99 to 2010-11. They were also able to provide information on the estimated additional cost to complete paving for Phases I, II, and III. The estimated additional cost would be approximately $428 million if paving of all three phases were included. Using assumptions provided by Department officials, a fully paved Highway could be completed by 2019.

Our review also indentified that:

- Department officials could not provide a formal plan to demonstrate how the Department intends to complete the Highway;

- Department officials could not provide documentation supporting why the southern route was chosen for Phase III rather than the northern route which was initially preferred;

- While the initial Government commitment was to pave the complete Highway, Department officials indicated that the decision whether to pave Phase II and Phase III would be reviewed in 2014 after completion of Phase I paving;

- Results of road project audits conducted by the Department identified deficiencies in practices and record keeping on the road projects;

- A payment in the amount of $1,572,507 was made to a contractor during 2010-11 to resolve a legal claim related to a construction contract for Phase II of the Highway;

- Bridges along the Highway route had not had official inspections conducted in accordance with Departmental policy; and

- Five of the 80 satellite phones purchased since March 2009, for use by the public when travelling the Highway, could not be accounted for.

We also identified instances where the Department did not comply with the *Public Tender Act*. Existing road paving contracts were extended multiple times to perform additional work that was not within the original scope of the paving contract. The additional work should therefore have been publicly tendered. As well, approval of the additional work by the Deputy Minister was not always documented and the changes were not always reported to Treasury Board, both of which are required under the *Act*.

Plan to Complete the Highway

Officials of the Department were not able to provide a formal plan to demonstrate how the Department intends to complete the Highway. A comprehensive plan would include: goals, objectives and milestones; timelines for completion of projects; the desired highway standards; an estimate of the construction costs for completion; and sources of funding for the identified costs.

The Department also does not have an integrated project management system for any of its road projects that could provide information on actual costs and related revenue by project, which would provide for analysis over a longer period of time. Currently, tracking is done through the use of manual spreadsheets.

Phase III Route

During 2002 and 2003, the Department considered thirteen routes for the final section, Phase III, between Happy Valley-Goose Bay and

Cartwright Junction. Based upon its review, the Department initially chose a northern route as their preferred route. An environmental assessment was undertaken of the northern route and submitted to the then Minister of Environment for review in January 2003. Departmental officials indicated that as part of the review, the Department was asked to prepare an environmental assessment for a different route, referred to as the southern route.

The resulting environmental assessment concluded that: there were no significant differences in terms of environmental impacts between the northern route and the southern route; there were no differences identified that precluded the Highway from being constructed along the northern route; the southern route was a longer route estimated to cost an additional $7.5 million more to construct and $4.5 million for an additional year of ferry service due to the longer construction time; the northern route would be cheaper to maintain and would be the lower cost alternative for users of the Highway; and that the Department felt that the decision should be based upon cost effectiveness and that the Department had intended to proceed with construction of Phase III along the northern route.

Although the Department subsequently decided to construct Phase III along the southern route, officials could not provide documentation supporting why the northern route was not chosen.

Paving the Highway

The initial Government commitment was to pave the complete Highway; however, the current commitment is to pave Phase I by approximately 2014, with any further plans for Phase II and Phase III to be reviewed at that time.

Department Audits

Results of road project audits conducted by the Department during Highway construction identified deficiencies in practices and record keeping. Audit reports highlight a number of consistent record keeping problems found with the road projects. They include: deficiencies in the completeness of information recorded in required project diaries; a lack of documentation to support regular project meetings being held; deficiencies in records kept to support certain pay items; and a significant number of overpayments and underpayments found related to individual project pay items.

While not of a high value in relation to total project cost, these overpayments and underpayments were significant in terms of the number of differences identified. The audit reports indicated that they resulted from calculation errors and omissions, and recommended that these calculations be checked during projects. Given the fact that Departmental officials only audit a portion of the total number of projects (one to two projects per season), it is likely that there are errors and omissions on other projects that go undetected.

Resolution of Legal Claim

During 2010-11, the Department paid $1,572,507 to a contractor to resolve a legal claim related to a Phase II construction contract completed in 2001. The Department of Justice had provided an opinion that the Department of Transportation and Works was liable for delays encountered by the contractor and would likely be found liable for certain other delays which the contractor encountered, as well as for claims related to different subsoil materials encountered by the contractor than were referenced in the public tender documents for the project. In order to settle the dispute, the Department agreed to pay the contractor the amount of $1,550,000 plus interest and taxes.

Bridge Inspections

Based on our review of information contained in the Department's on-line bridge inspection system as at April 2011, we identified 29 bridges that were part of the Highway. We determined that there were a significant number of bridges along the Highway route that had not had official inspections conducted in accordance with Departmental policy. The policy requires that bridges be inspected at least every two years. We found that as of April 2011:

- 1 of the 29 bridges did not have an official inspection performed for more than four years;

- the remaining 28 bridges did not have an official inspection performed within the two year requirement - the most recent inspections were conducted during 2009, with the previous inspections conducted three years earlier in 2006;

- 7 of the 28 bridges inspected during 2009 had an overall condition rating of fair but it was indicated that follow-up inspections were required within one year; however, there

was no evidence that follow-up inspections had been conducted; and

- the bridge management system had not been updated on a timely basis.

Satellite Phones

During the Department's annual maintenance check for the summer of 2011, officials determined that 5 of the 80 satellite phones purchased since March 2009 could not be accounted for. This represents a potential loss in this valuable service to the public using the Highway.

Public Tender Act

The Department did not comply with the *Public Tender Act* related to two road paving contracts. In these cases, existing contracts were extended multiple times to perform significant amounts of additional paving work, as well as other work outside the requirements of the original contracts. Details on the two instances reviewed follows.

- In one contract awarded at a value of $17.5 million, there were four contract extensions approved over two fiscal years, totalling an estimated $9.5 million or 54.3% of the estimated original contract. Two of the extension contracts totalling $3.5 million, cumulatively exceeded $50,000 or 5% of the original contract value, but approval of the Deputy Minister was not documented and the changes were not submitted for inclusion in the Department's annual report to Treasury Board, both of which are required under the *Act*. The other two extension contracts totalling $6.0 million again cumulatively exceeded $50,000 or 5% of the original contract value, and while these were documented as being approved by the Deputy Minister, they were not submitted for inclusion in the Department's annual report to Treasury Board until after our enquiry.

  Furthermore, the additional 36 kilometres of paving to be performed through three of the contract extensions totalling $7.9 million was not within the original scope of the 80 kilometres of paving, and, under the requirements of the *Act*, should have been tendered. The fourth extension

contract for $1.6 million was for the construction and paving of a permanent weigh scale site near Wabush. This work was not within the original scope of the paving contract and also should have been publicly tendered.

- In the second contract awarded at a value of $12.1 million, there were two contract extensions approved during 2010-11 totalling an estimated $3.5 million or 28.9% of the estimated original contract. In one of the two extension contracts, the $3.0 million extension value exceeded $50,000 or 5% of the original contract value, but approval of the Deputy Minister was not documented as required under the *Act* and the change was not submitted for inclusion in the Department's annual report to Treasury Board until after our enquiry. The other extension contract for $550,000 again cumulatively exceeded $50,000 or 5% of the original contract value, but approval of the Deputy Minister was not documented, and it was not submitted for inclusion in the Department's annual report to Treasury Board as required under the *Act*.

Furthermore, the additional 10 kilometres of paving to be performed through the contract extension for $3.0 million was not within the original scope of the 50 kilometres of paving, and, under the requirements of the *Act*, should have been tendered. The second extension contract for $550,000 was for the construction of a temporary portable weigh scale site at Happy Valley-Goose Bay. This work was not within the original scope of the paving contract and also should have been publicly tendered.

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Chapter 3 - Audit of the Province's Financial Statements

Reflections of the Auditor General

The Public Accounts provide an important link in an essential chain of public accountability. They are the principal means by which Government reports to the House of Assembly and to all Newfoundlanders and Labradorians on its stewardship of public funds.

Public Accounts Volume I (Consolidated Summary Financial Statements) provides the most complete information about the financial position and operating results of the Province. They combine the financial position and operating results of central Government and the departments (Consolidated Revenue Fund - Public Accounts Volume II), with those of other Government entities.

The Province's economy and Government's financial position have improved significantly over the last five years. While there have been fluctuations between years, the Province's GDP has increased overall from $21.5 billion in 2006 to $28.2 billion in 2011, and Government's debt to GDP ratio has decreased from 54.4% in 2006 to 28.8% in 2011. An increase in GDP and a related decrease in debt to GDP are seen as indicators of whether a Government can generate enough revenue to fund its expenditures and to service its debt, i.e. whether a Government is living within its means. As well, Government has recorded either surpluses or a slight deficit since 2006, and net debt has decreased from $11.7 billion in 2006 to $8.1 billion in 2011. Surpluses from 2006 to 2011 totalled $4.7 billion, with decreases in net debt of $3.6 billion.

Despite these improvements in the Province's financial position, the following factors need to be considered:

- The Province's net debt is significant. A surplus of $270 million would be required each year for 30 years to eliminate the $8.1 billion in net debt as at 31 March 2011, and the $8.1 billion represents a net debt per capita of $15,948.

- While overall the economy remains strong, there are concerns for the sustainability of current and future expenditure requirements and the impact on future generations of Newfoundlanders and Labradorians if sufficient revenues are not available so that these requirements can continue to be met. For the year ended 31 March 2011, 37.6% of all Provincial source revenues came from oil royalties; however, this revenue source is highly volatile and subject to the possibility of significant fluctuations in world oil prices, production and foreign exchange. It is also based on a non-renewable resource.

- Along with the continued reliance on oil to fund a significant portion of expenditures, the continuing shift in demographics towards an aging population continues to result in increasingly significant levels of expenditures. Information obtained from the Newfoundland and Labrador Statistics Agency indicates that the number of people in the Province who are 60 years of age or over had increased from 99,509 (or 19.5% of the total population) in 2006 to 119,002 (or 23.3% of the total population) in 2011. Health sector expenses have increased significantly over the last five years, from $1.9 billion in 2006 to $2.7 billion in 2011, an increase of over 42%, and for 2011 represented 35.3% of total Government expenses. These expenses are expected to increase in the future as our population continues to age. If revenue levels cannot sustain these increased expenses, Government will be faced with reductions in services or potentially significant deficits and resulting increases in net debt, both of which will be passed on to future generations.

- Diversification of the economy is important to the future of the Province. This is especially true given the volatility of oil revenues and the fact that oil is a non-renewable resource. Government has several activities aimed in part at diversifying and strengthening the economy, with two of the largest being Business Attraction in the former Department of Business and Comprehensive Economic Development in the former Department of Innovation, Trade and Rural Development. Combined, Government has budgeted a total of $200.2 million over the last five years in these two activities alone; however, actual expenditures totalled only $60.5 million, or 30% of the amount budgeted. While much of this funding is application driven, and unspent funding in

one year is sometimes budgeted again in subsequent years, Government's objective for these two activities, in terms of leveraging such funding to diversify and strengthen the economy, has likely not been fully realized.

- Government has increased capital spending dramatically in recent years, in large part due to an announced Infrastructure Strategy. Planned investments under the Infrastructure Strategy have increased from $300 million for the year ended 31 March 2007, to $1.0 billion for the year ended 31 March 2012. While spending on infrastructure is seen as a means to provide better services and to reduce future expenditures, it does come at a financial cost in terms of not utilizing associated funding to reduce debt and related debt servicing charges.

- There are several factors associated with the proposed agreement to develop Muskrat Falls which may have either a positive or negative impact on Government's financial condition. These factors include whether projected electricity demands, projected costs totalling $6.2 billion, and the level of anticipated debt expenses go as planned. If these factors do not go as planned, there could be significant issues that the Government of the day will have to face.

- While Government's borrowings have decreased, its unfunded pension liability and liability for group health and group life insurance retirement benefits continue to increase as follows:

    - The unfunded pension liability increased by $490 million, from $2.2 billion in 2010 to $2.7 billion in 2011. This represents an increase of $1.2 billion (80%) from a low of $1.5 billion in 2008. All of the six pension plans had increases in the unfunded liability, and for the year ended 31 December 2010, benefit payments of $494 million exceeded contributions of $329 million.

    - The liability for group health and life insurance retirement benefits increased by $141 million, from $1.8 billion in 2010 to $1.9 billion in 2011. This represents an increase of $644 million (51%) over the last five years.

Acknowledgements

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WAYNE R. LOVEYS, CMA
Auditor General (A)