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# Chapter 1

## Introductory Comments by the Auditor General

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# Introductory Comments by the Auditor General

## Introduction

**1.1** My Office's mission, as included in our 2014 to 2020 strategic plan is:

*To provide objective, reliable, and timely information to the Legislative Assembly on government's performance in its delivery of programs and services to the people of New Brunswick.*

**1.2** In this volume of our 2016 Report, we include three performance reports.

**1.3** Many residents of New Brunswick will eventually need nursing home services. Chapter 2 (Nursing Homes) addresses the capacity of the Province to provide this service to those in need over the short, medium, and long term.

**1.4** The other two chapters in this volume cover programs that, while small, are of great interest to many New Brunswick residents.

**1.5** The Office of the Public Trustee was set up by the Province to protect the interest of vulnerable people when no-one else is able and willing to do so. Our objectives for this audit, which is reported on in Chapter 3, were:

*to determine whether the Public Trustee properly safeguards and administers client assets held in trust;*

*to determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies; and*

*to determine whether the Public Trustee publicly reports on the performance of its services.*

**1.6** Many New Brunswickers regularly attend one or more of the various Agricultural Fairs organized annually in the Province. By doing so, they are demonstrating the importance of these fairs to the cultural fabric of our Province. Chapter 4 of this Volume reports on our audit of government oversight of these associations.

**1.7** In these three chapters, my Office reports upon several key findings that I wish to highlight in my comments.

**Lack of Capacity in Provincial Nursing Homes to Meet Current and Future Demands**

**1.8** There is a lack of capacity in the nursing home system to meet current and future demand for nursing home beds. The average utilization rate of nursing home beds was almost 97% in 2014-2015. As the number of seniors continues to grow, there will be an increased demand for nursing home beds.

***Long Waitlists for Nursing Home Beds***

**1.9** Due to the current demand for nursing home beds being well in excess of the Province's capacity to provide them, there are long waitlists of provincial seniors waiting for accommodations. In 2014-2015, these individuals waited an average of almost four months for placement. The majority of people on the waitlists are doing their waiting in a hospital bed. In fact, they occupy about one of every five acute care beds in New Brunswick hospitals.

***Cost of Nursing Home Services Exceeding Provincial Expenditure Growth Average, and May Get Worse***

**1.10** Further, between 2000-2001 and 2015-2016, the budget for nursing home services almost tripled, far outpacing the overall growth of the Province's expenditures during the same period. Nursing home infrastructure is also aging, and required significant expenditures in maintenance, repair and renewal (estimated by the Department of Social Development to be \$285 million) just to maintain service at its current level.

***Nursing Home System is Not Sustainable***

**1.11** I believe that significant changes are required to create a sustainable nursing home system in the Province. My Office has recommended the Department of Social Development develop a comprehensive long term plan as a starting point in addressing this critical issue.

**Provincial Trustee Services Case Management System Inadequate**

**1.12** In our audit of Public Trustee Services we identified a number of issues that serve to limit the effectiveness of that office in fulfilling its mandate.

**1.13** Most concerning is the lack of an adequate case management information system to allow staff to do their work efficiently, and produce appropriate reporting for management use and public reporting. I was also very concerned that the current legislative framework creates significant impediments to the ability of the Public Trustee to administer the affairs of clients under its care. It creates gap periods during which the Public Trustee has no ability to act on behalf of its clients. Finally, there are some significant control weaknesses that must be remedied. All of these issues are addressed in my Office's recommendations.

**Agricultural Fair Associations – no oversight or monitoring of operations or exemptions**

**1.14** Our most significant finding from our audit of Agricultural Fair Associations was that there is no oversight, supervision or control from the Department of Agriculture, Aquaculture and Fisheries (DAAF) as prescribed by legislation. In our opinion DAAF remains responsible for supervision and control of these entities.

**1.15** Further, by virtue of being classified as Agriculture Fair Associations, the thirteen entities can be exempted from property taxes and income taxes and may also meet charitable gaming requirements. We found Service New Brunswick (SNB) does not assess or monitor agriculture fair association eligibility for property tax exemptions; Public Safety does not review or monitor ongoing eligibility to conduct gaming events under the Charitable Gaming Program and the Department of Finance relies on the Federal Canada Revenue Agency to assess continued eligibility for income tax exemptions.

**Property Tax Exemptions Granted to Agricultural Fair Associations and Other Organizations not Appropriately Administered by Service New Brunswick**

**1.16** Another important finding from our audit of Agricultural Fair Associations relates more broadly to certain property tax exemptions granted by Service New Brunswick (SNB).

**1.17** SNB granted over \$50 million in property tax exemptions to Class 50 properties in 2015 (which include Agricultural Fair Associations, along with many other organizations). However, based upon our testing of Agricultural Fair Associations, SNB does not adequately evaluate, document the initial eligibility for, or periodically

review the continued eligibility of, the organizations that receive these property tax exemptions. Consequently, there is a risk that ineligible properties are being treated as exempt from property tax by SNB.

**1.18** We have recommended Service New Brunswick develop, document, and implement a standardized process and procedures to evaluate the eligibility of requests for property tax exemptions (tax class 50) and undertake regular monitoring to ensure organizations with exemptions have sustained their eligible status.

## **Acknowledgements**

**1.19** Staff in my Office worked very hard in carrying out the work reported upon in this volume of our Report. The individual chapters of this report are a reflection of their level of commitment, professionalism and diligence. I would like to express my appreciation to each for their contribution and continuing dedication to fulfilling the mandate of the Auditor General of New Brunswick.



Kim MacPherson, CPA, CA  
Auditor General

# Chapter 2

## Department of Social Development Nursing Homes

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# Department of Social Development Nursing Homes

## Introduction

- 2.1** In New Brunswick, the life expectancy of an adult who reaches the age of 65 is 83 years of age for men and 86 for women<sup>1</sup>. As people live longer, they are at risk of declining health due to dementia, Alzheimer's and other chronic diseases associated with old age. Seniors afflicted with these diseases will need assistance and care as they age, and some may be unable to live independently in their own home. Many of these individuals will require the services of a nursing home.
- 2.2** Nursing Home Services Branch of the Department of Social Development is responsible for the Nursing Home Program, with actual services being provided through licensed nursing homes. Services include resident care, resident support, plant and maintenance and general administration. Admissions to nursing homes must be approved by the Department.
- 2.3** Most nursing homes in the province are operated by not-for-profit boards and require significant government involvement. At March 31, 2015, there were three nursing homes in the province operated by a for-profit organization as part of integrated senior living campuses. These facilities operate more independently from the Province

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<sup>1</sup> Statistics Canada, CANSIM, table 102-0512 *Life expectancy, at birth and at age 65, by sex and by province and territory*



than the not-for-profit facilities.

**2.4** All nursing homes are funded by a per diem based on the number of beds in their facility, and they receive payments from residents for their cost of care. Budgets and per diems are established annually and paid by the Department of Social Development. Any unusual or unexpected expenses by the non-profit nursing homes are also covered by the Department of Social Development.

**Why we are interested in nursing homes**

**2.5** In its strategic plan, the Department of Social Development states “*we are facing unprecedented demands on our department from a challenging economy, from the increasing provincial budget deficit and from increasing demands for programs and services.*”<sup>2</sup> It goes on to say “*a large aging senior demographic requiring services is a challenge to an already strained system.*”<sup>3</sup> Given the mounting demand for senior care and the impacts it will have on New Brunswick, we were interested in determining the current situation in our Province concerning nursing homes and the capacity within the system to meet the growing demand for services. Our intent with this report is to provide objective information on the current status of nursing homes. We may conduct an audit at a later date.

**Summary**

**2.6** This report looks at nursing home bed capacity in New Brunswick. In summary, there are several factors that are a cause for concern when talking about nursing home capacity in the Province.

***Growing costs are not sustainable***

**2.7** Between 2000-2001 and 2015-2016, the budget for nursing home services increased 285%, far outpacing the overall growth of PNB expenditures (184%) during the same period. In addition, the portion of the Department of Social Development’s budget for nursing home services also grew, going from 17% in 2000-2001 to 28% in 2015-2016.

**2.8** Nursing home infrastructure is also aging, requiring significant investments for maintenance, repair and

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<sup>2</sup> *Planning for Tomorrow, Today*, Department of Social Development Strategic Plan 2013-2017, 2013, p.7

<sup>3</sup> *Ibid*

renewal. The *2011-2016 Nursing Home Renovation and Replacement Plan* estimated nursing home construction projects at \$285 million.

***Nursing homes operating at capacity while demand continues to grow***

**2.9** There is a lack of capacity in the nursing home system to meet current and future demand for nursing home beds. The average utilization rate of nursing home beds was almost 97% in 2014-2015. As the number of seniors continues to grow, there will be an increased demand for nursing home beds. Based on current use of nursing home beds and population projections by Statistics Canada (without considering any Department initiatives that could reduce demand), we estimated 10,776 nursing home beds could be needed in 2036. At March 31, 2015 there were 4,438 nursing home beds in the province.

***Limited public reporting on implementation and outcome of Department initiatives***

**2.10** There was limited performance information provided by the Department on the outcomes and overall implementation status of their *Home First* strategy and the *2011-2016 Nursing Home Renovation and Replacement Plan*. The impact on these activities on the waitlists for nursing home beds is not reported to the public.

***Impact of long waitlist for nursing home beds***

**2.11** Due to the high demand for nursing home beds and the current lack of capacity, there are long waitlist for nursing home beds. The majority of people on the waitlists for a nursing home bed are doing their waiting in a hospital bed. In 2014-2015, these individuals waited an average of 3.8 months for placement. These individuals occupy approximately 20% of the acute care beds in New Brunswick hospitals. This has several impacts:

- The cost of care in a hospital bed is higher than that of a nursing home bed. We estimated an additional \$40 million has been spent between 2010-2011 and 2014-2015 as a result of individuals waiting in hospital for a nursing home bed;
- It contributes to longer wait times in emergency rooms, longer wait times for elective surgeries and inefficient use of hospital resources; and
- The individual waiting for a nursing home placement could be receiving care that is more appropriate for their needs in a nursing home.

**2.12** Exhibit 2.1 provides a snapshot of nursing home capacity in 2014-2015.

Exhibit 2.1 - Snapshot of Nursing Home Bed Capacity in 2014-2015, by region

Snapshot of Nursing Home Bed Capacity in 2014-2015, by region			
Region	Number of beds	Number of individuals on waitlist for bed at 31 March 2015	Average wait time in hospital for a nursing home bed
Moncton	1,099	136	7 months
Saint John	1,090	148	5.8 months
Fredericton	874	88	3.4 months
Edmundston	362	40	3 months
Campbellton	190	14	3.4 months
Bathurst / Acadian Peninsula	544	41	1.4 months
Miramichi	279	54	6.3 months
<b>Total</b>	<b>4,438</b>	<b>521</b>	-

Source: Exhibit prepared by AGNB from figures provided by the Departments of Social Development and Health (unaudited)

**2.13** From our examination of the rising demand for services and growing costs of senior care, we encourage the Departments of Social Development and Health to continue to work together to find solutions to alleviate the fiscal challenges, while ensuring seniors have access to the services they require. As a result of our work, we made three recommendations.

### Results in brief

**2.14** Results in brief are presented in Exhibit 2.2

### Recommendations

**2.15** Our recommendations are presented in Exhibit 2.3.

## Exhibit 2.2 – Results in Brief

## Nursing Homes

### Why Is This Important?

- Seniors with chronic diseases will need assistance and care as they age, and some may be unable to live independently in their own home.
- The number of seniors in New Brunswick is expected to double over the next 20 years.
- We wanted to determine the current situation in the province concerning nursing homes and the capacity within the system to meet the growing demand for services.

### What We Found

#### Overall Conclusions

- Multi-faceted solution is needed to provide sustainable care and services in the future, not as simple as adding more nursing home beds to the existing system.
- Limited public performance reporting by the Department

#### Growing Costs are Not Sustainable

- Between 2000-01 and 2015-16, the budget for nursing home services almost tripled (285% increase) to \$313 million.
- Nursing home infrastructure is aging, requiring an estimated \$285 million for maintenance, repair and renewal.

#### Nursing Homes Operating at Capacity

- Nursing homes operating on average at 98% capacity while demand continues to grow.
- Over 10,000 nursing home beds could be needed in 2036. There are currently over 4,000 nursing home beds in the province.

#### Long Waitlist for Nursing Home Beds

- Majority of people are waiting in a hospital bed and waited an average of almost four months for placement in 2014-15.
- These individuals occupy approximately 20% of the acute care beds in NB hospitals.

#### Impacts:

- Estimated \$40 million in additional costs in last 5 years for waiting in hospital;
- Contributing to longer wait times in hospitals and inefficient use of hospital resources, and;
- Individuals could be receiving different care more appropriate for their circumstances.

#### Limited Public Performance Reporting by the Department

- Regarding the outcomes and overall implementation status of its *Home First* strategy and the *2011-2016 Nursing Home Renovation and Replacement Plan*.
- Impact of these activities on the waitlist for nursing home beds is not reported to the public.

Exhibit 2.3 - Summary of Recommendations

Recommendation	Department's response	Target date for implementation
<p><b>2.33</b> We recommend the Department of Social Development evaluate whether there is an economic benefit to providing nursing home beds under the public-private model versus the traditional model.</p>	<p><i>The Department analyzed and developed an RFQ/RFP model approach for nursing home services. This RFQ/RFP model was rolled out in 2014/15 for the procurement of 60 nursing home beds, and the contract was awarded during 2015/16. This approach was found to be more cost effective for a 60 bed nursing home than the traditional model.</i></p>	<p><i>June 2016</i></p>
<p><b>2.70</b> We recommend the Department of Social Development, in consultation with the Department of Health, develop a comprehensive long term plan to ensure the Province can continue to provide sustainable services to New Brunswick seniors.</p>	<p><b>Response from Health</b>  <i>Our Department is committed to collaborate with the Department of Social Development on the development of a comprehensive long term plan that will ensure the provision of continued sustainable services for New Brunswick seniors.</i></p> <p><i>The Department of Health continues to work with the Department of Social Development on initiatives, such as the Home First Strategy and the Alternate Level of Care Collaborative Work Group, to increase and improve community-based services for seniors and to alleviate the inappropriate use of hospital beds. More information on these initiatives will be available over the next few months.</i></p>	<p><i>See response</i></p>

Exhibit 2.3- Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
2.70 (continued)	<p><b>Response from Social Development</b></p> <p><i>The departments of Social Development and Health have been collaborating for a number of years to assure the provision of sustainable health and long term care services to seniors. This has included the implementation of Home First, a three-year plan to enhance healthy aging and care for all seniors in New Brunswick. It represents a shift away from nursing home care toward a greater focus on healthy, active aging, and on home and community-based care integrated across sectors and services. Many Home First initiatives have been rolled out in 2015-16 and more are being rolled out in the current year.</i></p> <p><i>The two departments are also responsible for supporting the Council on Aging which has been tasked with developing an aging strategy for New Brunswick to address both short-term (1-3 years) sustainability and long-term (10 or more years) transformational change. As part of this exercise the Council will develop a vision for aging in New Brunswick. This vision will serve as the foundation for a framework that will guide action on issues affecting seniors and the aging experience in New Brunswick. The scope of this framework is to reach beyond government services and public policy to frame the roles and responsibilities of all stakeholders, including individuals, families, communities, service providers, researchers, business, and non-profit organizations. It should also reach beyond the care continuum and provision of services to a broader view of the aging experience, including health and wellness, family and social life, community participation, lifelong learning, employment, income, housing, and food security. These are all areas that impact healthy aging by affecting individual health and wellbeing, as well as society as a whole.</i></p>	In progress

Exhibit 2.3- Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>2.71</b> We also recommend the Department report publicly on the measures and outcomes of current and future initiatives as part of the comprehensive long term plan.</p>	<p><i>The department agrees with the recommendation to report publicly on the measures and outcomes of the current and future activities. Although the Home First strategy is in early stages of implementation, the Department of Social Development has reported publicly on its progress via the Main Estimates process and presentations to numerous community organizations. The Council on Aging will leverage considerable work that has already been completed by stakeholders and develop a sustainable strategy for aging in New Brunswick. This strategy will represent a wide range of partner perspectives and the engagement of seniors and stakeholders to facilitate the development of a framework that will guide all action on issues affecting seniors and the aging experience in New Brunswick. As part of the strategy, a communications and reporting plan will be developed.</i></p>	<p><i>In progress</i></p>

**Scope****2.16** Our work included:

- interviews with staff at the Departments of Social Development and Health;
- examining various reports available internally and externally by the Departments of Health and Social Development; and
- conducting research online.

**2.17** Certain financial and statistical information presented in this report was compiled from information provided by others. It has not been audited or otherwise verified. Readers are cautioned that this financial and statistical information may not be appropriate for their purposes.

**Detailed Observations**

**2.18** A sustainable system is one of the pillars for success of the Department's *Home First* strategy. When we looked at the cost to provide nursing home services, it is evident why sustainability is such a critical component.

**Growing costs are not sustainable**

**2.19** The Department plays several roles in funding of long term care services. The costs of long-term care services are not covered by Medicare. New Brunswick residents are normally responsible to pay for their long-term care.<sup>4</sup> However, the Department can provide financial assistance to those who cannot afford to pay the costs of services. The Department also pays a per diem to nursing homes based on the number of beds in each nursing home. An aging population and an aging nursing home infrastructure have led to growing costs for nursing home care.

***Increasing Nursing Home Services budget outpaces Province's expense growth rate***

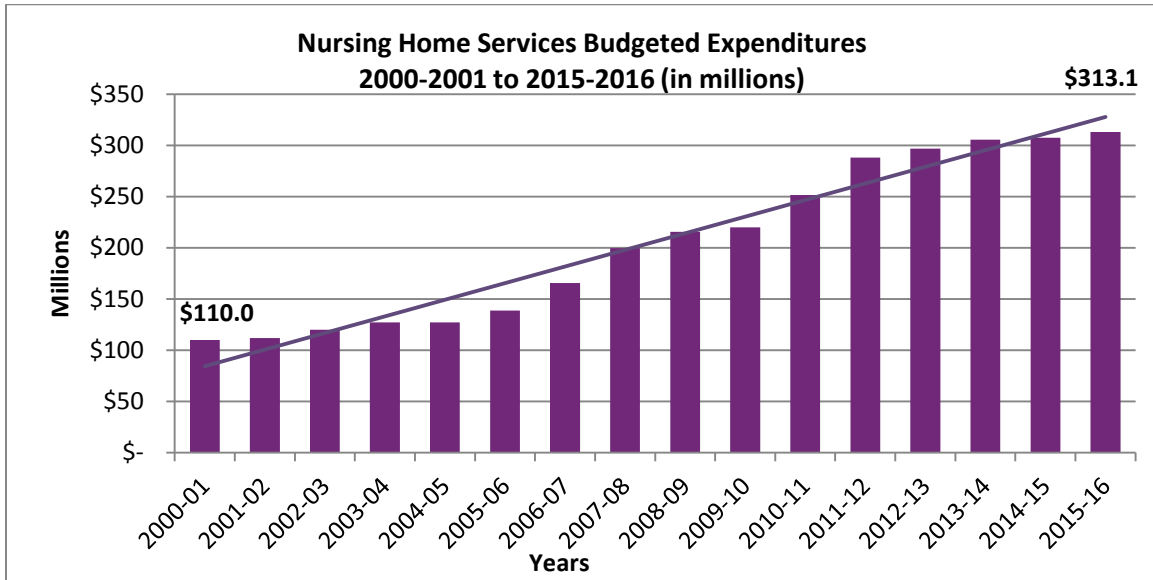
**2.20** We looked at the budget for nursing home services for the period of 2000-2001 to 2015-2016. As shown in Exhibit 2.4, the budget for nursing home services almost tripled (285%), increasing from \$110 million in 2000-2001 to over \$313 million in 2015-2016. In comparison, the budget of the Province during that same period grew by 184%. The growth of the budget for nursing home services is far outpacing the overall growth of provincial expenditures.

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<sup>4</sup> *Standard Family Contribution Policy Booklet*, Department of Social Development, April 2015



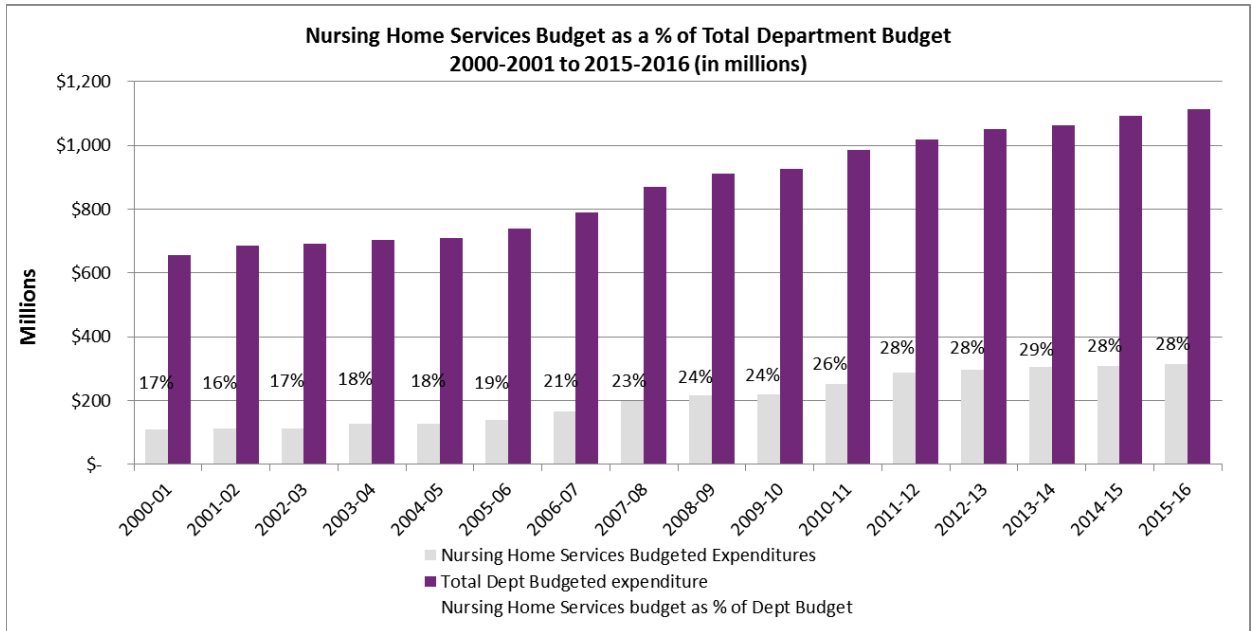
Exhibit 2.4 - Nursing Home Services Budgeted Expenditures, 2000-2001 to 2015-2016 (in millions)



Source: Exhibit prepared by AGNB from figures extracted from Main Estimates for the years 2000-2001 to 2015-2016 (unaudited), with added trend line

**2.21** The amount of funding designated for nursing home services is also increasing as a percentage of total expenditures of the Department. Exhibit 2.5 shows the portion of the Department’s budget dedicated to nursing home services has grown from 17% in 2000-2001 to 28% in 2015-2016.

Exhibit 2.5 - Nursing Home Services Budget as a % of Total Departmental Budget, 2000-2001 to 2015-2016 (in millions)



Source: Exhibit prepared by AGNB from figures extracted from Main Estimates for the years 2000-2001 to 2015-2016 (unaudited)

**All nursing home residents are subsidized**

**2.22** According to the Department of Social Development, the average cost of a nursing home bed is \$229 per day for the 2014-2015 budget year. As shown in Exhibit 2.6, the contribution of a resident to the costs of care is capped at \$113 per day, approximately half the average daily cost of a bed. The remaining amount is paid by the Department. Per the Department, the amount of \$113 per day is intended to cover the cost of room and board services. The Department estimates that 13% of nursing home residents pay the maximum daily amount.

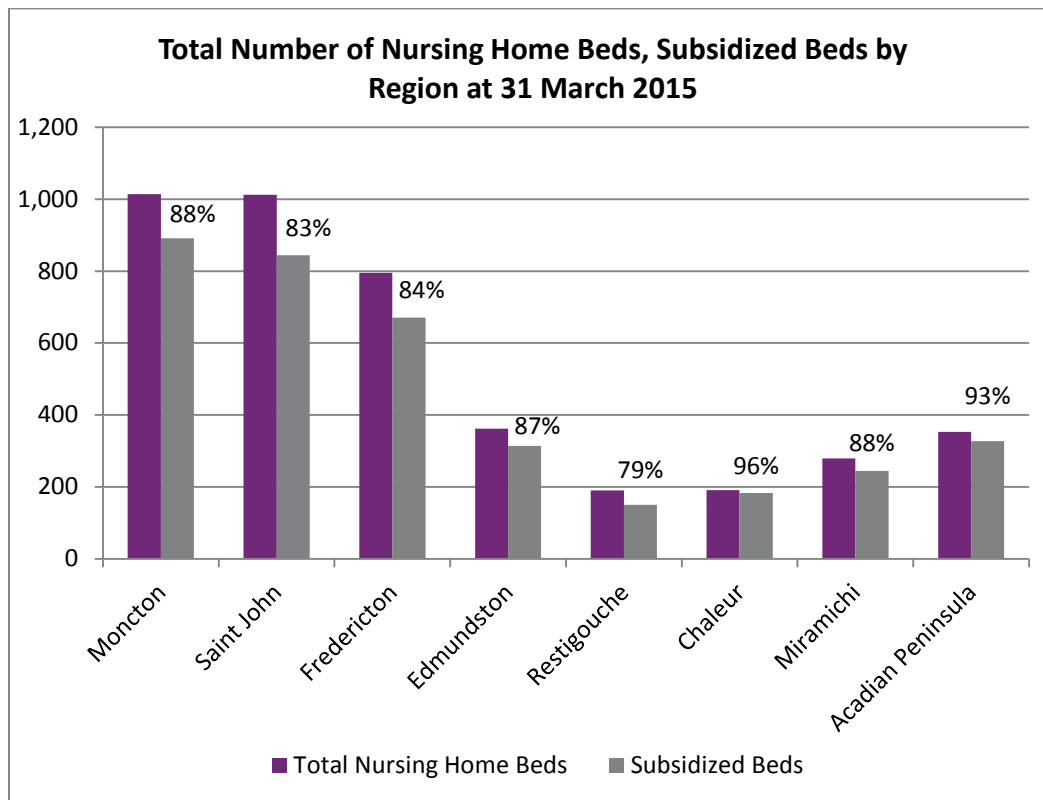
Exhibit 2.6 - Percentage of daily cost paid by the 13% of nursing home residents who pay the maximum daily amount for room and board services as set by the Department of Social Development

Percentage of daily cost paid by the 13% of nursing home residents who pay the maximum daily amount for room and board services as set by the Department of Social Development	
Maximum contribution by resident of nursing home	\$ 113
Average budgeted 2014-2015 daily per diem paid by Department to nursing homes	\$ 229
% of cost covered by resident	49%

Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

**2.23** For residents who cannot pay the maximum daily amount of \$113 per day, the Department provides financial assistance to cover the shortfall between the amount they are required to pay and the amount they can afford to pay. In Exhibit 2.7, we look at the number of nursing home residents who receive financial assistance across the Province. In this exhibit, a subsidized bed is a nursing home bed for which the resident cannot pay the maximum daily amount for their care (\$113 per day). We found the majority of nursing home residents receive financial assistance from the Department, ranging from 79% to 96% by region. On average, 87% of nursing home residents receive financial assistance to pay for their care in a nursing home.

*Exhibit 2.7 - Total Number of Nursing of Home Beds, Subsidized Beds by Region at 31 March 2015*



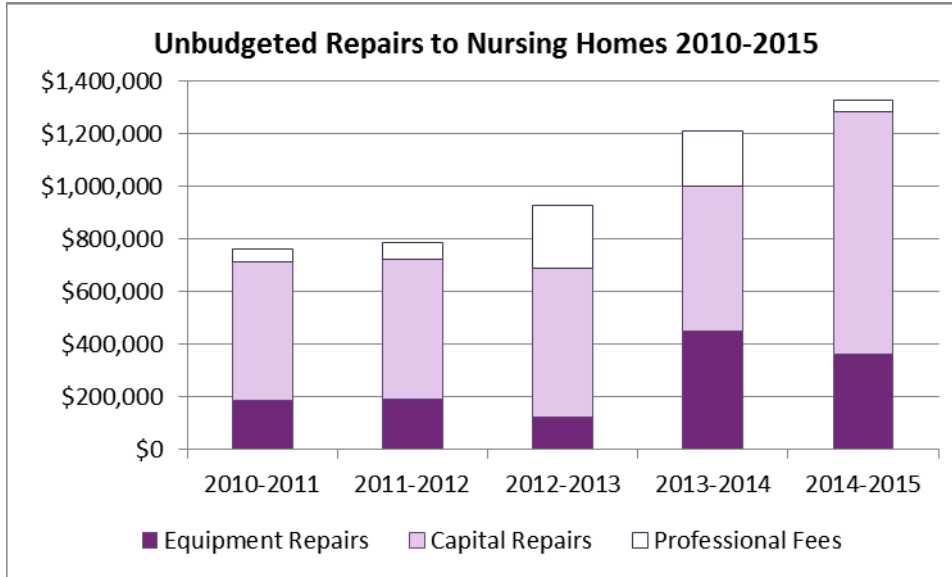
Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

**Unexpected repairs are increasing**

**2.24** Other items not included in the nursing homes budgets, such as unexpected repairs, are also paid by the Department. We found that the amount spent on repairs during the period of 2010-11 to 2014-15 increased by 74%,

from \$0.7 million in 2010-11 to \$1.3 million in 2014-15. These amounts are shown in Exhibit 2.8.

Exhibit 2.8 - Unbudgeted Repairs to Nursing Homes 2010-2015



Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

Note: Professional fees could include such items as fees charged by an engineer during a roof assessment

### ***Ageing Nursing Home Infrastructure***

**2.25** In 2009, the Department had 53 of its nursing homes inspected to assess the condition of the homes. Per the Department, the information was used to prioritize nursing home replacement and major capital repair projects. The homes were assessed and rated out of 450 for asset condition (100 points), space (100 points), safety (200 points) and energy efficiency (50 points). Their score out of 450 was equated to a % score out of 100. The lower the score, the poorer the condition of the facility.

**2.26** In our review of these reports, we found that more than half of nursing homes (57%) scored between 51% and 75%. Other observations included:

- 14 of 53 homes (26%) were rated at 50% or less. Twelve of these homes were scheduled for repair in the *2011-2016 Nursing Home Renovation and Replacement Plan*.
- 9 of 53 homes (17%) were flagged with a risk warning and recommended for replacement. These

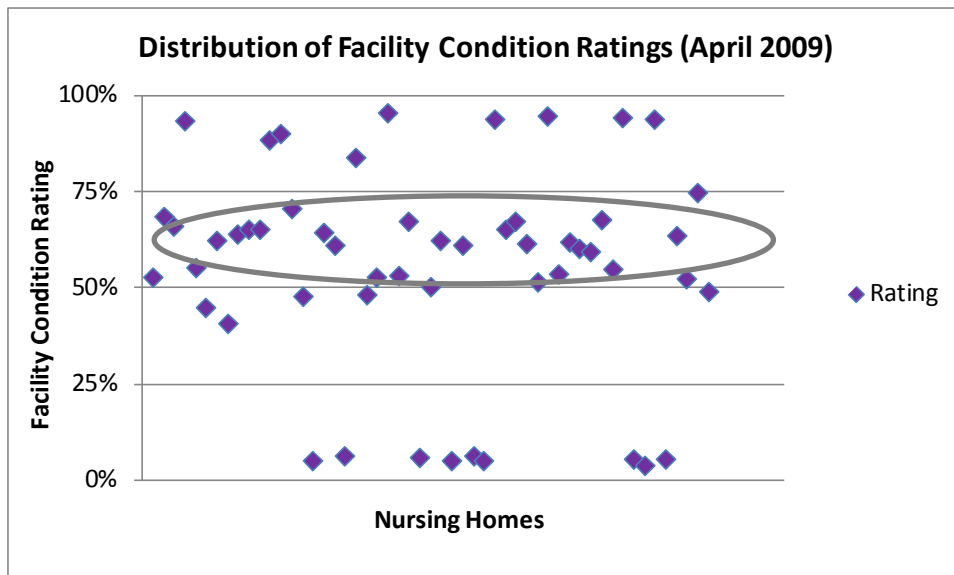
homes had a rating of 7% or less. All 9 of these homes are scheduled for replacement in the *2011-2016 Nursing Home Renovation and Replacement Plan*.

- In 2009, total amount of \$206 million was identified as needed over the next 25 years for capital renewal. This could include improvements to the architectural, mechanical and electrical components of the nursing homes to extend the life of these facilities.

**Condition of majority of nursing homes is rated 50% to 75%**

**2.27** Exhibit 2.9 displays the range of condition ratings for nursing homes at the time of inspection in 2009. The Exhibit shows the majority of homes were rated between 50% and 75%, while a small number were rated at the high end (>75%) and low end (<10%).

*Exhibit 2.9 - Distribution of Facility Condition Ratings (April 2009)*

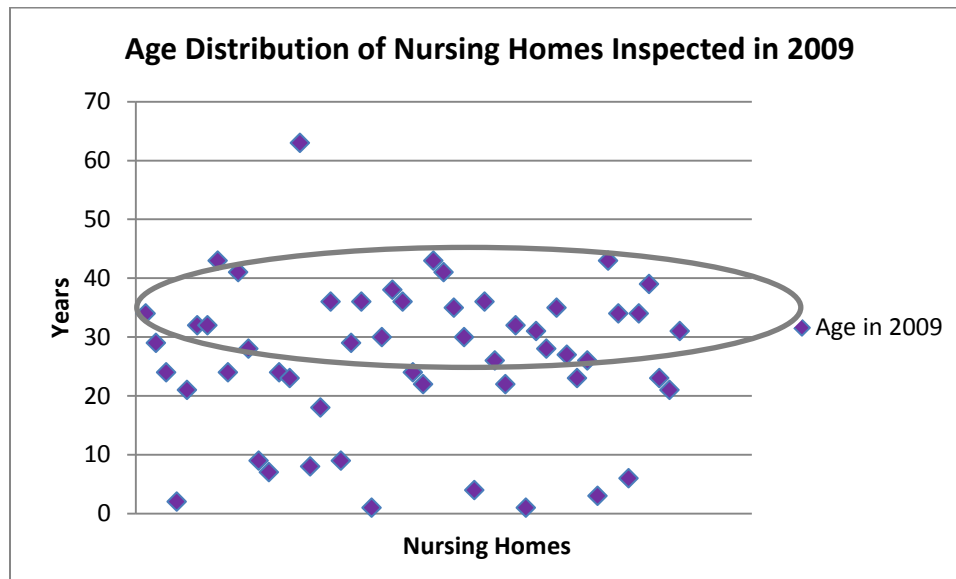


Source: Exhibit prepared by AGNB from condition reports provided by the Department of Social Development (unaudited)

**Average age of nursing home is 26 years**

**2.28** We also noted that, for the homes assessed in 2009, the average age of the homes was 26.4 years. The oldest home was 63 years old. That home is scheduled to be replaced per the *2011-2016 Nursing Home Renovation and Replacement Plan*. Exhibit 2.10 displays the range of building age for nursing homes assessed in 2009. The Exhibit shows that the majority of homes were between 25 and 45 years old.

Exhibit 2.10 - Age Distribution of Nursing Homes Inspected in 2009



Source: Exhibit prepared by AGNB from condition reports provided by the Department of Social Development (unaudited)

### *Contracts with Shannex facilities*

**2.29** In 2008, the Department of Social Development partnered with Shannex New Brunswick to pilot a public-private initiative to open 216 new nursing home beds in order to address the waiting list and bed shortages. This partnership represented a new model for supplying nursing home beds, consisting of three separate five-year contracts signed in April 2008.

**2.30** In the *2009 Report of the Auditor General*, we reported our findings following a review of the decisions and conditions surrounding the partnership with Shannex. That report recommended the Department assess the success of the pilot project with Shannex.

**2.31** In its response to our follow-up in 2013, the Department of Social Development reported the Shannex facilities had been evaluated on:

- resident outcomes (extent to which nursing home is meeting its service and care goals for reach resident, quality of resident care, etc.);
- system outcomes (extent to which nursing home is meeting service standards); and
- nursing and care staff outcomes (stability of staffing, quality of work life, work environment and

staff satisfaction, etc.).

**2.32** As a result of our follow-up work in 2013, we found that the evaluation carried out by the Department assessed the service delivery and working conditions of the Shannex facilities. However, the essence of our recommendation was the need to assess the success of the pilot project. While it is important that the Department be able to evaluate Shannex's ability to provide the required level of service, there should also have been an evaluation of whether this service delivery model was more economical than the traditional non-profit nursing home model. As a result of this important evaluation still not being completed, and as a result of the continued interest in alternative service delivery models for long term care solutions, we are restating the incomplete part of our prior recommendation from 2009.

**Recommendation**

**2.33 We recommend the Department of Social Development evaluate whether there is an economic benefit to providing nursing home beds under the public-private model versus the traditional model.**

**Strategy**

**2011-2016 Nursing Home Renovation and Replacement Plan**

**2.34** In response to the growing need for nursing home beds, the Department of Social Development developed the *2011-2016 Nursing Home Renovation and Replacement Plan*. It was based on a review of the previous *2009 Nursing Home Renovation and Replacement Plan* which was revised in order to find cost savings and efficiencies, and to improve the Province's aging nursing home infrastructure. The review consisted of a demographic review, an assessment of existing facility conditions and a review of design standards. The results of the review were used to allocate nursing home beds by region. The plan indicated the following was required to meet the needs of New Brunswick seniors 75 years of age and older in 2021:

- addition of 354 new nursing home beds;
- replacement<sup>5</sup> of 711 nursing home beds;

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<sup>5</sup> A replacement refers to an existing nursing home being replaced by a new home with the same number of beds.

- renovation<sup>6</sup> of 133 nursing home beds; and
- reduction in the average construction cost from \$333,000 per bed to \$235,000 per bed, as well as overall reduction in total construction costs of \$110 million.<sup>7</sup>

The plan also calls for the addition of 704 beds for clients with Alzheimer’s and other dementias, called “specialized care beds”. The plan calls for a “*phased addition of these new beds, beginning in regions where the nursing home waitlist is relatively high and there are no existing beds for clients with Alzheimer’s and other dementias (...) to support a gradual increase in the supply of these beds.*”

**2.35** The total investment required for nursing home construction projects as per the *2011-2016 Nursing Home Renovation and Replacement Plan* was estimated to be \$285 million. The multi-phase plan will be implemented over a five-year period of 2011-2016.

**2.36** The Department has not publicly reported on the overall implementation status of the plan and the impact, if any, on the waitlist for nursing home beds.

### **Home First**

**2.37** The Department also issued a *Home First* strategy in 2014, re-launched in 2015 following the election. The strategy is a three-year plan to “*enhance healthy aging and care for all seniors in New Brunswick. (...) The Home First strategy (...) represents a fundamental change in philosophy and practice whereby hospital admissions, lengthy hospital stays and transfers directly from hospital to residential facilities are considered last resort options, only after all other community-based options have been fully explored.*”

**2.38** The strategy includes 36 initiatives to “*support seniors to live in their own homes and continue to be part of their communities*”. There were no target implementation dates for the initiatives, nor specific performance targets, included in the publicly reported *Home First* strategy. The

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<sup>6</sup> A renovation refers to parts of a nursing home that are renovated, upgraded or repaired.

<sup>7</sup> *2011-2016 Nursing Home Renovation and Replacement Plan*, Department of Social Development



implementation status and outcomes of the numerous initiatives have not been publicly reported by the Department in its annual report or on its website.

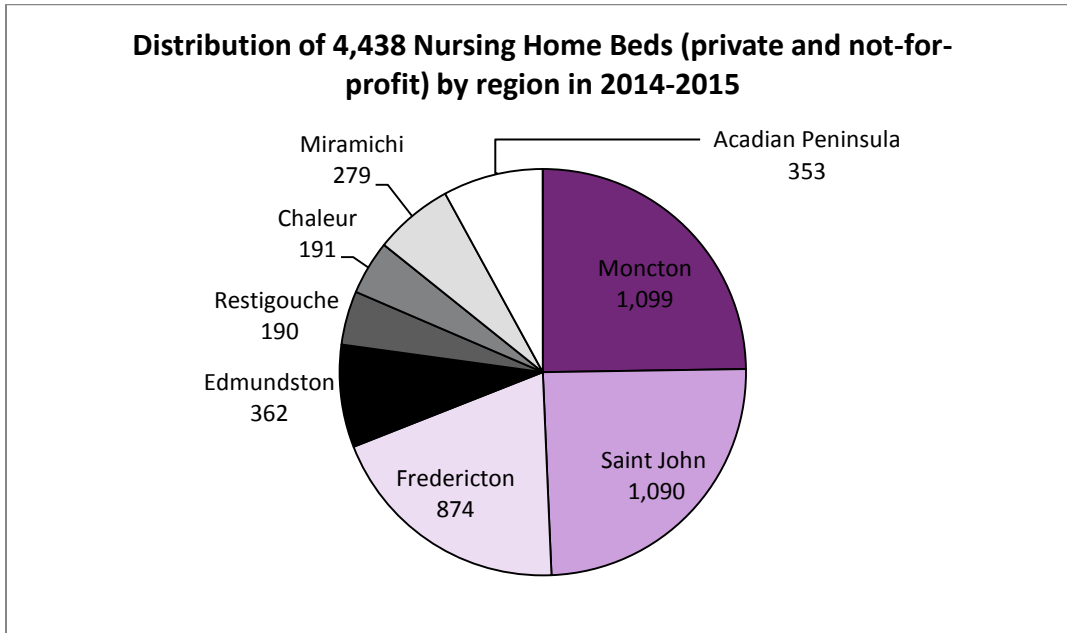
***Alternate Level of  
Care (ALC)  
Collaborative Group***

**2.39** Following the NB Alternate Level of Care (ALC) summit in October 2015 to address alternate levels of care in New Brunswick hospitals, an ALC collaborative work group was created in order to address the issues. “Alternate level of care” patients are patients who no longer require acute care but remain in a hospital bed while waiting for a placement or a service that is more appropriate to their needs. An individual waiting in a hospital for a nursing home bed is an example of an ALC patient. The “*Reducing ALC Bed Days Collaborative Workgroup*” is a workgroup that includes members from the Departments of Health and Social Development, as well as both regional health authorities. Its key objective is to develop an action plan to address ALC challenges. Its scope is to include activities across the healthcare continuum with a focus on activities and initiatives to address challenges and future actions. Its goal is to implement all initiatives by April 1, 2018.

**Nursing home bed  
capacity**

**2.40** One of the challenges facing the Department is nursing home bed capacity. At March 31, 2015, there were 4,222 beds in 61 nursing homes across all regions of the Province. There are also three private facilities with a total of 216 beds. Exhibit 2.11 shows the distribution of these beds by region. The majority of beds (69%) are located in the Province’s three largest cities.

Exhibit 2.11 - Distribution of 4,438 Nursing Home Beds (private and not-for-profit) by region in 2014-2015

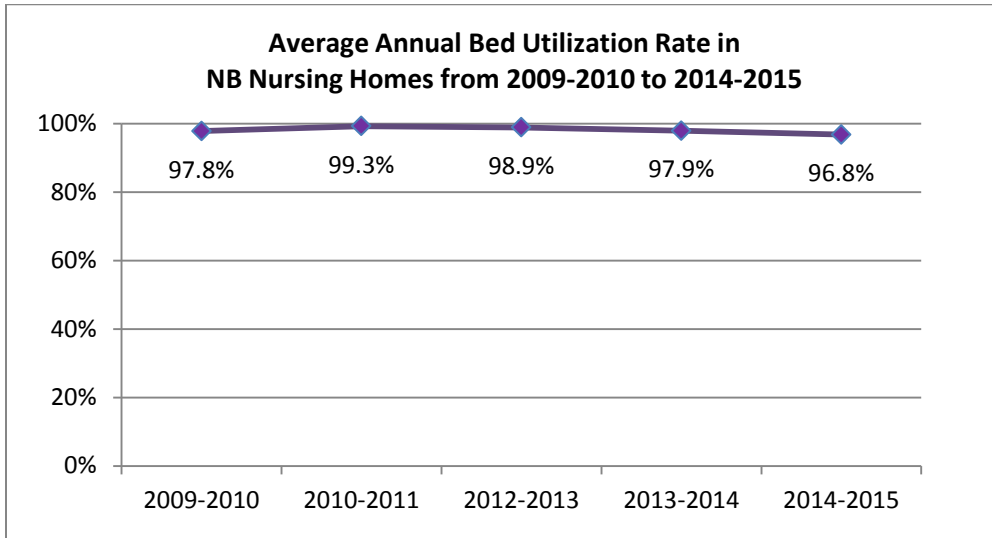


Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

### ***Low vacancy***

**2.41** Based on the information provided by the Department, vacancies in nursing homes are low. Between April 2009 and March 2015, the average bed utilization rate (occupancy rate) in New Brunswick nursing homes was 98.1% at the same time the wait list for nursing home beds was at its peak. The average annual bed utilization rate for the period of April 2009 to March 2015 is shown in Exhibit 2.12.

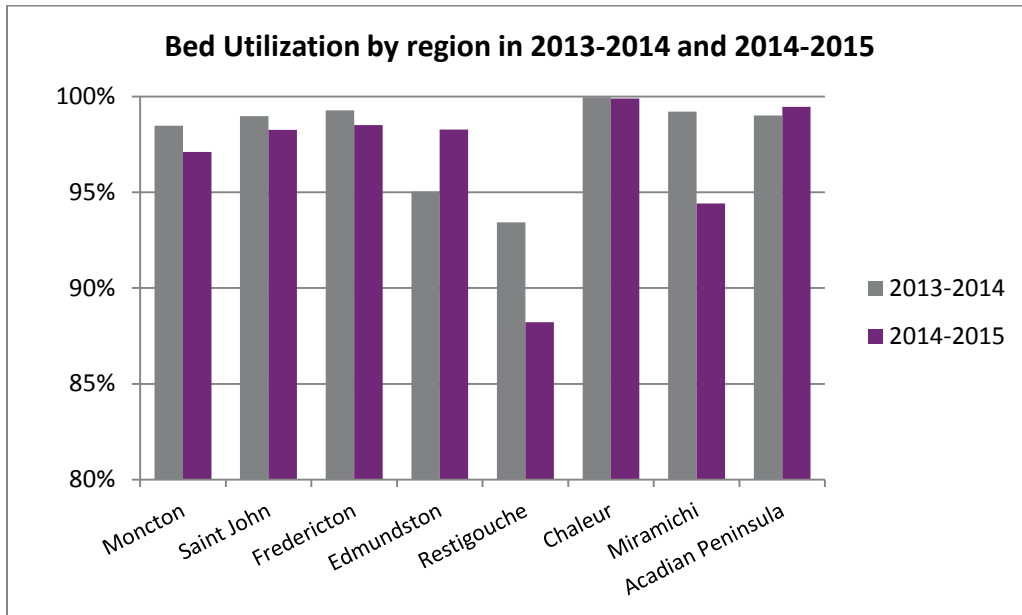
Exhibit 2.12 - Average Annual Bed Utilization Rate in New Brunswick Nursing Homes from 2009-2010 to 2014-2015



Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

**2.42** We also looked at utilization by region to identify any regional differences. Though the average utilization rate for 2013-2014 and 2014-2015 is above 95%, we can see in Exhibit 2.13 there are areas where the utilization rate was below the average, such as Restigouche.

Exhibit 2.13 - Bed Utilization by region in 2013-2014 and 2014-2015



Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

**2.43** The utilization rate may never be 100% at a particular point in time because of vacancies for “allowable” reasons such as:

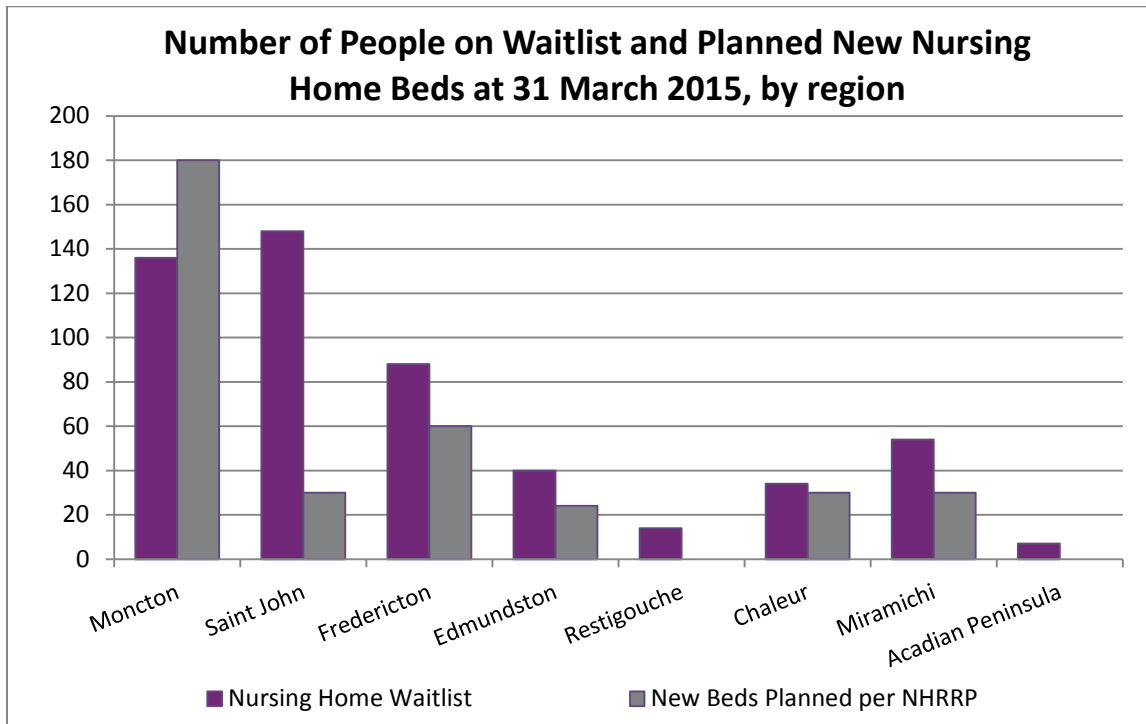
- flu outbreak (no new admissions are made during an outbreak to prevent the spread of sickness);
- renovations and repairs occurring at the home;
- aggressive patients that require a private room; or
- death of a resident (i.e. a nursing home has up to 48 hours to make the bed available to a new resident).

Per the Department, effective September 1, 2015 the only allowable reason for a vacant bed will be the 48 hour window following the death of a resident. This could affect the utilization rate.

**Existing beds and new beds planned**

**2.44** We also looked at the current location of nursing home beds in comparison to the planned added capacity as a result of the *2011-2016 Nursing Home Renovation and Replacement Plan* as well as the waitlist for a nursing home bed. Our results are shown in Exhibit 2.14.

Exhibit 2.14 - Number of People on Waitlist for a Nursing Home Bed and Planned New Nursing Home Beds as at 31 March 2015, by region



Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

Note: There are no new beds planned for the Restigouche and Acadian Peninsula regions at 31 March 2015

NHRRP: 2011-2016 Nursing Home Renovation and Replacement Plan

**2.45** Exhibit 2.14 shows the waitlist is higher in the province’s three largest cities; Moncton is receiving the greatest number of new nursing home beds by far. Though Moncton and Saint John have a similar number of existing nursing home beds and waitlist, Moncton will receive six times more new nursing home beds than Saint John. This allocation resulted from a demographic review carried out by the Department.

***Growing number of seniors***

**2.46** New Brunswickers are getting older. New Brunswick now has the second largest proportion of seniors in Canada and the number of seniors in New Brunswick is expected

to double over the next 20 years<sup>8</sup>. Exhibit 2.15 shows the proportion of New Brunswick's population aged 65 and older in 2001, 2006, 2011, and the numbers projected for 2016 and 2036. The proportion of the population aged 65 and older in the province is projected to increase from 16.5% in 2011<sup>9</sup> to 29.4% in 2036.

*Exhibit 2.15 - Proportion of New Brunswick Population Aged 65 and Older.*

Proportion of New Brunswick Population Aged 65 and Older					
	2001	2006	2011	2016*	2036*
Total New Brunswick population	729,500	729,995	751,171	772,200	822,200
Aged 65 and older	98,940	107,650	123,630	150,000	241,300
Proportion aged 65 and older	13.6%	14.7%	16.5%	19.4%	29.4%

\*projected figures

Source: Exhibit prepared by AGNB from figures obtained from Statistics Canada census information (2001<sup>10</sup>, 2006<sup>11</sup>, 2011<sup>12</sup>) and population projections report 91-520-X (2016, 2036)<sup>13</sup>, using a medium-growth scenario.

**2.47** According to the Department of Social Development, over 80% of nursing home residents are over the age of 75. We looked at the growth in that demographic in Exhibit 2.16.

<sup>8</sup> 2011-2016 Nursing Home Renovation and Replacement Plan, Department of Social Development

<sup>9</sup> Statistics Canada, 2012. *Focus on Geography Series, 2011 Census – Province of New Brunswick*. Catalogue no. 98-310-XWE2011004, Analytical products.

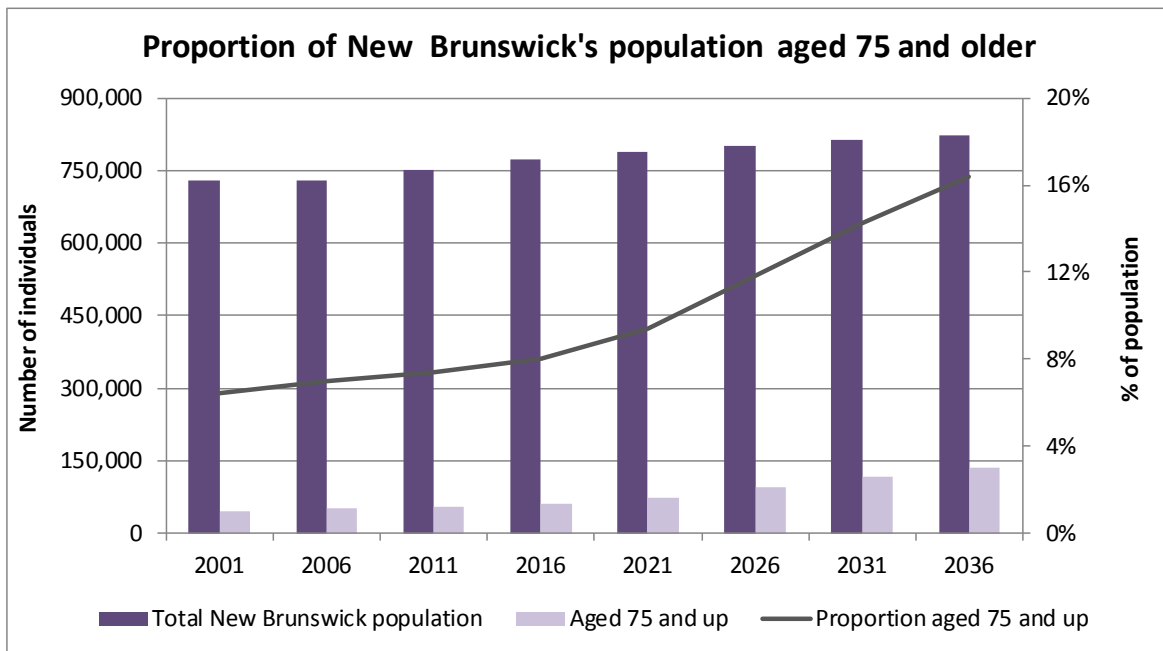
<sup>10</sup> Statistics Canada website, 2001 Census, Provincial and Territorial Profiles – New Brunswick

<sup>11</sup> Statistics Canada, 2007, *Age and Sex for the Population of Canada, Provinces, Territories, Census Divisions, Census Subdivisions and Dissemination Areas, 2006 Census*, catalogue no. 97-551-XCB2006006

<sup>12</sup> Statistics Canada, 2012. *Focus on Geography Series, 2011 Census – Province of New Brunswick*. Catalogue no. 98-310-XWE2011004, Analytical products.

<sup>13</sup> Statistics Canada, 2010. *Population Projections for Canada, Provinces and Territories 2009 to 2036*, catalogue no. 91-520-X, Table 11-5, p.171

Exhibit 2.16 - Proportion of New Brunswick population aged 75 and older.



Source: Statistics Canada 2001, 2006 Census data, and catalogue no. 91-520-X *Population Projections for Canada, Provinces and Territories 2009 to 2036*, 2010

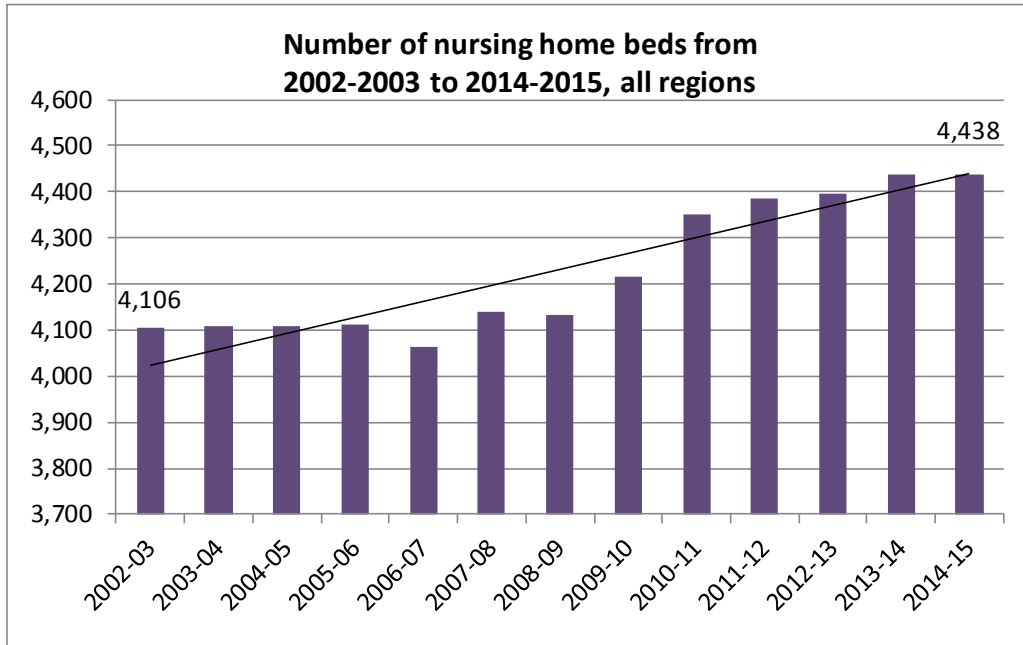
**2.48** We can see the proportion of New Brunswickers aged 75 and older will double between 2016 and 2036, going from 62,100 individuals (8.0%) in 2016 to 134,700 (16.4%) in 2036. In the demographic review of the *2011-2016 Nursing Home Renovation and Replacement Plan*, the Department noted that 8% of the New Brunswick population aged 75 and older currently use a nursing home bed. An increase in that population will inevitably lead to an increase in the need for nursing home beds. Based on our calculations, without considering the impact of any department initiatives that could reduce demand, we estimated 10,776 nursing home beds could be needed in 2036 (134,700 x 8%). As at March 31, 2015 there were 4,438 nursing home beds in NB.

### **Investment in nursing home beds**

**2.49** Over the years, there has been some investment in nursing home bed capacity in the Province, as shown in Exhibit 2.17. The Exhibit shows the number of nursing home beds increased from 4,106 in 2002-2003 to 4,438 in 2014-2015, an increase of 332 beds or 8.1%. The most significant increase was in 2010 when an additional 216 beds were added as a result of the opening of three private nursing homes (i.e. the Shannex facilities in Fredericton, Riverview and Quispamsis). The planned addition of 354

beds as part of the *2011-2016 Nursing Home Renovation and Replacement Plan* would be the largest recent investment.

*Exhibit 2.17 - Number of nursing home beds from 2002-2003 to 2014-2015, all regions*



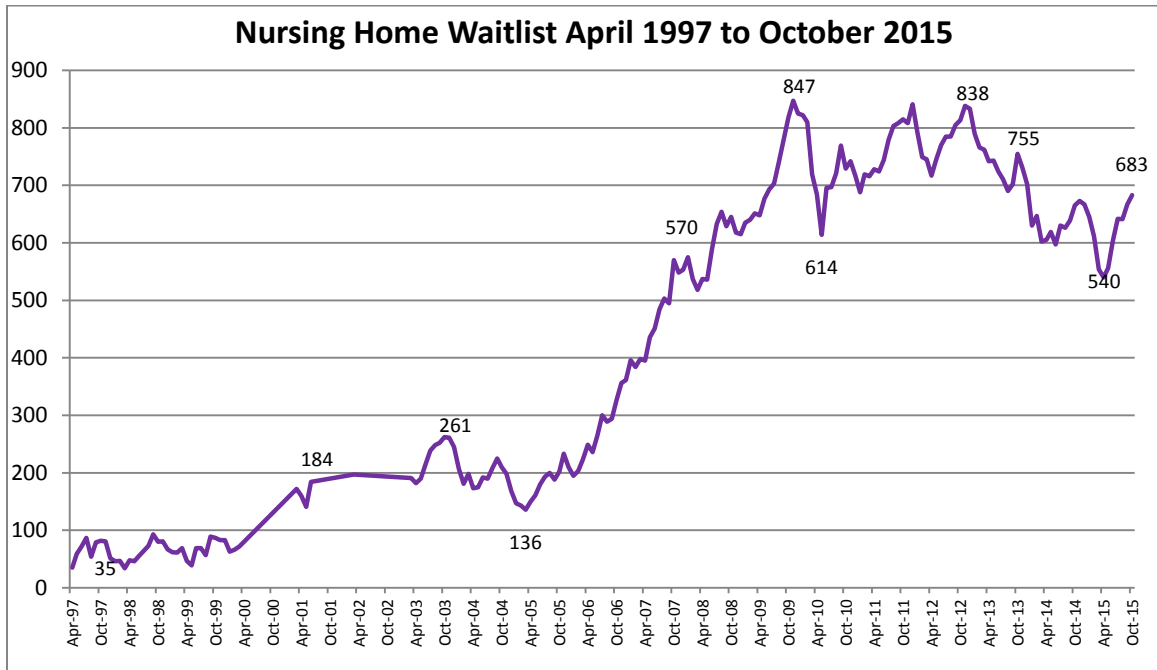
Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

### **Nursing Home Waitlist**

**2.50** Because of the high demand, there are waitlists for a nursing home bed in every region. In Exhibit 2.18 prepared by the Department of Social Development, we can see the growth in the waitlist between April 1997 and October 2015.



Exhibit 2.18 - Nursing Home Waitlist April 1997 to October 2015



Source: Exhibit prepared by Department of Social Development (unaudited), some edits by AGNB for formatting

**2.51** Exhibit 2.18 shows the waitlist for a nursing home bed began increasing in 2000, with a marked increase starting in 2005. We also observed significant peaks in demand between 2009 and 2013.

***Nursing home waitlist impacted by client contribution policy changes***

**2.52** According to the Department, many of the spikes in the waitlist can be attributed to policy changes. The Department noted the following client contribution policy changes that affected the waitlist numbers:

- In 1999, government reversed a policy that considered the home as an asset when calculating a client's contribution to the cost of residential long term care services;
- In 2003, government approved changes to the contribution policy to disregard the veteran's disability pension and the spousal portion when client contributions are calculated;
- Between 2003 and 2005, the daily cost of care as paid by residents increased an average of 9%;
- In 2004 and 2005, policy changes were made to allow spouses at home to keep more of the family's

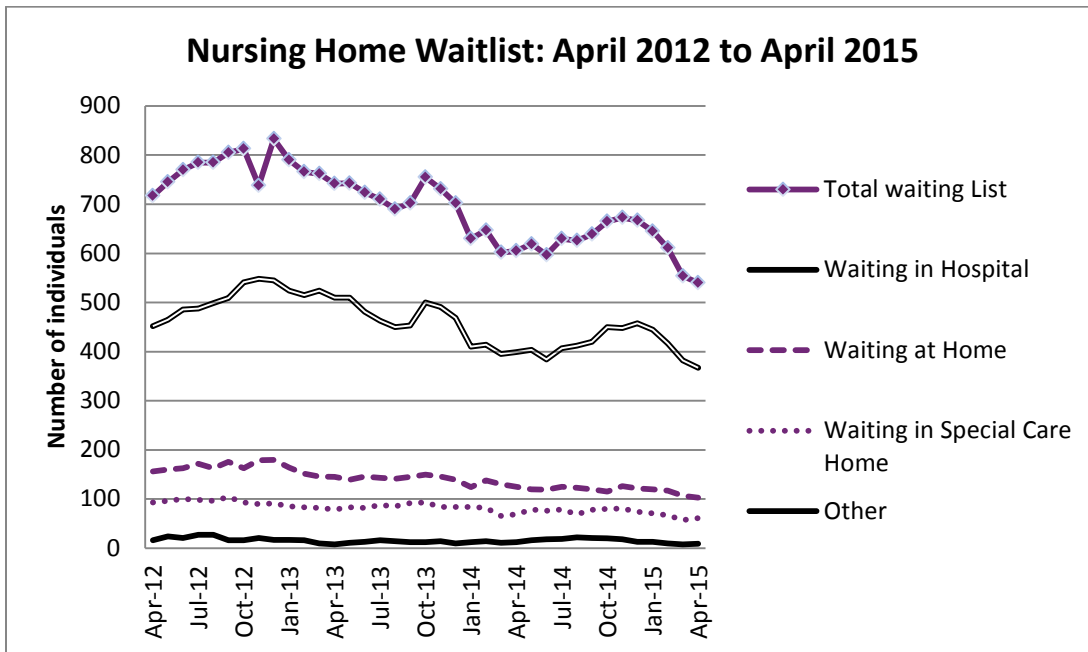
savings, monthly income and assets;

- In 2006, nursing home residents were no longer required to pay all their nursing home costs. Responsibility was limited to room and board, with contribution capped at \$70/day. In addition, assets were removed from the financial calculation determining the resident’s contribution. This seems to have had the biggest impact on the waitlist numbers; and
- Since the peak in 2009, the waitlist has varied in response to opening of additional beds and expansion of other long term care services such as home support, special care homes and specialized care beds.

**Seniors wait in hospitals for nursing home beds**

**2.53** The individuals on the waitlist for a nursing home bed can be in their home, at a special care home or, in the majority of cases, in a hospital bed. Exhibit 2.19 shows the total waitlist and where individuals on the waitlist “were located” between April 2012 and April 2015. We can see that over 60% of people waiting for a nursing home bed were in the hospital.

Exhibit 2.19 - Nursing Home Waitlist April 2012 to April 2015

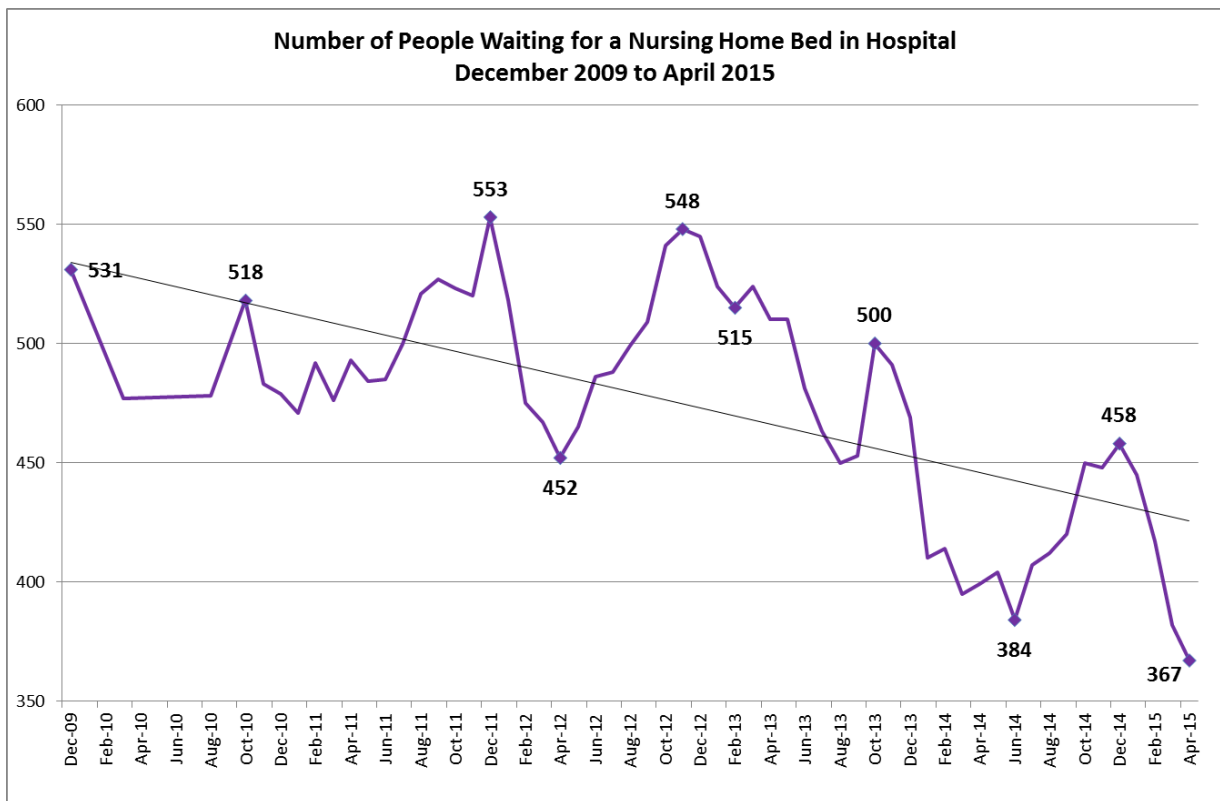


Source: Exhibit prepared by AGNB from figures provided by the Department of Social Development (unaudited)

**2.54** Exhibit 2.19 shows that during the period between April 2012 and April 2015, between 367 and 548 individuals were waiting in hospitals each month for a nursing home bed.

**2.55** We also looked specifically at the number of people waiting for a nursing home bed in a hospital for the period from December 2009 to March 2015. The trend line shows an overall decline during that period of the number of people waiting for a nursing home bed while in the hospital. This can be seen in Exhibit 2.20.

*Exhibit 2.20 - Number of People Waiting for a Nursing Home Bed in Hospital, December 2009 to April 2015*



Source: Exhibit prepared by Department of Social Development, edited and updated for 2015 by AGNB from figures provided by the Department of Social Development (unaudited)

**2.56** We also observed the average waiting time, in days, for a nursing home bed varies by region. In its July 2015 report, the New Brunswick Health Council reported the following average wait times for nursing home placement. The wait times are shown in Exhibit 2.21.

Exhibit 2.21 - Average wait time for a nursing home placement

Average wait time for a nursing home placement	
Region	Average wait time (in days)
Moncton	73
Saint John	131
Fredericton	62
Madawaska	65
Restigouche	162
Bathurst/Acadian Peninsula	106
Miramichi	89

Source: New Brunswick Health Council, “*Health System Sustainability in New Brunswick*,” July 2015

**2.57** The wait times and the number of people on the waitlist are having an effect on New Brunswick hospitals. A high number of people waiting for alternate care in hospitals are taking beds that would otherwise be used for acute care.<sup>14</sup> This is a contributing factor to long wait times in emergency rooms<sup>15</sup>, long wait times for elective surgeries and inappropriate use of hospital resources<sup>16</sup>, to name a few. Also, the patients could be receiving care that is more appropriate for their needs in another facility.

***Cost of care is higher in hospital***

**2.58** In addition, the cost of care to the Province and to the individual varies depending on where the individual is located. As shown in Exhibit 2.22, the average cost of care (nursing unit care) in a hospital for an Alternative Level of Care (ALC) patient in an acute care bed is 32% higher than the average daily cost of care in a nursing home (\$229) and almost three times higher than a special care home (\$81). The cost to residents also varies, and subsidies can be

<sup>14</sup> Hospital care involves many types of care such as acute care, emergency care and rehabilitation care. Acute care refers to inpatient care necessary for treatment of disease or severe episode of illness for a short period of time with the goal of discharging patients as soon as they are stable.

<sup>15</sup> Report Card on Wait Times in Canada 2014, Wait Time Alliance, June 2014, p.7

<sup>16</sup> Report Card on Wait Times in Canada 2011, Wait Time Alliance, June 2011, pp.10-12

provided for those who are unable to pay the full amount.

Exhibit 2.22 - Daily cost of care for ALC patients in 2015

Daily cost of care for ALC patients in 2015		
	Average daily cost of care for ALC patients	Daily resident per diem for cost of care of ALC patients
Special Care Home	\$81.00	Up to \$77.00
Specialized Care Beds	\$127.00	Up to \$83.00
Nursing Home	\$229.00	Up to \$113.00
Hospital <sup>3</sup>	\$303.00	\$40.00 or \$141.00*

\*This is the fee charged to a medically discharged patient who has been deemed appropriate for long term care by the Dept. of Social Development. Thirty days after being medically discharged, the amount of \$40 is charged; if a patient refuses to participate in the long term care assessment, or refuses (more than once) an offer of appropriate services, the rate of \$141 will be applied.

Source: Exhibit prepared by AGNB based on information provided by the Departments of Social Development and Health (unaudited)

1 - As at April 1, 2016

2 - As at Oct 1, 2015

3- The Department of Health has established several hospital bed rates for different level of hospital patient care. We selected the rate for nursing unit costs that is most reflective of services provided to individuals waiting in hospital to be transferred to a nursing home.

**2.59** The percentage of acute care hospital beds used by patients who are waiting for placement in alternate care is rising, and is much higher than the national average, as shown in Exhibit 2.23. Alternate levels of care can include nursing homes, special care homes, rehabilitation, or other.

*Exhibit 2.23 - Percentage of acute care hospital days used by patients who no longer require acute care but are waiting to be discharged to a setting more appropriate to their needs, as compared to the national average*

Percentage of acute care hospital days used by patients who no longer require acute care but are waiting to be discharged to a setting more appropriate to their needs, as compared to the national average						
	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
NB Hospital % of ALC days	20.7%	22.5%	20.5%	23%	24.3%	25.9%
National average	13.7%	14.1%	12.9%	13.6%	13.5%	14.11%

Source: Exhibit prepared by AGNB from figures appearing in the 2013-2014 and 2014-2015 Annual Reports of the Department of Health (unaudited)

**Approximately 20% of acute care hospital beds used by people waiting for a nursing home bed**

**2.60** We examined these figures more closely to establish the percentage of acute care hospital beds used for individuals who are waiting to be transferred to a nursing home. We looked at the figures for April for the years 2011 to 2015. Our findings can be found in Exhibit 2.24.

*Exhibit 2.24 - Percentage of acute care hospital days used by patients who no longer require acute care but are waiting to be discharged to nursing home.*

Percentage of acute care hospital beds used by patients who no longer require acute care but are waiting to be discharged to a nursing home					
	Apr-2011	Apr-2012	Apr-2013	Apr-2014	Apr-2015
Number of acute care beds in operation during the month of April	2,135	2,175	2,216	2,220	2,026
Number of people in hospital on waitlist for nursing home bed at April 30	496	452	510	399	367
% acute care hospitals beds taken by nursing home waitlist	23%	21%	23%	18%	18%

Source: Exhibit prepared by AGNB from figures provided by the Departments of Health and Social Development (unaudited)

**Average length of stay is between 3 and 4 months**

**2.61** Exhibit 2.24 shows the percentage of acute care hospital beds taken up by people who are waiting for a placement in a nursing home varied between 18% and 23% on the dates we examined. We also looked at how long individuals were in a hospital bed before being transferred to a nursing home and the cost associated with the wait. Exhibit 2.25 looks at the number of cases, the average length of stay, and the average additional cost of patients that were transferred from a hospital bed to a nursing home.

*Exhibit 2.25 - Number of cases, average length of stay, average cost and estimated annual excess cost of individuals transferred from hospital to nursing home*

<b>Number of cases, average length of stay and average cost of individuals transferred from hospital to nursing home</b>					
	<b>2010-2011</b>	<b>2011-2012</b>	<b>2012-2013</b>	<b>2013-2014</b>	<b>2014-2015</b>
Number of cases	778	709	663	750	796
Average length of stay in days	111	99	108	118	114
Average daily cost in hospital <sup>1</sup>	\$341	\$320	\$324	\$317	\$303
Average daily cost in nursing home	\$200	\$211	\$220	\$229	\$229
<b>Estimated annual excess cost of hospital over nursing home (in millions)</b>	<b>\$12.16</b>	<b>\$7.69</b>	<b>\$7.43</b>	<b>\$7.76</b>	<b>\$6.71</b>

Source: Exhibit prepared by AGNB from figures provided by the Departments of Health and Social Development (unaudited)

<sup>1</sup> The Department of Health has established several hospital bed rates for different levels of hospital patient care. We selected the rate for nursing unit costs that is most reflective of services provided to individuals waiting in hospital to be transferred to a nursing home.

**2.62** In Exhibit 2.25, we can see that each year, between 600 and 800 people were waiting from three to four months in hospital for a placement in a nursing home. We estimated, based on the difference in average daily cost of care, an additional \$41.8 million has been spent in hospitals during the period from 2010-2011 to 2014-2015 as a result of individuals waiting in hospital for placement in a nursing home.

**2.63** In Exhibit 2.25, we can see that the number of cases and the length of stay are relatively stable in the five years examined. When we examined the data by region for the five-year period of 2010-2011 to 2014-2015, as shown in Exhibit 2.26, we can see clear distinctions between different regions of the province.

Exhibit 2.26 - Number of cases and average length of stay (in months) of individuals transferred from hospital to nursing homes, 2010-2011 to 2014-2015

Number of cases and average length of stay (in months) for individuals transferred from hospital to nursing homes, 2010-2011 to 2014-2015										
Region	2010-2011		2011-2012		2012-2013		2013-2014		2014-2015	
	Number of cases	Avg LOS in months	Number of cases	Avg LOS in months	Number of cases	Avg LOS in months	Number of cases	Avg LOS in months	Number of cases	Avg LOS in months
Moncton	186	6.2	190	7.8	163	7.5	194	7.2	201	7.0
Saint John	182	5.3	125	3.0	110	5.0	140	6.7	164	5.8
Fredericton	218	3.2	161	2.8	161	3.1	142	3.3	168	3.4
Edmundston	43	4.3	64	2.7	63	4.8	72	2.9	79	3.0
Campbellton	17	4.4	32	2.8	22	4.0	42	5.8	45	3.4
Bathurst	80	2.4	89	1.5	113	1.6	127	1.4	98	1.4
Miramichi	52	4.1	48	4.6	31	4.6	33	6.3	41	6.3

LOS: Length of stay

Source: Exhibit prepared by AGNB from figures provided by the Department of Health (unaudited)

***In Moncton, Saint John and Miramichi, people must wait approximately six months in hospital for placement in a nursing home***

**2.64** In Exhibit 2.26 we can see that individuals in the Moncton, Miramichi and Saint John regions had the longest average wait time for a nursing home placement in 2014-2015. During that year, 242 individuals waited over 6 months in a hospital for placement. During that same period, the Bathurst region had the lowest average wait time at 1.4 months. Exhibit 2.26 also shows this trend was not unique to 2014-2015. Moncton and Bathurst consistently had the highest and lowest (respectively) average length of stay in months for the period of 2010-2011 to 2014-2015.

### Overall comments

**2.65** The province is facing significant challenges over the next 20 years as the proportion of New Brunswickers aged 75 and older will double and the number of nursing home beds needed could be over 10,000. Approximately 20% of acute care beds in hospitals are being taken by individuals who are waiting for placement in a nursing home, which has led to additional costs in excess of \$40 million between 2010 and 2015.

**2.66** The Department of Social Development has taken a number of measures to address the pending problems as a result of New Brunswick's changing demographics, including:

- *2011-2016 Nursing Home Renovation and Replacement Plan;*



- Increased budget to nursing home services budget;
- Alternative Level of Care (ALC) Collaborative Group initiatives; and
- *Home First* strategy.

**2.67** The Department has not yet demonstrated how these initiatives will address the situation that by 2036 the senior population in New Brunswick will have doubled.

**2.68** The solution to providing sustainable care in the future is not as simple as adding more nursing home beds to the existing system. Instead, a multi-faceted solution is needed that involves nursing homes, other long term care facilities, in-home care, family support or other options to serve New Brunswick seniors.

**2.69** From our examination of the rising demand for services and costs of senior care, we encourage the Departments of Social Development and Health to continue working together to find solutions to alleviate the fiscal challenges while ensuring seniors receive the services they require.

### *Recommendations*

**2.70** We recommend the Department of Social Development, in consultation with the Department of Health, develop a comprehensive long term plan to ensure the Province can continue to provide sustainable services to New Brunswick seniors.

**2.71** We also recommend the Department report publicly on the measures and outcomes of current and future initiatives as part of the comprehensive long term plan.

# Chapter 3

## Legal Aid Services Commission

### Public Trustee Services

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# Legal Aid Services Commission

## Public Trustee Services

### Introduction

**3.1** Public Trustee Services, a section of the New Brunswick Legal Aid Services Commission, provides trustee and guardianship services to some of the most vulnerable New Brunswick residents. The Public Trustee “*protects the financial and personal interests of the elderly, the mentally challenged, children, missing or deceased persons, when there is no one else able and willing to do so.*”<sup>1</sup>

### Why we did this audit

**3.2** The New Brunswick Legal Aid Services Commission requested we complete a performance audit of Public Trustee Services. We believe this topic should be of interest to legislators and the public for the following reasons:

- The Public Trustee’s clients are extremely vulnerable. The program has a significant social impact; it is needed as it is the last resort for its clients;
- Delays in the initial legal process to obtain authority to act as Public Trustee for an individual affect hospital bed usage, costing the Province money and increasing hospital wait times;
- The client base will continue to grow with New Brunswick’s aging population;

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<sup>1</sup> *Legal Aid Services Commission Annual Report 2013-2014*

- Net client assets held in trust total \$9.96 million<sup>2</sup> at March 31, 2015;
- Previously in planning our annual financial audit of Trusts under the Administration of the Public Trustee, we identified there is an elevated risk of fraud due to control weaknesses; and
- There have been cases of fraud for significant amounts of money at other jurisdictions' Public Trustee.

### **Audit Objectives**

#### **3.3** The objectives of our audit were:

1. *To determine whether the Public Trustee properly safeguards and administers client assets held in trust.*
2. *To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.*
3. *To determine whether the Public Trustee publicly reports on the performance of its services.*

### **Conclusions**

#### **3.4** Our conclusions were:

1. We concluded the Public Trustee did not safeguard and administer client assets held in trust to the standard we expected. In recent years we found efforts to improve performance and noted no incidence of fraud. However continued improvements are needed to address:
  - Out of date or incomplete policies;
  - The lack of a functioning investment policy;
  - Inadequate information system;
  - Inadequate controls over electronic receipt of revenue;
  - The lack of a process for supervisory review of files; and
  - The lack of an internal audit function.
2. We concluded the Public Trustee's processes for

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<sup>2</sup> Audited financial statements of Trusts under the Administration of the Public Trustee, March 31, 2015

making care decisions on behalf of its clients were in accordance with legislation and policies. However, improvements are needed to properly document care decisions.

3. We concluded the Public Trustee has not publicly reported on the performance of its services since 2011.

**Results in Brief**

- 3.5 Results in brief are presented in Exhibit 3.1.

**Recommendations**

- 3.6 A summary of our recommendations are in Exhibit 3.2.

*Exhibit 3.1 - Results in Brief*

## Public Trustee Services

### Why Is This Important?

- Public Trustee Services, a section of the New Brunswick Legal Aid Services Commission, provides trustee and guardianship services to some of the most vulnerable New Brunswick residents.
- The program has a significant social impact; it is the last resort for its clients.
- Net client assets held in trust total \$9.96 million at March 31, 2015.
- Client base will continue to grow with NB's aging population.

### What We Found

#### Overall Conclusions

- Public Trustee did not safeguard and administer client assets held in trust to the standard we expected.
- Processes for making care decisions on behalf of clients were in accordance with legislation and policies. However, improvements are needed to properly document care decisions.
- Public Trustee has not publicly reported on the performance of its services since 2011.

#### Improvements needed to safeguard and administer client assets

- Outdated and incomplete policies
- Investment policy not implemented
- Inadequate controls over electronic receipt of revenue
- Lack of a process for supervisory review of client files
- Inadequate case management information system

#### Need for Public Reporting

- No annual report prepared since 2011.
- No audited financial statements for trusts made public since 2011.

#### Issues Requiring Legislation Changes

- Lengthy process to obtain authority to act as Public Trustee for a client
- Loss of authority upon death of a client
- Limitations in fees that can be charged to clients
- Inability to distribute unclaimed property

Exhibit 3.2 - Summary of Recommendations

Recommendation	Department's response	Target date for implementation
<b>Safeguarding and administering client assets held in trust</b>		
<p><b>3.39</b> We recommend the Public Trustee develop comprehensive policies and procedures for trust officers to assist trust officers in their work, to help in training new trust officers, and to ensure consistency of client files.</p>	<p><i>A full review of policies commenced and many policies were developed or revised in the fiscal year ended March 31, 2016. Work is ongoing to further develop additional policies and refine existing ones to reflect the current environment, assist staff, and ensure consistency in administration of client files.</i></p>	<p><i>FY 2017 and FY 2018 Bulk of policies to be completed by end of FY 2018 with ongoing work continuing as the program evolves</i></p>
<p><b>3.40</b> We recommend the Public Trustee amend and implement the investment policy for client funds.</p>	<p><i>Investment policy to be amended and implemented, with the Commission's Board of Directors approval.</i></p>	<p><i>FY 2017</i></p>
<p><b>3.41</b> We recommend the Public Trustee upgrade or replace its current case management information system in order to meet user needs.</p>	<p><i>Public Trustee Services is currently working with the SNB IT group to incorporate enhancements to existing software and are continuing to network with other Public Trustee programs in an effort to identify alternatives. Currently there are no suitable commercial or custom applications available for procurement.</i></p>	<p><i>Ongoing</i></p>
<p><b>3.42</b> We recommend the Public Trustee review its insurance coverage to ensure client assets are adequately insured.</p>	<p><i>Public Trustee Services reviewed the insurance policy in detail with the insurance broker and implemented appropriate measures to ensure clients assets are adequately covered.</i></p>	<p><i>Completed</i></p>

Exhibit 3.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<b>3.43</b> We recommend the Public Trustee implement regular supervisory review of client files.	<i>A more structured process around regular supervisory review of client files will be implemented.</i>	FY 2017
<b>3.44</b> We recommend the Public Trustee implement an internal audit function.	<i>Public Trustee Services will meet with the Office of the Comptroller to explore alternatives with respect to an internal audit program, associated costs, and possible options given the maturity and size of the program.</i>	FY 2017
<b>Processes for making care decisions on behalf of clients</b>		
<b>3.50</b> We recommend the Public Trustee ensure guardianship officers sufficiently document the rationale for all personal care and healthcare decisions in the case management system.	<i>Documentation standards for care decisions will be reviewed to ensure sufficient and consistent documentation in the case management system.</i>	FY 2017



Exhibit 3.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<b>Public reporting on the performance of services</b>		
<p><b>3.59</b> We recommend the Public Trustee establish goals, objectives and measurable targets for its services, measure its performance against the targets and publicly report on its performance.</p>	<p><i>Public Trustee Services will establish goals and objectives and begin measuring performance against established targets to the extent possible with the existing software. Efforts to improve measuring and reporting capabilities will be incorporated into ongoing software improvements.</i></p>	<p><i>FY 2017 – FY 2018</i></p>
<p><b>3.60</b> We recommend the Public Trustee make available publicly all audited financial statements of Trusts under the Administration of the Public Trustee.</p>	<p><i>All audited financial statements of Trusts Under the Administration of the Public Trustee will be included in Annual Reports which will be posted on the Commission's website in a timely manner.</i></p>	<p><i>FY 2017</i></p>
<b>Other issues</b>		
<p><b>3.69</b> We recommend the Public Trustee identify legislation changes needed to address the following, and work with the responsible department to implement them:</p> <ul style="list-style-type: none"> <li>• lack of timeliness in obtaining authority to act as Public Trustee for a client;</li> <li>• loss of authority upon death of a client;</li> <li>• limitations in fees that can be charged to clients; and</li> <li>• administration of unclaimed property.</li> </ul>	<p><i>Public Trustee Services is currently working with government on legislative changes to address the lack of timeliness in obtaining authority, residual authority after death of a client, and revisions to fees charged. Public Trustee Services will apply to the Court for direction on the administration of unclaimed property pursuant to current legislation.</i></p>	<p><i>FY 2017- FY 2018</i></p>

## Background

**3.7** The Office of the Public Trustee was created on June 1<sup>st</sup>, 2008, as a branch of the Department of Justice and Consumer Affairs. Effective April 1, 2012, the Office, with a budget of \$838,500, was transferred to the New Brunswick Legal Aid Services Commission and renamed Public Trustee Services. New Brunswick was the last province in Canada to create a Public Trustee.

**3.8** Legislation under which the Public Trustee operates includes the *Public Trustee Act*, the *Mental Health Act*, the *Infirm Persons Act*, the *Probate Court Act* and the *Family Services Act*. These allow the Public Trustee to:

- “act to make personal, healthcare, legal, or financial decisions for someone who is mentally incapable and cannot make those decisions;
- act on behalf of an individual in accordance with the terms of a power of attorney;
- act as an executor under a Will or as an administrator of the property of a deceased person;
- act to make legal or financial decisions for an individual declared to be an absentee under the Presumption of Death Act; and
- act to protect an individual's financial interests if appointed by a court.”<sup>3</sup>

**3.9** Public Trustee Services is comprised of three main groups:

- Legal counsel: lawyers prepare documents and appear in Court to obtain Court Orders or other legal documents, facilitate the sale of real property and provide legal services as required for clients;
- Financial: trust officers manage the estates of deceased and incompetent clients, and the trusts of adults and minors. They search for assets and liabilities, coordinate the sale of client assets and close estates. The financial officer processes invoices for client costs such as those related to personal care; and
- Guardianship: guardianship officers liaise with

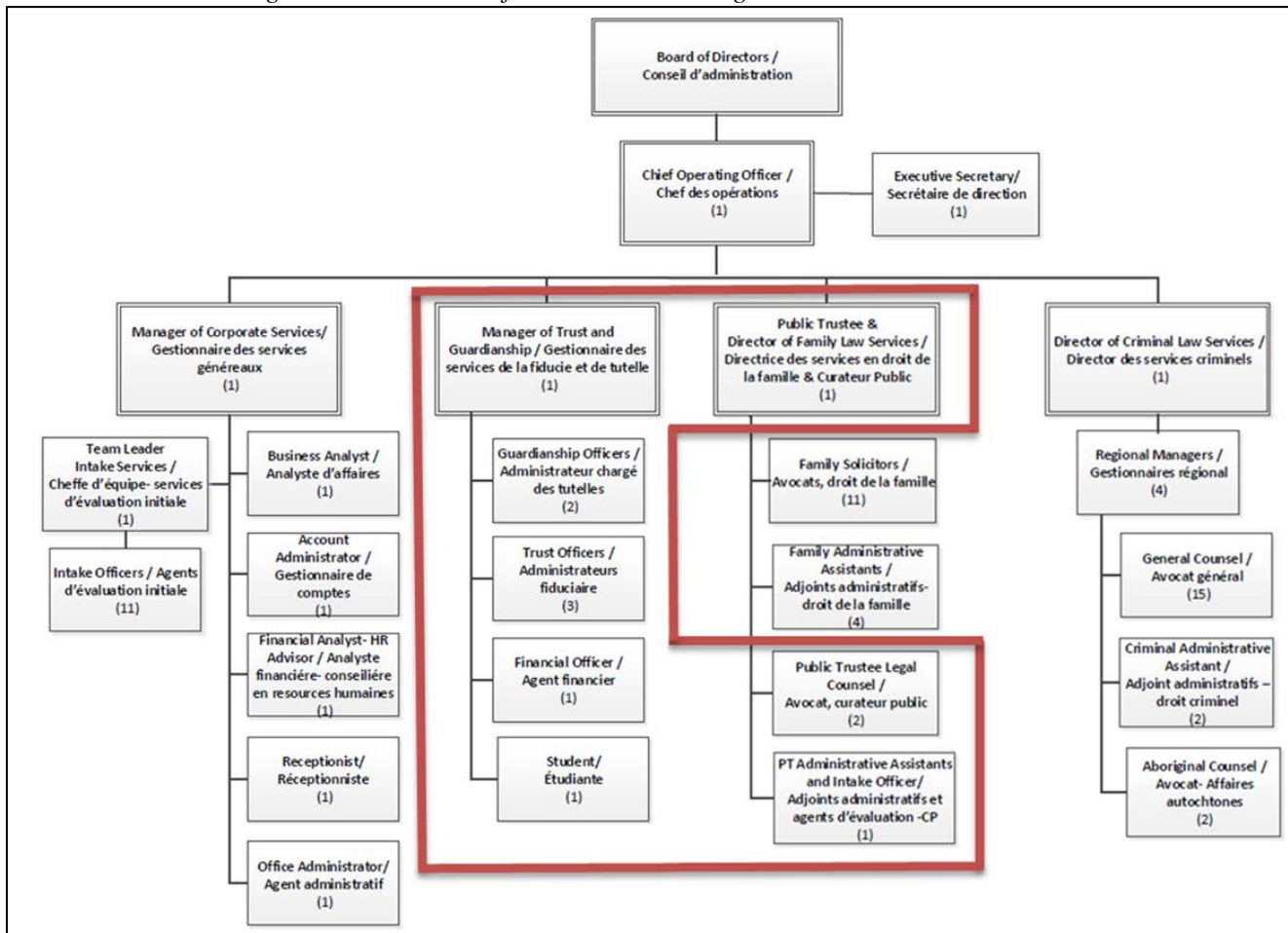
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<sup>3</sup> [http://legalaid.nb.ca/en/public\\_trustee\\_services](http://legalaid.nb.ca/en/public_trustee_services)

family members, service providers and other parties, consult with medical professionals and make personal care and healthcare decisions for incompetent persons on whom there is a court order designating the Public Trustee responsible for personal care.

**3.10** Exhibit 3.3 presents an organizational chart of the Legal Aid Services Commission. Approximately 12 FTEs relating to Public Trustee Services are highlighted in the outlined section.

*Exhibit 3.3 - Organizational Chart of New Brunswick Legal Aid Services Commission*



Source: Chart provided by New Brunswick Legal Aid Services Commission (unaudited)

**3.11** Operating expenses of Public Trustee Services are presented in Exhibit 3.4, along with fees collected from clients for services. The net cost of services is funded through the New Brunswick Legal Aid Services Commission’s budget.

Exhibit 3.4 - Net Cost of Public Trustee Services, by fiscal year

<b>Net Cost of Public Trustee Services (in thousands \$)</b>			
	<b>2013</b>	<b>2014</b>	<b>2015</b>
Program Expense*	787	990	945
Fee Revenue**	203	188	172
Net Cost***	585	802	772

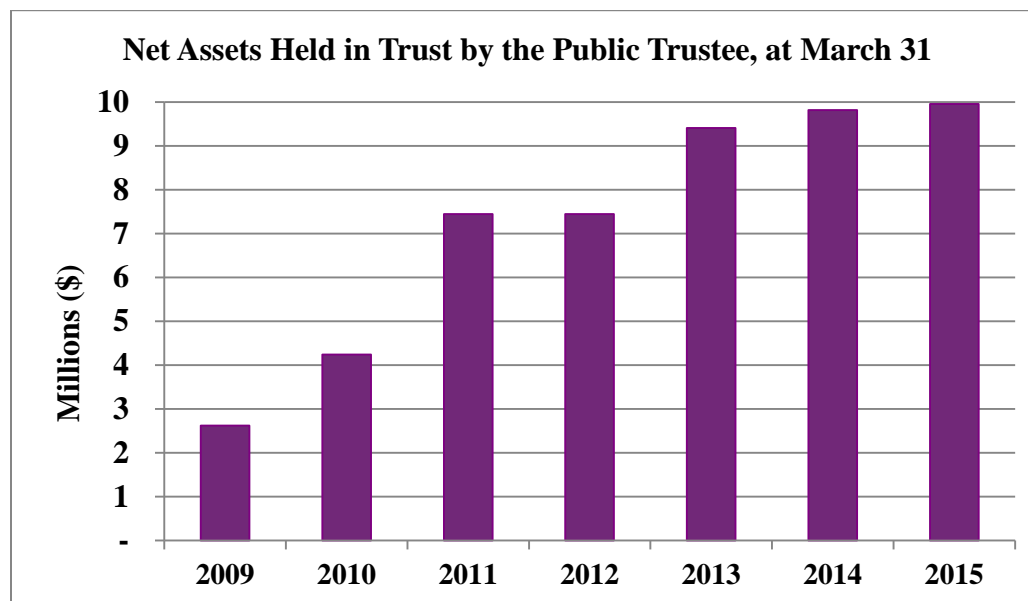
Sources: \* New Brunswick Legal Aid Services Commission Annual Report (unaudited)

\*\*Audited Financial Statements of New Brunswick Legal Aid Services Commission

\*\*\*Calculated by AGNB

**3.12** Information on net assets held in trust by the Public Trustee is shown in Exhibit 3.5. These figures have increased steadily since the creation of the Office of the Public Trustee, in line with an increasing client base. The increase in net assets in 2011 is largely due to two new clients with a high net worth. An excerpt from the 2015 audited financial statements of Trusts under the Administration of the Public Trustee, presenting the Statement of Financial Position, can be found in Appendix I.

Exhibit 3.5 - Net Assets Held in Trust by the Public Trustee, at March 31



<b>Net Assets Held in Trust by the Public Trustee, at March 31 (in millions \$)</b>							
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Net Assets Held In Trust	2.62	4.24	7.45	7.45	9.41	9.81	9.96

Source: Audited Financial Statements of Trusts under the Administration of the Public Trustee

**3.13** The number of actively managed client files, which has increased by 82% from 2012 to 2015, is presented by type of file in Exhibit 3.6. Comparable numbers are not available for 2009 to 2011 due to reporting limitations of the case management software, which are explained later in this chapter.

*Exhibit 3.6 - Number of Actively Managed Client Files, at March 31*

<b>Number of Actively Managed Client Files, at March 31</b>				
<b>Type of File</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Adult	161	203	235	290
Estate	19	37	67	67
Child	36	35	34	36
<b>Total Clients</b>	<b>216</b>	<b>275</b>	<b>336</b>	<b>393</b>

*Sources: Information provided by New Brunswick Legal Aid Services Commission (unaudited)*

## Scope

**3.14** We examined the time period from the creation of the Public Trustee in 2008 to September, 2015. Our work included the following:

- reviewing legislation and policies;
- meeting with management and staff of the Legal Aid Services Commission;
- selecting a sample of client files and examining documentation of the work done by trust officers and guardianship officers. Our testing of client files is discussed later in paragraph 3.34;
- observing a client property inspection; and
- performing other procedures as determined necessary.

**3.15** Our audit was performed in accordance with standards for assurance engagements, encompassing value-for-money and compliance, established by the Chartered Professional Accountants of Canada, and accordingly such tests and other procedures as we considered necessary in the circumstances.

**3.16** We developed criteria to use as the basis for our work. The criteria were reviewed and agreed upon by the New

Brunswick Legal Aid Services Commission. They are listed in Appendix II.

**3.17** Certain financial and statistical information presented in this chapter was compiled from information provided by the New Brunswick Legal Aid Services Commission. It has not been audited or otherwise verified. Readers are cautioned that this financial and statistical information may not be appropriate for their purposes.

### **Client Assets Held in Trust**

**3.18** Our first objective was:

*To determine whether the Public Trustee properly safeguards and administers client assets held in trust.*

**3.19** A summary of the significant deficiencies found pertaining to the safeguarding and administering of client assets is presented in Exhibit 3.7. The deficiencies are explained in more detail in the paragraphs following the exhibit.

*Exhibit 3.7 - Summary of Significant Deficiencies Identified*

<b><i>Summary of Significant Deficiencies Identified</i></b>	
<b>Finding</b>	<b>Paragraph Number</b>
Policies outdated and lacking	3.20
Investment policy not implemented	3.22
Inadequate information system	3.24
Inadequate controls for electronic receipt of revenue	3.28
Inadequate insurance coverage	3.29
No regular review of client files	3.30
No internal audit function	3.31

### ***Policies Outdated and Lacking***

**3.20** We reviewed policies in place at Public Trustee Services. Several policies have been developed in recent years, with significant progress in 2015-2016; however there is still work to be done. For example:

- Some policies are no longer relevant, such as the investment policy; and
- Some needed policies have yet to be developed, such as guidance on accepting clients (the meaning of “when there is no one else able and willing to do so”<sup>4</sup> has yet to be defined.)

**3.21** We were told trust officers often look for guidance on complex cases. From our examination of client files, we found processes have changed significantly over the years but documentation for the policies in place at particular points in time was often not available. This made it difficult in some cases for us to establish if appropriate policies were followed in our sample of client files. Our testing of client files is discussed later in paragraph 3.34. A comprehensive set of documented policies and procedures would assist trust officers in their work, help in training new trust officers and ensure uniformity across client files, such as when determining the level of fees that can be charged to a client.

***Investment Policy Not Implemented***

**3.22** In May 2010, the Province’s Board of Management approved the investment strategy defined in the Public Trustee’s *Statement of Investment Policies and Objectives*. During our Office’s financial audit of Trusts under the Administration of the Public Trustee we noted the Investment Policy has not been implemented. We examined this more closely at Public Trustee Services and found the following:

- The majority of client investment portfolios are converted to cash. We were informed this is to ensure liquidity of the funds in order to allow for timely payment of expenses on behalf of clients.
- The funds are kept in a bank account generating a low interest rate. At March 31, 2015, \$8.8 million of \$10.7 million in client financial assets consisted of cash held in a bank account. Approximately 73% of client net assets belong to 7% of clients.
- Public Trustee representatives indicated that

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<sup>4</sup> *New Brunswick Legal Aid Services Commission Annual Report, 2013-2014, p. A1a-2*

assigning staff to administer investments would benefit very few of their clients.

***Inadequate  
Information System***

**3.23** We believe the Public Trustee should implement a documented strategy and policy for investing client funds.

**3.24** We were told by several employees of Public Trustee Services the case management software is inefficient and difficult to use. It does not adequately meet user needs.

**3.25** The software does not allow for read-only access and does not track changes to client files, which increases the risk of inappropriate changes. In addition, until recently, changes made to the software were not tracked, which increases the risk of inappropriate software changes such as untested or unauthorized changes. (Representatives indicated this process has been implemented in early 2016).

**3.26** The system does not have the functionality to generate financial statements or produce reports that would allow reconciliation to Oracle, the financial information system used by the Province. It does not allow management information or statistics to be generated easily, such as the number of clients, or for client care plan information to be viewed in one screen.

**3.27** Financial statements are prepared manually for Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered. This is a very time-consuming process. Staff indicated having a significant backlog of work in this area. The reconciliation of the information system's listing of client assets to the financial statement figures is an extensive process done only yearly. Manual processes increase the risk of errors in the financial statements. Although we have noted improvements in our latest audit, several errors have been found in our Office's annual audits of these financial statements.

***Inadequate Controls  
for Electronic Receipt  
of Revenue***

**3.28** From our review of processes, we found there were inadequate segregation of duties around the electronic receipt of client revenue (such as pension benefits) which increase the risk of misappropriation of assets. We were told there were no documented policies and procedures related to setting up electronic transfers.



***Inadequate Insurance Coverage***

**3.29** Public Trustee clients are added to the group institutional insurance policy, and property insurance if applicable, when they become clients. We noted there was a gap in insurance on clients' property when assets are transported and stored for auction. The terms of the insurance policy should be reviewed to ensure client assets are adequately insured.

***No Regular Review of Client Files***

**3.30** We inquired about the review of client files. While specific components of client files are reviewed, we were told there is no process for regular supervisory review of client files. File reviews by a supervisor of work done by trust officers and guardianship officers provide assurance that client assets are being managed and care decisions are being made in the best interest of the client.

***No Internal Audit Function***

**3.31** We found there is no internal audit function in place to test compliance with policy, and verify that internal controls are working and client assets are protected. Other jurisdictions, such as Alberta and Manitoba, have an internal audit function.

**3.32** Internal audit can identify weaknesses and opportunities for improvements, which becomes more important as the client base grows. This function should be independent and report directly to the Public Trustee. The Comptroller is considered the Chief Internal Auditor for the Government of New Brunswick. The Public Trustee could consult with the Office of the Comptroller (OOC) to determine if the OOC could provide periodic internal audit services.

***Property Inspections Done Well***

**3.33** Public Trustee Services contracts with external parties to inspect vacant residences owned by clients in order to obtain important documents, such as wills, and assets that may be liquidated in order to help pay for the client's needs. We observed a property inspection at a client's home. We found minor instances of non-compliance with established procedures. However controls around the inspection appear to be strong overall and inspections appear to be well done.

**Client Files Examined**

**3.34** We selected a sample of 30 client files to examine, including files assigned to different trust officers and guardianship officers. We examined work performed on files from the creation of the Public Trustee in 2008 to September 30, 2015. Our sample was allocated to the different types, based on their proportion of total files:

- 22 adult files;
- 6 estate files; and
- 2 child files.

**Findings**

**3.35** We examined policies and other documentation and interviewed staff to identify appropriate processes. Our work included testing 26 to 39 attributes for adult files, 23 attributes for estate files, and 10 attributes for child files. From our testing, we determined the following:

- the Public Trustee had appropriate authority on the files;
- in most files, trust officers performed a thorough search for client assets and debts;
- Trust offices applied for eligible income and filed tax returns on behalf of clients in all applicable files;
- real property or other assets were disposed of appropriately; and
- in most files, funds were managed and disbursed properly.

**3.36** We found deficiencies which are described below:

- **Inadequate Training** - In one case, staff was not properly trained on current procedures. This increases the risk of errors being made which could have adverse financial effects on clients or Public Trustee Services.
- **Client Fee Incorrectly Calculated** - Fees are collected from clients for services. The fees charged are defined by the Regulation under the *Public Trustee Act*. An analysis of each client's financial situation is performed to determine the fee percentage, if any, that can be collected from each client based on their ability to pay. In three cases, the financial position analysis, which calculates a client's ability to pay fees, was completed incorrectly. In one of these files this would have affected the level of

fees charged to the client, possibly resulting in both lost fee revenue some years and overcharged fees during other years.

- **Client Fee Not Recalculated on Annual Basis** - Public Trustee Services' policy is to perform the financial position analysis yearly or when a client's financial situation changes. In three cases, the financial position analysis was not recalculated on an annual basis as required by policy. In one of these files, this may have resulted in lost fee revenue.
- **Approval Form Signed After Payment Processed** - In one case, the Release of Client Funds Distribution Approval Form was signed after the cheque for payout of funds held in trust for a child client was printed. This form ensures the calculation of the payout is accurate.
- **Secure Room Listing Incomplete** - In one case, the secure room inventory listing for the client was incomplete. The secure room contains clients' personal items and important documents. Inadequate documentation of items stored in the secure room reduces safeguards around client assets.
- **Identification not Requested from Beneficiaries** - In two cases, government identification was not requested from beneficiaries of an estate. We were told no threshold existed at the time for requesting identification, which allows verification of the identity of the beneficiaries. The estate payouts in these cases (approximately \$1,400 and \$400) were over the subsequently implemented threshold amount of \$200.
- **Required Forms not Signed by Parties Attending Inspection** - In three cases, the signed Confidentiality and Conflict of Interest Declarations were not on file for at least one of the persons present at the client's property inspection. These documents ensure confidentiality around client information and must be signed by parties present at the inspection.
- **Estate Documentation Missing** - In one case, the Letters of Administration for an estate were not on file. This file pre-dated the creation of the Public Trustee. Beneficiaries of the estate could not be located due to the missing information.

**3.37** Several of these deficiencies occurred early in the period under audit (before 2013). In our review of more recent files, we noted enhanced documentation, consistency and improvements in processes resulting from staffing reorganization.

## **Conclusion**

**3.38** We concluded the Public Trustee did not safeguard and administer client assets held in trust to the standard we expected. In recent years we found efforts to improve performance and noted no incidence of fraud. However continued improvements are needed to address:

- out of date or incomplete policies;
- the lack of a functioning investment policy;
- inadequate information system;
- inadequate controls over electronic receipt of revenue;
- the lack of a process for supervisor review of files; and
- the lack of an internal audit function.

## **Recommendations**

**3.39** We recommend the Public Trustee develop comprehensive policies and procedures for trust officers to assist trust officers in their work, to help in training new trust officers, and to ensure consistency of client files.

**3.40** We recommend the Public Trustee amend and implement the investment policy for client funds.

**3.41** We recommend the Public Trustee upgrade or replace its current case management information system in order to meet user needs.

**3.42** We recommend the Public Trustee review its insurance coverage to ensure client assets are adequately insured.

**3.43** We recommend the Public Trustee implement regular supervisory review of client files.

**3.44** We recommend the Public Trustee implement an internal audit function.

**Care Decisions  
Made on Behalf of  
Clients**

**3.45** Our second objective was:

*To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.*

**3.46** Guardianship officers make personal care and healthcare decisions, such as care facility placement, consent for medical procedures and approval of visitations, for mentally and physically incompetent persons.

**3.47** Our sample of files examined for the first audit objective included 22 files involving guardianship officers. We examined 30 care decisions involving the 22 clients. We expected to find documentation clearly indicating the guardianship officer identified all possible options, performed a risk assessment, and selected the best alternative for the client. Proper documentation of decisions is important so that the necessary information is available to another guardianship officer should file assignments change, or to any person reviewing the file.

***Two Deficiencies  
Regarding  
Documentation of  
Care Decisions***

**3.48** We found two deficiencies in documentation in our sample of 22 files:

- The work done by a guardianship officer around a sensitive personal care decision taken regarding visitations was insufficiently documented in one file; and
- In one case, a decision was not recorded in the case management software. Should there be a need to refer to this decision during on-call hours, the guardianship officer (using the information in the case management software) would have incomplete data, as they would not have access to the paper file.

**Conclusion**

**3.49** We concluded the Public Trustee's processes for making care decisions on behalf of its clients were in accordance with legislation and policies. However, improvements are needed to ensure care decisions are sufficiently documented.

***Recommendation***

**3.50** We recommend the Public Trustee ensure guardianship officers sufficiently document the rationale for all personal care and healthcare decisions in the case management system.

**Public Reporting by  
the Public Trustee**

**3.51** Our third objective was:

*To determine whether the Public Trustee publicly reports on the performance of its services.*

**3.52** Reporting on the effectiveness of a program is an important component of accountability. We reviewed the last annual report of the Office of the Public Trustee published through the former Department of Justice and Consumer Affairs, as well as the Legal Aid Services Commission's 2012, 2013 and 2014 annual reports. We also reviewed reporting by Public Trustees from other Canadian jurisdictions to identify examples of best practices.

**Public Trustee Act  
Requires Audited  
Financial Statements  
and Annual Report on  
Operations**

**3.53** The *Public Trustee Act* states in section 20:

*20(1) Within 60 days after receiving the Auditor General's report on the audit of the books and accounts of the Public Trustee for a fiscal year, the Public Trustee shall make to the Commission a report on the operations of the office of the Public Trustee in the fiscal year.*

*20(1.1) Before the first day of October in each year, the Commission shall submit the report on the operations of the office of the Public Trustee to the Minister for the fiscal year ending on the thirty-first day of March of that year.*

*20(2) The Minister shall lay a copy of the report on the operations of the office of the Public Trustee before the Legislative Assembly if it is in session or, if not, at the next session.*

**No Annual Report  
Since 2011**

**3.54** The Public Trustee reported performance information publicly each year until 2011. However, annual reports for Public Trustee Services have not been prepared since. As well, the Legal Aid Services Commission (NBLASC) has not reported on Public Trustee Services' performance in its annual report since the amalgamation. NBLASC's annual report provides limited information on Public Trustee Services, including only information on types of services provided and total costs. It does not present objectives, goals, or progress towards achieving goals.

**No Audited Trust  
Financial Statements  
Made Public Since  
2011**

**3.55** Audited financial statements of Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered for fiscal years ending after March 31, 2011, are not available publicly.

***Need for Performance Reporting***

**3.56** From our review of other jurisdictions' Public Trustee annual reports, we found examples of performance reporting the New Brunswick Public Trustee could follow including useful performance measures such as:

- number of days taken to assign files to a client administration officer from receipt of authorizing documentation;
- number of days needed for client asset search and inventory after assignment; and
- number of hours of training on average per employee per year.

**3.57** An example of reporting on a performance measure, from the Manitoba Public Trustee, is presented in Appendix III. While the last Office of the Public Trustee annual report from 2011 mentions the goal of developing performance measures, these have yet to be developed. A significant barrier to this is Public Trustee Services' inadequate case management software which generates very limited management information.

**Conclusion**

**3.58** We concluded the Public Trustee has not publicly reported on the performance of its services since 2011.

***Recommendations***

**3.59** **We recommend the Public Trustee establish goals, objectives and measurable targets for its services, measure its performance against the targets, and publicly report on its performance.**

**3.60** **We recommend the Public Trustee make available publicly all audited financial statements of Trusts under the Administration of the Public Trustee.**

**Issues Identified in Previous Financial Statement Audits**

**3.61** Our Office audits the annual financial statements for Trusts under the Administration of the Public Trustee, which present the financial position and activity of client trusts administered. Appendix IV presents the issues identified during the financial audit for the 2015 fiscal year, as well as our recommendations and the responses from Public Trustee management. Similar issues have been identified repeatedly in previous years. We are concerned there has been little action to address these recurring weaknesses.

**Other Issues Identified**

**3.62** In the course of our work, we identified four other issues, requiring legislation changes:

- lack of timeliness in obtaining authority to act as Public Trustee for a client;
- loss of authority upon death of a client;
- limitations in fees that can be charged to clients; and
- administration of unclaimed property.

***Timeliness of Obtaining Authority***

**3.63** The Public Trustee receives applications referring clients to its services. After an application is received, the legal process for obtaining Court Orders appointing the Public Trustee as Committee of the Estate and/or Person of an adult client can take months. This process includes obtaining affidavits from the client's relatives and two doctors, and filing documents with the court. During this time, the client may have to remain in hospital because a decision to place them in a care home cannot be made. After a patient is discharged medically, they are charged for the use of the hospital bed. In the case we examined, these costs totaled thousands of dollars.

**3.64** Furthermore, the Public Trustee does not have access to the client's funds until a court order is obtained. The client's bills may not be paid during this time and the client is at risk of financial abuse until the funds are secured. Alberta, on the other hand, allows for an urgent order appointing a trustee to be obtained in a week and reviewed after 90 days.

***Authority upon Death of a Client***

**3.65** When an adult client passes away, the Public Trustee loses authority. Lawyers must apply to the court again to obtain Letters of Administration in order to administer the client's estate. In the meantime, the Public Trustee does not have residual authority to disburse funds on behalf of the client. This can delay payments to the care home where the client resided, a funeral home or other service providers.



Residual authority must be established through legislation however it is not included in the New Brunswick *Public Trustee Act*. Other jurisdictions, including Nova Scotia, Alberta and Manitoba, include this clause in their legislation.

***Public Trustee Fees***

**3.66** Fees that can be charged to clients are set out in the Regulation to the *Public Trustee Act* and the amounts set have not changed since 2008. The Regulation also does not address certain types of fees, such as percentages of estate proceeds. Other jurisdictions' fee schedules, such as Manitoba and Ontario, are comprehensive. For example, legislation allows the Manitoba Public Guardian and Trustee to charge fees for services "*if such a fee would be allowed to be charged by a private trustee*"<sup>5</sup>. The latest available audited financial statements of the Public Guardian and Trustee of Manitoba show that the office's expenses have been entirely funded by fees charged to clients for fiscal years 2012 to 2014. The New Brunswick Public Trustee fees are limited to a small percentage of the cost of providing the service, as shown in Exhibit 3.4 previously.

***Unclaimed Property***

**3.67** The administration of unclaimed bank accounts with Canada's large banks falls under Federal jurisdiction. However, only some provinces have legislation covering other unclaimed property, such as amounts held in trust. The New Brunswick Public Trustee has a number of estate files for which heirs have not been located. The New Brunswick *Escheats and Forfeitures Act* addresses personal property, however there are no guidelines indicating when personal property is considered forfeited or unclaimed. These funds, as well as other types of unclaimed property, could be transferred to the Province after a set number of years as is allowed in other jurisdictions.

***Legislation Changes Needed***

**3.68** The Office of the Public Trustee's 2011 annual report states that identifying recommended legislative change is part of the organization's future plans. This process is still underway. Based on discussions with management and review of other jurisdictions' legislation, changes to legislation could improve current processes, provide more guidance and allow the Public Trustee to charge client fees

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<sup>5</sup> *The Public Guardian and Trustee Act*, Province of Manitoba

in line with other jurisdictions.

***Recommendation***

**3.69 We recommend the Public Trustee identify legislation changes needed to address the following, and work with the responsible department to implement them:**

- **lack of timeliness in obtaining authority to act as Public Trustee for a client;**
- **loss of authority upon death of a client;**
- **limitations in fees that can be charged to clients; and**
- **administration of unclaimed property.**

## Appendix I - Excerpt from Audited Financial Statements of Trusts under the Administration of the Public Trustee at March 31, 2015

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TRUSTS UNDER THE ADMINISTRATION OF THE PUBLIC TRUSTEE  
NEW BRUNSWICK LEGAL AID SERVICES COMMISSION  
STATEMENT OF FINANCIAL POSITION  
AS AT MARCH 31

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	2015	2014
<b>Financial Assets</b>		
Cash and Cash Equivalents	\$ 8,780,895	\$ 9,303,930
Other Investments (Note 5)	1,238,647	673,494
Property Held for Sale (Note 2.7)	633,700	459,300
Interest Receivable	16,747	15,776
	<u>10,669,989</u>	<u>10,452,500</u>
<b>Liabilities</b>		
Accounts Payable (Note 7)	545,134	455,227
Client Debt (Note 2.8)	545,146	521,730
	<u>1,090,280</u>	<u>976,957</u>
<b>Net Financial Assets</b>	<u>9,579,709</u>	<u>9,475,543</u>
<b>Non-Financial Assets</b>		
Prepaid Expenses (Note 2.5)	377,775	339,421
Other Assets (Note 2.6)	1	1
	<u>377,776</u>	<u>339,422</u>
<b>Net Assets Held in Trust (Note 11)</b>	<u>\$ 9,957,485</u>	<u>\$ 9,814,965</u>

Contingent Liabilities - See Note 9

## Appendix II - Criteria used in our audit

The audit criteria we used to evaluate our objectives are listed below.

### **Objective 1**

To determine whether the Public Trustee properly safeguards and administers client assets held in trust.

Criterion 1: The Public Trustee should have policies and procedures to safeguard and administer client assets.

Criterion 2: Trust officers should follow legislation, policies and procedures in safeguarding and administering client assets.

Criterion 3: Decisions on safeguarding and administering client assets should be clearly documented in the client files.

### **Objective 2**

To determine whether the Public Trustee's processes for making care decisions on behalf of its clients are in accordance with legislation and policies.

Criterion 1: The Public Trustee should have policies and procedures in place to provide guidance on making care decisions on behalf of its clients.

Criterion 2: Guardianship officers should follow legislation, policies and procedures in making care decisions on behalf of clients.

Criterion 3: The rationale for care decisions should be clearly documented in client files.

### **Objective 3**

To determine whether the Public Trustee publicly reports on the performance of its services.

Criterion 1: The Public Trustee should have performance goals.

Criterion 2: The Public Trustee should measure its actual performance.

Criterion 3: The Public Trustee should publicly report on its performance.

## Appendix III - Example of Reporting on Performance Measures (Source: Excerpt from Public Guardian and Trustee of Manitoba 2013-2014 Annual Report)

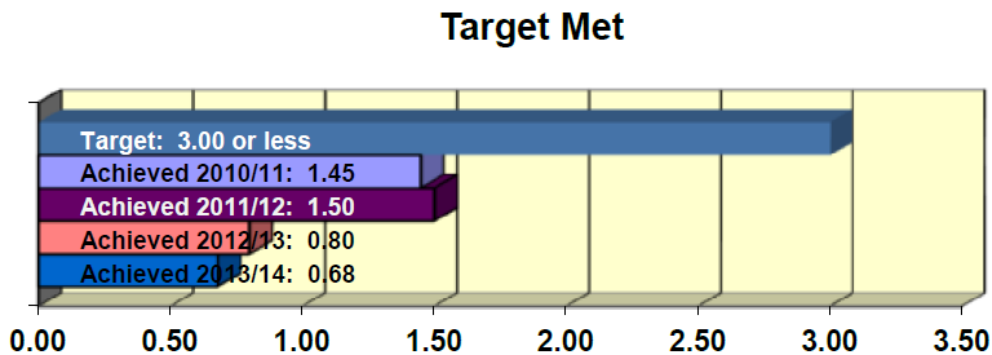
### Objective:

Adult clients will begin receiving management and protective services from The PT in a timely manner after receipt by The PT of authority to act.

This information is important to ensure that files for adult clients are assigned in a timely manner after authorizing documentation is received. This ensures that clients receive the management and protective services that The PT provides as soon as possible after the need is identified.

### Performance Target:

Client Administration files will be assigned to a client administration officer within an average of 3 days from receipt of authorizing documentation.



## Appendix IV - Issues Identified in the 2015 Financial Statement Audit

<i>Issues Identified in the 2015 Financial Statement Audit</i>	
Recommendation	Management Comments
<b>Implementation of Investment Policies</b>	
<p>We again recommend the Public Trustee move forward with the formation of an investment committee as specified in the Statement of Investment Policies and Objectives. (Also recommended in: 2014, 2013, 2012)</p>	<p><i>Management has evaluated the appropriateness of the formation of an investment committee. Management will present a recommendation to the Board of Directors that a resolution be passed that an investment committee will not be formed at this time.</i></p>
<b>Inefficient Manual Financial Statement Processes</b>	
<p>We recommend the Public Trustee develop a list of system modifications and work corroboratively with Information Management and Technology to implement these system improvements to allow interim and annual financial reports to be compiled electronically and reduce inefficient manual processes. (Also recommended in: 2014, 2013, 2012)</p>	<p><i>Due to resource and financial constraints within both Public Trustee Services and Information Management and Technology [Department of Justice] there is currently no plan for system modifications significant enough to provide the ability to generate either interim or annual financial statements and reduce the inefficient manual process. Spreadsheets supporting the financial statements will be password protected beginning with the March 31, 2016 fiscal year end.</i></p>
<b>Annual Report</b>	
<p>We recommend annual reports be prepared on a timely basis to meet the requirements of the Act. (Also recommended in: 2014)</p>	<p><i>Work is currently in progress to prepare all outstanding annual reports. Ongoing annual reports will be prepared as part of each year's annual audit preparation.</i></p>
<b>Change Management Controls in Aegis System</b>	
<p>We recommend the Public Trustee formalize and document a change management process for the Aegis system [Public Trustee Services' case management system]. Documentation should be on file to show all changes are tracked, approved, tested and approved to production. (Also recommended in: 2014)</p>	<p><i>Work on developing a change management process to track, approve and test program changes was undertaken in January 2016. The process and documentation has been created. Two change requests have been submitted and further change requests are being worked on. The process and documentation that has been developed has been applied to the change requests submitted and will be used on all future change requests submitted.</i></p>

# Chapter 4

## Department of Agriculture, Aquaculture and Fisheries

### Agricultural Fair Associations

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# Department of Agriculture, Aquaculture and Fisheries

## Agricultural Fair Associations

### Introduction

- 4.1** In August of 2013, the Auditor General of New Brunswick received a letter from a concerned stakeholder regarding the governance of an agricultural fair association operating in the Province.
- 4.2** The letter referred to several issues of concern to the author, including:
- changes to share structure and governance practices resulting in concentrated ownership by a related group of individuals;
  - operation as a private company under the *Business Corporations Act* of New Brunswick “contrary to the company founding charter”; and
  - potential loss of not-for-profit status and the associated exemptions from taxation.
- 4.3** After discussing the contents of the letter with the author and reviewing the history of agricultural societies and associations, we completed a preliminary scoping exercise by reviewing relevant legislation and discussing oversight of agricultural associations with various government officials and non-government stakeholders. Through this exercise we identified potential risk related to government oversight of these organizations.



- Objective**                    **4.4**    The objective of our work was:  
*To determine whether there is adequate government oversight of New Brunswick Agricultural Associations.*
- Conclusion**                   **4.5**    We have concluded there is no government oversight of agricultural fair associations by the Department of Agriculture, Aquaculture and Fisheries (DAAF) as required by legislation. DAAF believes the 13 existing agricultural fair associations do not fall under the Agricultural Fair Associations regulation, despite providing annual grant funding to these associations and acknowledging these entities are the only government recognized agricultural fairs in the Province.
- 4.6**    In addition, there are limited provincial processes to monitor compliance with eligibility requirements for benefits such as property tax exemptions, gaming privileges, and income tax exemptions available to these entities. These exemptions are granted to the applicable associations by virtue of their operating status as agricultural fair associations and/or not-for-profit organizations.
- Main Points**                   **4.7**    There are currently 13 provincially recognized agricultural fair associations in New Brunswick. These associations receive a small grant from DAAF annually but may also be eligible for other government programs and tax exemptions.
- 4.8**    We reviewed oversight of agricultural fair associations by DAAF. We also looked at how government departments evaluate and monitor eligibility of these organizations for:
- property tax exemptions;
  - charitable gaming licenses; and
  - exemption from income tax.
- Department of Agriculture, Aquaculture and Fisheries - oversight of agricultural fair associations**                   **4.9**    DAAF is required to “*supervise and control*” agricultural associations and societies in the Province under the *Agricultural Associations Act*.

***DAAF does not fulfill its legislated mandate under the Agricultural Associations Act for oversight of agricultural fair associations.***

**4.10** We found DAAF does not fulfill its oversight mandate under the *Agricultural Associations Act* regarding agricultural fair associations. Although agricultural societies and exhibitions have existed since before 1900, DAAF does not supervise or control the associations as prescribed under the regulations and takes no action to address non-compliance by the associations.

**4.11** A lack of action by DAAF to address non-compliance allows all parties to continue as they wish, with no regard for legislative requirements and no plan to further the legislated purpose for the existence of these organizations in provincial legislation.

**Service New Brunswick – property tax exemptions**

**4.12** Service New Brunswick (SNB) is mandated to regulate property tax exemptions under the *Assessment Act*. Agricultural societies and fair associations are specifically exempted from payment of property tax under the *Assessment Act* if the property is occupied by the society or fair association solely for exhibition purposes.

**4.13** We estimated the 2015 foregone revenue from property tax exemptions to agricultural fairs or the societies that sponsor the fairs at over \$468,000. The total 2015 foregone property tax revenue for all tax class 50 properties exempted under section 4 and paragraph 7.1(4)(a) of the *Assessment Act* (excepting Crown lands) was approximately \$52 million.

**4.14** We noted that SNB requires no application form or associated documentation for an exemption from property tax and maintains no specific files on exemptions benefiting the associations in the Property Assessment Services Branch. Although regional files exist for property assessment purposes, these do not adequately address compliance with eligibility requirements.

***SNB does not monitor eligibility of agricultural fair associations for property tax exemptions.***

**4.15** We found SNB does not adequately evaluate and document eligibility under the *Assessment Act* of agricultural fair association exemptions which is part of a larger group of similar exemptions for other various organizations totalling approximately \$52 million.

**Department of Public Safety – Charitable gaming**

**4.16** Agricultural fair associations may be eligible for gaming event licensing under the Charitable Gaming Program administered by the Department of Public Safety (DPS) if they:

- are deemed an agricultural fair;

*DPS does not evaluate or monitor the eligibility of all agricultural fair associations licensed under the Charitable Gaming program*

- have a not-for-profit status; and
- comply with terms and conditions for holding events.

**4.17** Although DPS requested documentation from some agricultural fair associations when they initially applied for a charitable gaming license, we could not conclude this was done in all cases or determine how that information was used to assess eligibility under the Charitable Gaming program.

**4.18** Additionally, DPS indicated it does not revisit the eligibility status of the organizations on a periodic basis to ensure eligibility to hold charitable gaming events is maintained. We believe it is important to monitor continuing eligibility to ensure the status of these organizations has not changed and the associations remain compliant with legislated requirements.

**Department of Finance – Income tax exemptions**

**4.19** Agricultural fair associations may be eligible for exemption from paying income tax under the *Income Tax Act* in two ways:

- as an agricultural organization; and/or
- as a not-profit organization.

**4.20** We asked officials in the Department of Finance (DOF) how these organizations meet either of the two criteria. We were informed the Province relies upon Canada Revenue Agency definitions and conclusions regarding these exemptions. DOF has never audited these organizations for income tax purposes. According to DOF, under the terms of the Canada/New Brunswick Tax Collection Agreement, the Canada Revenue Agency is responsible for the monitoring function.

*DOF does not monitor agricultural fair association eligibility for income tax exemption.*

**4.21** Based on our review, we found there is no monitoring of compliance with agricultural fair association status or not-for-profit status for income tax purposes at the provincial level. Reliance on Federal oversight under the Tax Collection Agreement may result in the Province providing exemptions and other benefits that agricultural fair associations may not be eligible to receive.

**Results in Brief**

**4.22** Results in brief are presented in Exhibit 4.1.

**Recommendations**

**4.23** Exhibit 4.2 provides a summary of recommendations from our work as well as department responses and timelines for implementation.

*Exhibit 4.1 – Results in Brief*

## Agricultural Fair Associations

### Why Is This Important?

- In 2013, the Auditor General received a letter from a concerned stakeholder.
- Preliminary scoping exercise was performed and potential risk related to government oversight of these organizations was identified.
- Government programs and exemptions can represent significant financial value and benefits for the 13 Agricultural Fair Associations (AFA) recognized in New Brunswick.

### What We Found

#### Overall Conclusions

- Lack of oversight by government
- Limited provincial processes to monitor compliance with eligibility requirements for benefits
- Tax exemptions and other benefits could be unfairly given

#### Property Tax Exemptions Eligibility not Adequately Assessed or Monitored

- Property tax exemptions are regulated under the *Assessment Act* administered by Service New Brunswick (SNB)
- AFA property tax exemptions only applicable if the property is solely occupied for exhibition purposes
- Similar property tax exemptions for various organizations in New Brunswick totalled nearly \$52 million in 2015
- Inappropriately applied exemptions could lead to inconsistent or inequitable circumstances, as well as forgone revenue

#### No Oversight from Department of Agriculture, Aquaculture and Fisheries

- Department believes the *Agricultural Associations Act* and regulation are out of date

#### Department does not:

- Supervise or control the associations as prescribed under regulations;
- Acknowledge its oversight role over the fairs;
- Monitor AFA compliance with legislation, nor;
- Adequately monitor or control grant allocation

#### Charitable Gaming Program License Eligibility not Evaluated or Monitored

- Eligibility based solely on status of agricultural fairs and not-for-profit entities
- Department of Public Safety (DPS) does not regularly review or monitor AFA financial records or eligibility for Charitable Gaming activities

#### Income Tax Exemptions not Monitored at Provincial Level

- Under terms of agreement, Department of Finance relies solely on Federal government to monitor AFA eligibility for income tax exemptions

Exhibit 4.2 - Summary of Recommendations

Recommendation	Department's response	Target date for implementation
<b>Audit Objective - To determine whether there is adequate government oversight of New Brunswick Agricultural Associations.</b>		
<p><b>4.55</b> We recommend the Department of Agriculture, Aquaculture and Fisheries fulfill its legislated mandate under the <i>Agricultural Associations Act</i>. We recommend DAAF develop a strategy to further define its mandate, including a clear definition of its role and responsibilities as well as goals and objectives for its work with agricultural societies and agricultural fair associations.</p>	<p><i>DAAF views its departmental role as supporting the agricultural fairs and exhibitions for the service they provide in promoting the sector through agricultural awareness activities. Therefore, DAAF will accept the alternate recommendation, below.</i></p>	<p>NA</p>
<p><b>4.56</b> We recommend, alternatively, if the Department of Agriculture, Aquaculture and Fisheries does not intend to meet its current mandate under the <i>Agricultural Associations Act</i> and regulations, it pursue legislative amendments to the <i>Agricultural Associations Act</i> and regulations. This would define and clarify its commitment to these entities.</p>	<p><i>Agricultural fairs and exhibitions are largely volunteer and community based organizations, and lend valued support to DAAF priorities such as the promotion of Local Foods. Based on the above role, DAAF agrees to amend or repeal all or part of the Agricultural Associations Act, and related regulations.</i></p>	<p>2017</p>

Exhibit 4.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.72</b> We recommend the Department of Agriculture Aquaculture and Fisheries define, communicate, and monitor minimum reporting requirements for all agricultural associations and societies it is required to oversee under the <i>Agricultural Associations Act</i>.</p>	<p><i>DAAF agrees that it will communicate with the agricultural associations and societies the findings of the Auditor General's report.</i></p> <p><i>Although DAAF contends that if an agricultural association is not incorporated under the Agricultural Associations Act it is not required to comply with the regulations, while legislative or regulatory amendments / repeals are investigated, DAAF agrees to develop an appropriate process for a regular review of the exhibition associations' operating status.</i></p>	<p><i>Summer 2016</i></p> <p><i>2016-17</i></p>
<p><b>4.81</b> We recommend the Department of Agriculture, Aquaculture and Fisheries distribute funding directly to agricultural fair associations without the assistance of a third-party entity. Accordingly, we recommend DAAF develop and implement a grant allocation process with applicable controls to ensure proper use of public funds.</p>	<p><i>DAAF agrees that it will formalize and implement a grant allocation process for agricultural fair associations. DAAF will ensure that this process will enable it to support the fair associations directly.</i></p> <p><i>DAAF notes that it is also able to support any third party entity that plays a valuable role in promoting agriculture and representing New Brunswick in national organizations.</i></p>	<p><i>2017</i></p>

Exhibit 4.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.104</b> We recommend, at a minimum, Service New Brunswick follow its internal standard and re-assess any agricultural fair association exceeding the 10-year assessment cycle, including Fredericton, Saint John, Miramichi and Queens County associations. We recommend SNB evaluate the eligibility of these organizations for exemption from property tax.</p>	<p><i>Service New Brunswick completed an on-site inspection of each Agricultural Fair Association in December 2015. An inventory of current building information was updated and the exemption status on each property was reviewed to ensure the current use of the property meets the eligibility for an assessment exemption.</i></p>	<p><i>Completed</i></p>
<p><b>4.109</b> We recommend Service New Brunswick develop, document, and implement a standardized process and procedures to evaluate the eligibility of requests for property tax exemptions (tax class 50) and undertake regular monitoring to ensure organizations with exemptions have sustained their eligible status.</p>	<p><i>Service New Brunswick will implement a standardized process to evaluate the eligibility of future requests for property tax exemptions. In addition, SNB will commence regular monitoring of exempt properties to ensure their continued eligibility status.</i></p>	<p><i>December 31, 2016</i></p>

Exhibit 4.2 - Summary of Recommendations (continued)

Recommendation	Department's response	Target date for implementation
<p><b>4.143</b> We recommend the Department of Public Safety develop a standardized process and implement associated procedures for evaluating initial and ongoing eligibility of agricultural fair associations for licensing under the Charitable Gaming program.</p>	<p><i>The Department commits to mapping the current processes used when determining licence approval eligibility, and to develop a checklist of criteria to accompany future applications in order to ensure that all licences are issued in a consistent manner.</i></p> <p><i>The Department of Public Safety, Gaming Control Branch is responsible for the issuance of licences pertaining to the charitable gaming program and does not assess or monitor Agricultural fair association status and/or not-profit status for Agricultural fair associations.</i></p>	<p><i>September 30, 2016</i></p>
<p><b>4.154</b> We recommend the Department of Finance request Canada Revenue Agency undertake audits of Agricultural Fair Associations currently exempted from provincial income tax to verify the eligibility status of these organizations.</p>	<p><i>The Department will be engaging Canada Revenue Agency and will request that the Canada Revenue Agency undertake audits of Agricultural Fair Associations currently exempted from provincial income tax to verify the eligibility status of these organizations.</i></p>	<p><i>The request to the Canada Revenue Agency will be made immediately following the public release of the audit report.</i></p>



## Background

**4.24** According to a Government of New Brunswick document entitled “*Sectors in Review 2013*”, the agriculture and agri-food sector is an important contributor to the provincial economy. Exhibit 4.3 provides an excerpt from the 2013 overview of the agri-food industry in the province.

*Exhibit 4.3 - Agriculture and Agri-Food Industry in New Brunswick*

<b>Agriculture and Agri-Food Industry in New Brunswick</b>	
Number of farms (2011 Census of Agriculture)	2,611
Farmland, hectares (2011 Census of Agriculture)	379,526
Land in crops, hectares (2011 Census of Agriculture)	142,138
Total farm assets	\$2.7 billion
Farm cash receipts	\$573 million
Number of processing plants	140
Estimated shipments of processed food products	Over \$1 billion
Agri-food exports	\$380.8 million
Employment, farm	4,500
Employment, processing	6,200
Source – This information was reproduced by AGNB from a Government of New Brunswick website document entitled <i>Sectors in Review 2013</i> .	

**4.25** A 2010 Government of New Brunswick Agricultural strategy stated “*the agriculture sector has transitioned from a collection of many diversified farms to fewer, larger farms that tend to focus their efforts on specific commodities*”. This differs significantly from the 19<sup>th</sup> century, when agricultural associations were developing in New Brunswick and farms were typically smaller and widespread.

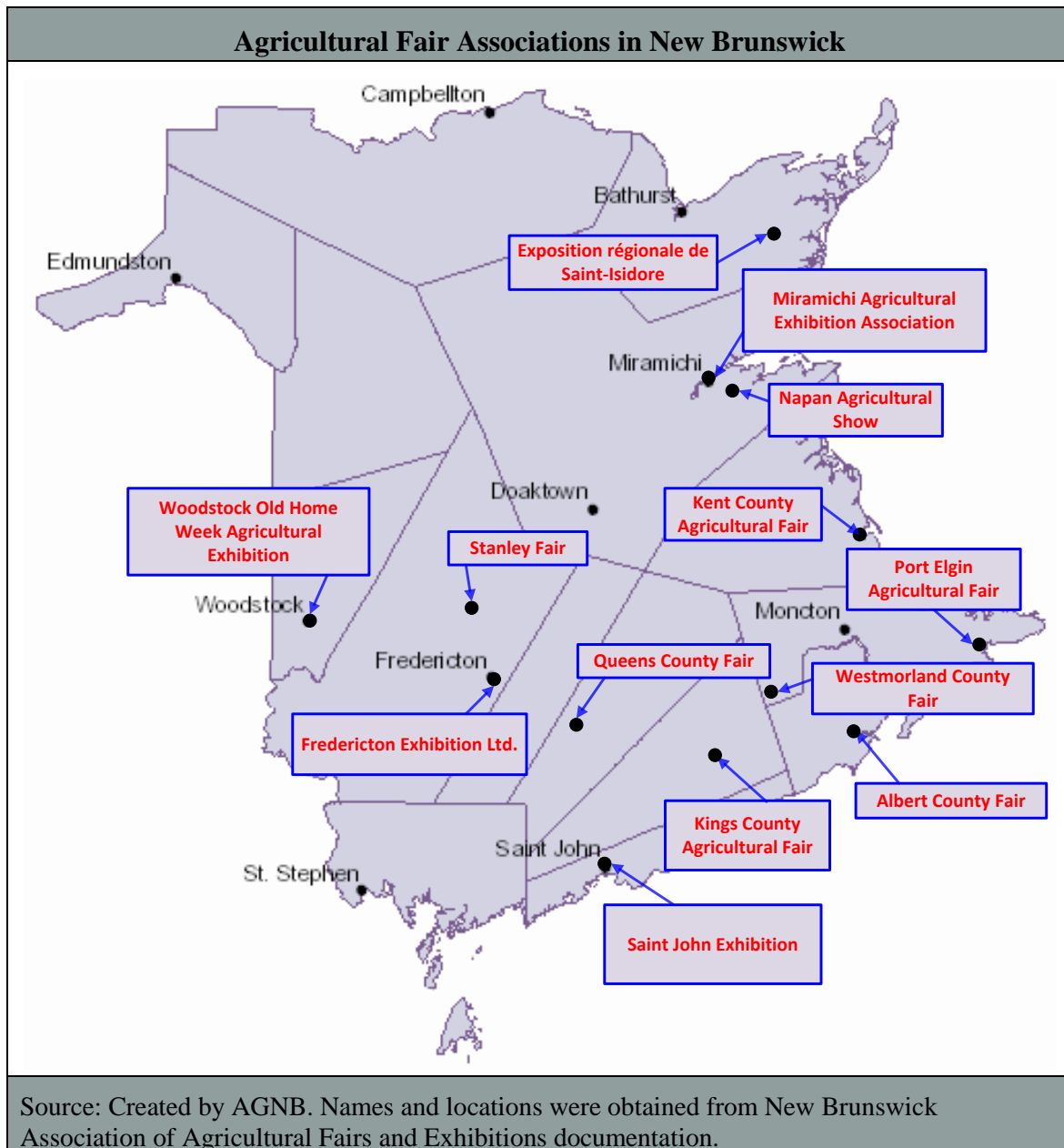
**4.26** Although the agriculture industry in New Brunswick has changed considerably since the mid-19<sup>th</sup> century, the purpose of agricultural fairs has remained relatively constant. The current *Agricultural Associations Act* defines the purpose of an agricultural fair association to “*...hold exhibitions of livestock, poultry, agricultural produce and the products of kindred agriculture and*

*homemaking arts.”*

**4.27** There are currently 13 entities acknowledged as agricultural fair associations by government in New Brunswick. All are members of the New Brunswick Association of Agricultural Fairs and Exhibitions (NB Fairs) and each has a seat on the NB Fairs Board of Directors. The following list with locations of the fairs highlighted in Exhibit 4.4 was taken from NB Fairs documentation:

1. Albert County Fair
2. Fredericton Exhibition Ltd.
3. Kent County Agricultural Fair
4. Kings County Agricultural Fair
5. Exposition régionale de Saint-Isidore
6. Miramichi Agricultural Exhibition Association
7. Napan Agricultural Show
8. Port Elgin Agricultural Fair
9. Queens County Fair
10. Saint John Exhibition
11. Stanley Fair
12. Westmorland County Fair
13. Woodstock Old Home Week Agricultural Exhibition

Exhibit 4.4 – Agricultural Fair Associations in New Brunswick



**4.28** The Province has provided an annual grant to recognized agricultural fairs since at least the early eighties. Over the five years we reviewed (2010 through 2014) DAAF provided funding in the range of \$80,000 to \$85,000 and DAAF officials indicated NB Fairs distributes approximately \$65,000 of the grant to the member associations, retaining the remainder for NB Fairs internal use.

**4.29** In addition to the grant, the 13 fair associations may be eligible for benefits such as:

- property tax exemption or reduction (administered by SNB). In 2015 this benefit was approximately \$468,000;
- the ability to generate revenue by offering games of chance (lottery schemes administered by DPS). In 2014, self-reported gaming revenue across the 13 fairs totaled approximately \$450,000; and
- exemption from payment of tax on any surplus income they earn or raise (administered by DOF).

These potential benefits are subject to applicable government regulations and eligibility requirements.

### Scope

**4.30** This chapter addresses oversight of agricultural fair associations by government. Our work focused on the government departments we believe to be responsible for overseeing operations of agricultural fairs as well as the privileges and exemptions available to these organizations under various statutes.

### Methodology

**4.31** We reviewed provincial legislation governing agricultural fair associations, property tax assessment, charitable gaming control, and income tax. We reviewed government oversight and regulatory processes, documentation and data related to agricultural fair associations as well as the benefits and exemptions provided through government departments to these associations.

**4.32** We conducted interviews with management and staff of government departments as well as representatives of the NB Fairs. We sent information surveys to the 13 agricultural fairs to gather background information on their governance and operations.

**4.33** We focused on the 13 agricultural fair associations recognized by the Province through DAAF.

**4.34** Our work was performed in accordance with standards for assurance engagements, encompassing value-for-money and compliance, established by the Chartered Professional Accountants of Canada, including such tests and other procedures as we considered necessary in the circumstances.

**4.35** Certain financial and statistical information presented

## Observations and Recommendations

### Department of Agriculture, Aquaculture and Fisheries - Governance and oversight of agricultural fair associations

in this chapter was compiled from information provided by government departments and entities directly involved in the topic area. It has not been audited or otherwise verified. Readers are cautioned that this information may not be appropriate for their purposes.

- 4.36** To review this topic area we developed four criteria against which to measure and report our observations, conclusions, and recommendations. These criteria can be found in Appendix I.
- 4.37** Our observations, conclusions and recommendations are presented under the following headings:
- Department of Agriculture, Aquaculture and Fisheries (DAAF) - Governance and oversight of agricultural fair associations;
  - Service New Brunswick (SNB) - Property tax exemptions;
  - Department of Public Safety (DPS) - Charitable gaming oversight; and
  - Department of Finance (DOF) - Income tax exemptions.
- 4.38** We developed our first criterion to evaluate if DAAF exercised adequate oversight of agricultural fair associations by monitoring compliance with the *Agricultural Associations Act* and regulations.
- 4.39** We surveyed each of the 13 agricultural fair associations, of which:
- 9 responded with varying levels of detail;
  - 3 did not respond (Fredericton, Kent County, and Woodstock); and
  - 1 responded by letter (Miramichi).
- 4.40** In their letter, Miramichi Agricultural Exhibition Association declined to complete the survey or provide any information not publicly available, citing “*significant privacy concerns*” and indicating that “*sponsoring an agricultural fair is only one of this firm’s objectives*”.
- 4.41** The *Agricultural Associations Act* prescribes the power and duties mandated to the Minister of Agriculture, Aquaculture, and Fisheries under section 2, as follows:

*“The supervision and control of the societies and associations and the administration of grants to them is vested in the Minister”.*

**4.42** The *Agricultural Associations Act* governs both “agricultural societies” and “agricultural fair associations”. The Act defines agricultural societies as:

*“a community group of farmers organized for the general promotion of agriculture within that community”*

### ***Agricultural fair associations***

**4.43** Our review work focused on agricultural fair associations, defined in the *Agricultural Associations Act* as:

*“...an organization of district, county or provincial scope whose purpose is to hold exhibitions of livestock, poultry, agricultural produce and the products of kindred agricultural and homemaking arts.”*

**4.44** While these are separate entities under the *Agricultural Associations Act*, at least 3 of the 13 agricultural fairs we reviewed were sponsored by an agricultural society. We included these three agricultural societies in our review.

**4.45** The *Agricultural Associations Act* also provides for incorporation of both agricultural societies and agricultural fair associations. Regulation (82-55), entitled “*Agricultural Fair Associations*”, prescribes operating and reporting requirements of the associations as well as DAAF’s recourse when associations are not in compliance with the regulation or the *Agricultural Associations Act*.

**4.46** DAAF believes the *Agricultural Associations Act* and regulation are out of date; noting that language in some sections is very similar to the *Agriculture Act, 1888*. They highlighted section 11 of the regulation which states “*the proposed prize list shall be submitted to the Minister for approval or amendment before it is circulated to prospective exhibitors or competitors*”, as an example of an outdated requirement.

**4.47** DAAF indicated it has been considering a significant update or possible repeal of this legislation. The process has not yet been undertaken due to competing legislative priorities.

***Regulatory framework appears old and some language is dated***

**4.48** We concur that some sections of the regulation do appear dated. However, we believe DAAF is required to comply with the current *Agricultural Associations Act* and associated regulations until such time as amendments are approved by the Legislative Assembly.

**4.49** Section 2 of the *Agricultural Associations Act* sets a mandate for DAAF to “*supervise and control*” these entities. We expected DAAF to have further defined and documented a strategy to fulfil this role and set meaningful goals and objectives against which to measure their success.

***DAAF is not performing supervision or control as mandated under Section 2 of the Agricultural Associations Act***

**4.50** DAAF representatives however, indicated they perform only an advisory function to agricultural fair associations. They could provide no evidence of a documented strategy, goals or objectives to guide their work with these associations.

**4.51** Without a clear strategy to implement their oversight mandate and measure performance, we believe DAAF cannot demonstrate effective supervision and control of these entities as required under section 2 of the *Agricultural Associations Act*.

***DAAF does not acknowledge its oversight role over the 13 fairs***

**4.52** DAAF stated they had significant reservations regarding their oversight responsibility for the 13 agricultural fair associations. DAAF representatives indicated most of these organizations were not incorporated under the *Agricultural Associations Act* based on extensive research by DAAF. DAAF representatives were unable to confirm whether three of the agricultural fair associations were incorporated at all.

**4.53** DAAF officials informed us of their intention to seek legal advice to determine if sections of the *Agricultural Associations Act* and Regulation 82-55 applied to the 13 existing agricultural fair associations. They contend that if an association was not incorporated under Regulation 82-55 of the *Agricultural Associations Act* or was incorporated under another Act, the entity was not required to comply with Regulation 82-55.

***In our opinion, DAAF is responsible for supervising and controlling Agricultural Societies and Agricultural Fair Associations under the Agricultural Associations Act***

***Recommendations***

***DAAF has no policy or procedural documentation to monitor agricultural fair association compliance with legislation***

**4.54** While we understand DAAF's perspective, we believe that section 2 of the *Agricultural Associations Act*, as highlighted above, applies to all associations with no limitation based on the organization's legal structure or which Act they are incorporated under. In our opinion, DAAF remains responsible for supervision and control of the entities.

**4.55** We recommend the Department of Agriculture, Aquaculture and Fisheries fulfill its legislated mandate under the *Agricultural Associations Act*. We recommend DAAF develop a strategy to further define its mandate, including a clear definition of its role and responsibilities as well as goals and objectives for its work with agricultural societies and agricultural fair associations.

**4.56** We recommend, alternatively, if the Department of Agriculture, Aquaculture and Fisheries does not intend to meet its current mandate under the *Agricultural Associations Act* and regulations, it pursue legislative amendments to the *Agricultural Associations Act* and regulations. This would define and clarify its commitment to these entities.

**4.57** DAAF could provide no policy or procedural documentation explaining how monitoring of agricultural fair association compliance with legislation is completed. DAAF representatives reiterated their belief that their role is advisory and geared toward helping the associations fulfill their purpose of promoting agriculture in the Province.

**4.58** Policy and procedural documentation provides employees with guidance on planning and performing duties required to fulfill the DAAF mandate. Reports allow management to gauge compliance with legislation and address compliance issues.

**4.59** Regulation 82-55 addresses agricultural fair association requirements under the *Agricultural Associations Act* and is the only available framework against which we could measure the DAAF effort to oversee agricultural associations.

**4.60** We reviewed annual files on agricultural fair associations provided by DAAF covering a period from



2010 through 2014 to determine if legislative requirements for the submission of financial and associated governance information were complied with and/or followed up by DAAF.

**4.61** From our review it was apparent that none of the regulatory requirements were being addressed. The files typically contained only two items related to our work:

1. A report from NB Fairs; and
2. The annual request for grant funding from NB Fairs and the Minister's response.

**4.62** NB Fairs operates as an umbrella organization with membership from the 13 fair associations, each of which has a seat on the NB Fairs Board of Directors. It has no standing in the *Agricultural Associations Act*. A single DAAF employee also sits on the NB Fairs Board in an advisory capacity but provides no formal report on the organizations activities or decisions to DAAF.

***No agricultural fair association submits an annual report on finances, operations, or governance to DAAF***

**4.63** The reports submitted to DAAF from NB Fairs over the five-year period did contain summaries from some individual fair associations specific to the events of their annual fair. However, they included no relevant financial statements, operating, or governance information from any of the agricultural fair associations operating in the Province during that period.

**4.64** Exhibit 4.5 shows the submission history of these reports from individual fairs, as contained within the NB Fairs report submission.

Exhibit 4.5- Event Report Submissions by Agricultural Fair Association (2010 through 2014)

Event Report Submissions by Agricultural Fair Association (2010 through 2014)													
Year	Albert County	Fredericton	Kent County	Kings County	Miramichi	Napan	Port Elgin	Queens County	Saint John	St.- Isidore	Stanley	Westmorland County	Woodstock
2014	N	Y	Y	N	N	N	N	Y	Y	N	Y	Y	N
2013	N	Y	N	N	N	Y	N	Y	Y	Y	Y	Y	Y
2012	Y	N	N	N	N	Y	N	Y	N	N	Y	Y	Y
2011	Y	N	N	Y	N	N	N	Y	N	N	Y	Y	Y
2010	Y	Y	N	Y	N	N	N	Y	Y	Y	Y	Y	Y
<b>Reports Filed</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>5</b>	<b>3</b>	<b>2</b>	<b>5</b>	<b>5</b>	<b>4</b>
Y - report submitted through NB Fairs N – no report submitted through NB Fairs Source – Table created by AGNB using information provided by Agriculture, Aquaculture and Fisheries (unaudited).													

**4.65** The DAAF files indicated only three agricultural fair associations (Queens County, Stanley, and Westmorland) filed a report each year to DAAF through NB Fairs. We found no reports from Miramichi or Port Elgin in DAAF files over the five-year span. DAAF would need such information in order to fulfill even a limited oversight role.

***DAAF has no documented reporting framework for Agricultural Fair Associations***

**4.66** We also found no evidence DAAF has communicated any reporting requirement or provided any guideline to these organizations ensuring a minimum level of information is submitted on a regular basis.

**4.67** DAAF confirmed that it has no records in its files communicating its oversight responsibility to the individual fairs and exhibitions operating in the Province.

**4.68** In order to fulfill its mandate under section 2 of the *Agricultural Associations Act*, DAAF needs to ensure the associations it is required to “supervise and control” are aware of the nature of this relationship and understand what is required of them to be compliant with legislation.

***DAAF does not monitor agricultural fair association compliance with the Agricultural Associations Act***

**4.69** Our review of DAAF files over the five-year period found no evidence DAAF undertakes any monitoring to ensure compliance with the *Agricultural Associations Act* and associated regulations.

***DAAF takes no action to address non-compliance***

**4.70** Additionally, while aware the existing agricultural fair associations are not compliant with the *Agricultural Associations Act*, DAAF has taken no action to address the non-compliance issues. Officials have indicated the *Agricultural Associations Act* and regulation are not relevant to the current relationship between the Province and the agricultural fair associations.

**4.71** A lack of action by DAAF to address non-compliance allows all parties to continue as they wish, with no regard for legislative requirements and no plan to further the legislated purpose for the existence of these organizations.

***Recommendation***

**4.72** **We recommend the Department of Agriculture Aquaculture and Fisheries define, communicate, and monitor minimum reporting requirements for all agricultural associations and societies it is required to oversee under the *Agricultural Associations Act*.**

***DAAF provides grants to Agricultural Fair Associations***

**4.73** Files we reviewed did contain the annual request for grant funding from NB Fairs. This funding ranged from \$80,000 to \$85,000 over the five years we reviewed. Each year approximately \$15,000 of the total grant is used to offset NB Fairs administrative and travel expenses. The remainder is distributed to the 13 agricultural fair associations.

**4.74** We found copies of the approval letter from the Minister to NB Fairs in each of the annual files at DAAF.

**4.75** However, we found various weaknesses in the grant application process through NB Fairs. We have communicated these weaknesses to DAAF. For the purposes of this report we note two items of particular concern in the grant funding process.

***DAAF has no agreement with the New Brunswick Association of Fairs and Exhibitions to administer the grant to agricultural fair associations on its behalf***

**4.76** There is no current policy or agreement of any sort defining the purpose of the DAAF relationship with NB Fairs and regulating the grant award or distribution process carried out by NB Fairs. As previously noted, there is no standing in the *Agricultural Associations Act* for this entity so we would have expected DAAF, as a minimum, to have a legal agreement governing this funding relationship. This would help ensure adequate

controls are in place to protect public interest as well as interests of the parties involved.

*DAAF has no documented process to determine eligibility of potential new fairs. They do not document decisions on potential new fair membership*

**4.77** In addition, the NB Fairs Board of Directors Annual Meeting minutes revealed that over the five-year period we reviewed, at least two requests from other potential exhibitions to become members of NB Fairs were made to the NB Fairs Board. We could find no record of a recommendation from the NB Fairs Board to DAAF relating to these requests. We also found no procedural documentation prepared by NB Fairs or DAAF on how a decision of this nature should be made.

**4.78** We note that if a new member is added to the Board of NB Fairs, the grant distribution would likely include the new member, thereby decreasing the share of the grant available to each of the other members. This could represent a conflict of interest for current board members.

**4.79** DAAF officials assured us they were made aware of the requests and the applicants were not eligible to be recognized as fairs and therefore the requests were not approved. DAAF could provide no documentation supporting these decisions.

*An inherent conflict of interest exists for the New Brunswick Association of Agricultural Fairs and Exhibitions*

**4.80** We believe NB Fairs has an inherent conflict of interest since the entire board of directors is comprised of the currently recognized agricultural societies or fair associations. Although the primary activity NB Fairs undertakes on behalf of DAAF is to distribute the grant funding to the individual associations, we could determine no reason for DAAF to rely on NB Fairs to complete this annual process. We believe DAAF is responsible for the grant funding and should ensure adequate controls exist to protect public funding.

*Recommendation*

**4.81** We recommend the Department of Agriculture, Aquaculture and Fisheries distribute funding directly to agricultural fair associations without the assistance of a third-party entity. Accordingly, we recommend DAAF develop and implement a grant allocation process with applicable controls to ensure proper use of public funds.

**4.82** By not actively supervising and controlling agricultural societies and fair associations, DAAF cannot provide confirmation of their continued operation as an agricultural fair. This is important to the associations as well as other government departments who may determine eligibility for various government programs, funding, and

tax exemptions based upon the operation of these entities as an agricultural fair.

**Conclusion**

**4.83** We concluded DAAF does not oversee or monitor the agricultural fair associations as mandated under the *Agricultural Associations Act* or regulation.

**Service New Brunswick - Property tax exemptions**

**4.84** Property tax exemptions and assessment reductions are regulated under the *Assessment Act* administered by the Property Assessment Services Branch in Service New Brunswick (SNB).

**4.85** Subsection 4(1) of the *Assessment Act* states that “*all real property in New Brunswick is liable to assessment and taxation...*”. It then highlights properties exempted from taxation including, among others, real property:

- owned by a church (subject to specific eligibility requirements);
- owned and occupied by literary and historical societies or institutions and associations formed and operated for the advancement of science and art within the province; and
- of cemetery companies not organized, incorporated or operated for profit.

***Agricultural fair associations are exempt from property tax***

**4.86** Paragraph 4(1)(f) of the *Assessment Act* specifically exempts agricultural societies and fair associations from paying property tax, stating:

*“real property occupied by an agricultural society or an agricultural fair association that is used solely for exhibition purposes”*

***Tax class 50 properties are exempt from property tax***

**4.87** SNB classifies property for assessment and taxation purposes. Tax class 50 “*applies to that portion of real property where the assessed owner has been exempted from all tax rates under section 4 of the Assessment Act. It also applies to property that has qualified for a 100% reduction of assessment under section 7 of the Assessment Act.*”

**4.88** Because all section 4, tax class 50 exemptions are treated similarly by SNB, we believe our findings relating to agricultural fair associations are equally applicable to other organizations eligible for these exemptions.

**4.89** We estimated the total 2015 assessment value of tax class 50 properties (excluding Crown land under the Department of Natural Resources) at \$1.46 billion using

data provided by SNB.

Exhibit 4.6 – 2015 Tax Class 50 Exemptions - Estimated Foregone Revenue

2015 Tax Class 50 Exemptions - Estimated Foregone Revenue		
Taxation Authority	Tax Class 50 Properties	Agricultural Associations & Societies
Municipal, LSD, & Rural Communities	\$ 25,065,440	\$ 244,513
Provincial	26,517,846	221,319
Provincial assessment cost levy	283,515	2,478
<b>Total</b>	<b>\$ 51,866,801</b>	<b>\$ 468,310</b>
<p><u>Tax class 50 properties</u> include both section 4 and section 7 properties identified as eligible under the <i>Assessment Act</i> (we have excluded Crown lands administered by the Department of Natural Resources).</p> <p><u>Agricultural Associations &amp; Societies</u> include both agricultural fair associations and agricultural societies who have been exempted under the <i>Assessment Act</i>.</p> <p>Source: Calculation completed by the AGNB using data and information provided by Service New Brunswick (unaudited).</p>		

***\$51.9 million in foregone revenue from tax class 50 exemptions in 2015***

**4.90** As highlighted in Exhibit 4.6, the estimated forgone revenue of all tax class 50 exemptions to all taxation authorities in 2015 was \$51.9 million.

**4.91** After reviewing the legislation and given the \$51.9 million estimated value of 2015 foregone tax revenue (provincial and municipal), we expected SNB to be following clearly documented policies and processes to:

- initially evaluate the eligibility of applicants seeking section 4 exemption from property tax; and
- monitor ongoing eligibility of exempted organizations.

**4.92** We expected, as a minimum, that SNB would evaluate whether agricultural societies and fair associations met the criteria under 4(1)(f) as noted above. This should include specifically verifying the properties were “*occupied*” by the associations in question and met the sole use criteria specified in legislation.

**4.93** SNB officials indicated while they have not documented a formal process, they may complete an informal evaluation when an initial request is made for an

exemption under section 4. SNB does not, however, require a written application from the requestor or document the approval process and maintain records at the Property Assessment Branch for the initial evaluation of eligibility.

**4.94** SNB officials stated they rely on two primary methods of evaluating eligibility of agricultural fair associations:

1. SNB would complete regular monitoring for eligibility as part of the SNB property assessment process. SNB officials indicated they have an internal standard requiring regular inspection for property assessment purposes at intervals not exceeding 10-years and field records are maintained at the SNB regional offices for these inspections.
2. In addition, SNB would consider DAAF information to determine and evaluate the status of an agricultural fair association.

*Estimated foregone revenue from agricultural fair association property tax exemptions totaled \$468,000 in 2015*

**4.95** Exhibit 4.7 summarizes information from SNB records and regional files provided. According to SNB information there are 10 agricultural societies or fair associations listed in section 4, tax class 50 exempt properties. We estimated the 2015 assessment value of property attributed to these agricultural societies and fair associations at \$12.8 million, resulting in foregone property tax revenue to all taxation authorities of approximately \$468,000.

Exhibit 4.7 – 2015 Agricultural Society &amp; Fair Association Property Tax Information

2015 Agricultural Society & Fair Association Property Tax Information						
SNB Assessed Owner or Lessee	SNB Assessed Property Value	Estimated Forgone Property Tax Revenue			Date of Last SNB Assessment	Comments
		Provincial	Municipal, LSD & Rural	Total		
Albert Agricultural Society #133	\$ 476,600	\$ 6,180	\$ 6,461	\$ 12,641	2012-09-12	
Centre agricole Péninsule Acadienne à St Isidore Inc	34,900	453	440	892	2011-01-14	
Exhibition Association of the City and County of Saint John	4,365,300	96,272	116,881	213,153	2006-05-26	Due for reassessment in 2016
Exposition regionale du Madawaska (Lessee)	154,200	2,000	2,521	4,521	2009-08-06	Not operating as a fair since at least 2011 - remains SNB exempt
Fredericton Exhibition Co Ltd	1,056,400	13,698	15,013	28,711	2005-07-29	Overdue for 10-year reassessment
Fredericton Exhibition Ltd (Lessee)	2,922,700	37,899	41,534	79,433	2005-07-29	Overdue for 10-year reassessment
Kent County Agricultural Fair Association	1,465,700	19,006	6,631	25,637	2010-07-30	
Miramichi Agricultural Exhibition Association Ltd	1,841,900	40,621	47,795	88,416	2005-10-12	Overdue for 10-year reassessment
Queens County Fair Inc	173,400	3,668	3,320	6,988	1996-08-13	Overdue for 10-year reassessment
Stanley Agricultural Society	69,300	1,268	1,222	2,491	2011-09-21	
Westmorland County Agricultural Fair Association	210,700	2,732	2,696	5,428	2010-09-15	
<b>Totals</b>	<b>\$ 12,771,100</b>	<b>\$ 223,797</b>	<b>\$ 244,513</b>	<b>\$ 468,310</b>		
<b>Notes</b>						
LSD refers to local service district						
Rural refers to rural community						
Source: Created by the Office of the Auditor General of New Brunswick with information and data provided by Service New Brunswick						



***Miramichi Agricultural Exhibition Association sold property valued at \$1.5 million in 2012***

**4.96** We noted the property assessment related to Miramichi Agricultural Exhibition Association does not reflect a 2012 sale of part of this property to the Federal government for \$1.5 million. At the time of our review SNB indicated they had not completed a re-assessment of the property remaining with the association so the value shown in the table may be overstated.

**4.97** We reviewed all regional files SNB provided relating to the agricultural societies and fair associations with a tax class 50 exemption. This information included field card files meant to document inspections and property assessment as well as other assorted documentation.

**4.98** SNB officials indicated SNB field staff would complete field inspection cards detailing required information during the assessment process. This information would be entered into the SNB systems and also be used to evaluate and monitor eligibility for property tax exemptions.

***SNB regional files were inconsistent and provided inadequate support for monitoring of eligibility***

**4.99** Examples we found of inadequate supporting information and poor documentation included:

- field cards not consistently completed. In the Miramichi Agricultural Exhibition Association file, while 18 field inspection cards were included, none were completed, and
- inconsistent, non-current documentation. The Saint John Exhibition file referenced only a 1992 appeal but contained no field inspection card related to the exempt property while the Westmorland County Fair file had only one 1988 field inspection card completed in the file. According to the SNB system though, inspections had been completed on Westmorland County Fair property after 1988.

**4.100** Our analysis found no standardized, documented process had been followed to evaluate the “sole purpose” criterion noted above. Additionally, regular monitoring for ongoing compliance with eligibility requirements was poorly documented.

**4.101** Due to incomplete, inconsistent and missing field card information, we could not confirm from these files that assessments were actually completed and eligibility was verified by SNB.

**4.102** Our review also found instances where inspections had

not met the internal SNB 10-year interval standard. The Queens County Agricultural Fair Association file indicated this organization had not been inspected in over 19 years. Both the Fredericton Exhibition and the Miramichi Agricultural Exhibition Association files suggested the most recent inspection dates had surpassed the SNB 10-year time limit in 2015. We also noted property owned by the Exhibition Association of the City and County of Saint John has not been reassessed since 2006, meaning it is due for reassessment in 2016.

**4.103** At a minimum we believe SNB should review these properties per the 10-year timeline to ensure assessed value is accurate and current. During the assessment SNB should also review eligibility requirements for any property tax exemptions benefiting the fair association and verify the organizational status has not changed.

*Recommendation*

**4.104** We recommend, at a minimum, Service New Brunswick follow its internal standard and re-assess any agricultural fair association exceeding the 10-year assessment cycle, including Fredericton, Saint John, Miramichi and Queens County associations. We recommend SNB evaluate the eligibility of these organizations for exemption from property tax.

**4.105** We also noted the Exposition régionale du Madawaska remains listed in the exempted category although according to DAAF officials, it has not operated a fair since at least 2011 and no longer receives a DAAF grant as an agricultural fair association. We found nothing in the SNB regional file on this organization noting any issue with eligibility for the section 4 exemption. SNB officials we spoke with had no knowledge of this situation.

**4.106** We asked SNB for any requests they have made to DAAF in an effort to confirm the status of the fair associations for eligibility purposes. It could provide nothing of this nature.

*SNB does not assess or monitor agricultural fair association eligibility for tax class 50 exemptions*

**4.107** SNB provided no documentation clearly supporting either the initial evaluation of eligibility or the decision to approve exemptions granted to the agricultural fairs. Further, SNB could provide little documentation to support how it monitors the ongoing eligibility of these organizations to substantiate their continuing exemption from property tax.

**4.108** Without standardized, documented procedures for evaluating, monitoring, and reporting on compliance with

eligibility requirements for these organizations, SNB cannot adequately control exemption authorizations and ensure that only those organizations entitled to an exemption under section 4 of the *Assessment Act* are receiving them.

**Recommendation**

**4.109 We recommend Service New Brunswick develop, document, and implement a standardized process and procedures to evaluate the eligibility of requests for property tax exemptions (tax class 50) and undertake regular monitoring to ensure organizations with exemptions have sustained their eligible status.**

**Conclusion**

**4.110** After completing our review of tax class 50 exemptions, as administered by SNB under section 4 of the *Assessment Act*, we concluded SNB does not adequately monitor the eligibility of agricultural fair association exemptions.

**Department of Public Safety - Charitable Gaming**

**4.111** The ability to raise funds by conducting gaming activities can provide considerable financial benefit to eligible organizations. We wanted to understand if The Department of Public Safety (DPS) assessed and monitored compliance with agricultural fair association status and/or not-for-profit status when determining agricultural fair association eligibility to conduct these events.

**4.112** Although lotteries and games of chance in Canada are generally prohibited, section 207 of the *Criminal Code* does allow provincial governments to license specific types of gaming / lottery activities.

**4.113** *Criminal Code* section 207 also allows fairs and exhibitions to undertake permitted gaming activities, provided the provincial government has:

- “designated that fair or exhibition as a fair or exhibition where a lottery scheme may be conducted and managed, and;
- issued a licence for the conduct and management of a lottery scheme to that board or operator.”

**4.114** In New Brunswick, lottery licensing is regulated under the *Gaming Control Act*. The Gaming Control Branch in DPS is responsible for “regulation, control, and licensing of charitable gaming in the Province.”

**4.115** According to Government of New Brunswick online information, to qualify for licensing by DPS under the

Charitable Gaming program, an “*organization must be a charitable organization and the proceeds of the lottery scheme must benefit a charitable object or purpose*”

***DPS considers agricultural fair associations eligible to conduct gaming events in New Brunswick under the Charitable Gaming program***

***Organizations granted licenses under the Charitable Gaming program cannot operate for personal profit***

***Eligibility of agricultural fair associations for Charitable Gaming licensing purposes is based solely on their status as agricultural fairs and not-for-profit entities***

**4.116** A government document, *Charitable Lottery Licence - Terms and Conditions* for lottery licensing in the Province identifies two separate groups eligible for charitable gaming:

- Religious or Charitable
- Fairs and Exhibitions

**4.117** It also defines a charitable or religious organization as “*an organization whose purpose or object is for:*”

- *the relief of poverty;*
- *education;*
- *advance of religion; or,*
- *any purpose beneficial to the community”*

It further states that a “*not-for-profit organization can be considered eligible when the use of proceeds is considered charitable*”.

**4.118** Representatives of DPS confirmed that an organization must be non-profit to be licensed under the Charitable Gaming program. In other words, an organization cannot obtain a charitable gaming license from DPS if it operates for personal profit.

**4.119** DPS provided us with documentation outlining general eligibility requirements and procedural rules for gaming events. However, DPS representatives confirmed there was no specific process followed or criteria developed and documented to evaluate agricultural fair associations respecting their status as an agricultural fair or as a not-for-profit organization.

**4.120** Charitable gaming files maintained by DPS from 2010 through 2014 highlighted the activities of six agricultural fair associations over this period. Exhibit 4.8 provides estimated net proceeds (or losses) reported to DPS by the organizations.

Exhibit 4.8 – Agricultural Fair Association Net Proceeds from Charitable Gaming (2010 through 2014)

<b>Agricultural Fair Association Net Proceeds from Charitable Gaming (2010 through 2014)</b>					
<b>Agricultural Fair Association</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Napan	\$ -	\$ -	\$ 1,025	\$ 2,435	\$ -
Queens County	897	1,930	1,854	(405)	2,792
Kent County	-	949	2,167	3,667	1,996
Miramichi	103,931	145,721	182,765	191,881	181,895
Saint John	206,120	198,467	175,050	249,439	175,347
Fredericton	-	-	-	30,766	87,752
<b>Total</b>	<b>\$310,948</b>	<b>\$347,067</b>	<b>\$362,861</b>	<b>\$477,783</b>	<b>\$449,782</b>

Source – Created by AGNB with data and information from the Department of Public Safety as reported by the agricultural fair associations (unaudited).

**4.121** The information in Exhibit 4.8 suggests that the Saint John and Miramichi organizations undertake significantly more gaming activities than the other four entities. Saint John proceeds came solely from bingo events while DPS records indicate Miramichi undertook bingo combined with break-open ticket events.

**4.122** DPS uses the following sources of information in determining eligibility for a charitable lottery license and ongoing compliance with the *Gaming Control Act*:

- application documentation from agricultural fair associations;
- information from the SNB Corporate Registry;
- information from the Canada Revenue Agency; and
- event reports from agricultural fair associations.

**Application documentation from agricultural fair associations**

**4.123** DPS indicated that in practice they would assess the eligibility of an entity when it first applied for a license under the program. To do this they would review the information provided on the application for licensing and might request other information from the entity to ensure they were a not-for-profit organization.

**4.124** In the case of an unincorporated agricultural fair association they would generally acquire documentation directly from the association in support of eligibility. Documentation could vary considerably depending on the

size and nature of the organization.

***Application and license approval information is maintained by DPS***

**4.125** From the incorporated associations, they could request documentation such as Letters Patent, organizational charter documents, and by-laws.

***Three of the six agricultural fair association files contained documentation supporting initial eligibility of the associations***

**4.126** We noted applications are typically completed per DPS requirements and when they are not, DPS representatives indicate they do not issue a charitable gaming license until they are satisfied requirements have been met.

***DPS provided no support for either Kent County or Miramichi Exhibition Association eligibility for licensing under the Charitable Gaming program***

**4.127** We found supporting documents related to the organizational structure (Letters Patent, charter, by-laws, board membership, etc.) or financial position in three of the six agricultural fair association files provided, mostly associated with their first application for a charitable gaming license. DPS provided similar information related to a fourth association from a prior period.

**4.128** We found no similar organizational information in either the Kent County or Miramichi files. In the case of the Miramichi Agricultural Exhibition Association file, there was a single note supporting the association's eligibility for a charitable gaming license, stating "*although this org. is registered as a corporation, they operate as a non-profit agricultural group, therefore, qualify for licensing*". However, there was nothing further substantiating this conclusion of eligibility located in the file.

***Service New Brunswick Corporate Registry information***

**4.129** When we raised this with DPS officials they indicated they also review the SNB Corporate Registry annual returns to ensure an entity is a not-for-profit organization and thereby eligible for a license.

**4.130** SNB requires incorporated entities to file an annual return with organizational information and a current list of the board of directors. We found evidence of what appeared to be limited SNB information in only one of the six agricultural fair association files we reviewed. There was no SNB information in the Miramichi file to support the eligibility conclusion.

**4.131** In addition, SNB representatives indicated they do no verification of the information provided annually by corporate entities to ensure accuracy. They simply verify that the forms have been completed. For this reason, we cannot consider Corporate Registry information as an adequate source to verify compliance with eligibility

**Information from the  
Canada Revenue  
Agency**

requirements.

**4.132** DPS also indicated it relies on the Canada Revenue Agency (CRA) to determine if an applicant is a charitable organization and might review the CRA website listing of charitable organizations to confirm this status.

**4.133** We found no evidence in any agricultural fair association file that DPS contacted the CRA, reviewed CRA information, or used CRA not-for-profit definitions in evaluating eligibility for these entities.

**Event Reports from  
Agricultural Fair  
Associations**

**4.134** DPS requires organizations to submit financial information on gross proceeds, costs, and calculated net proceeds of the licensed event(s). DPS requires this information to evaluate compliance with specific rules related to the use of funds from the event(s) and completes a tracking report on this information that is updated for each licence period.

*DPS relies on self-  
reported financial  
information to gage  
compliance with program  
requirements*

**4.135** We found the calculation and tracking of this information was completed for each file we reviewed but it is based entirely on financial information submitted by the licensee, with no third-party assurance. DPS is reliant on this self-reported financial information from the licensee to gage compliance with these requirements.

**4.136** DPS indicated it does have a Memorandum of Understanding with DOF to undertake audits of licensees. However, these audits are conducted when DPS believes there is a specific issue and not as a normal process to validate the financial records of the licensee or to determine ongoing compliance with eligibility requirements.

*DPS does not regularly  
review or monitor  
agricultural fair  
association financial  
records or eligibility  
status for Charitable  
Gaming activities*

**4.137** DPS personnel told us they do not undertake sampling audits or other periodic monitoring to substantiate either the financial information provided by the agricultural fair associations or their ongoing eligibility.

**4.138** We expected to find evidence in all files to support the eligibility of these associations as agricultural fairs and not-for-profit entities. We also expected at a minimum to find DPS reports or other documentation supporting periodic monitoring of these requirements by DPS, particularly for the incorporated associations.

**4.139** We believe DPS does request information from various sources to support initial eligibility requirements as evidenced in four of the six files we reviewed.

However, we found no documentation or evidence detailing how this information is used to determine compliance with eligibility requirements or the results of the review, other than the issuance of licences to conduct charitable gaming events.

**4.140** DPS does not document how it uses information to measure and verify an applicant's status as an agricultural fair association and a not-for-profit entity. For this reason DPS could not demonstrate how the information it collects serves to verify eligibility requirements.

**4.141** DPS representatives confirmed that "*once an organization is deemed eligible for licensing, licensing officers do not go back to verify eligibility each year*". This means monitoring of continuing eligibility is not a standardized DPS practice.

**4.142** We believe it is important to ensure applicants for Charitable Gaming licenses are initially eligible under the criteria of the program and this eligibility is reviewed on a periodic basis to verify continuing compliance with program requirements.

**Recommendation**

**4.143 We recommend the Department of Public Safety develop a standardized process and implement associated procedures for evaluating initial and ongoing eligibility of agricultural fair associations for licensing under the Charitable Gaming program.**

**Conclusion**

**4.144** Although DPS requested documentation from some agricultural fair associations when they initially applied for a charitable gaming license, we concluded this was not done in all cases. Further, we could not determine how that information was used to assess eligibility under the Charitable Gaming program.

**4.145** Finally, we could find no evidence of any ongoing monitoring of compliance with eligibility requirements specifically related to agricultural fair associations.

**Department of Finance - Income tax exemption**

**4.146** In our initial review of agricultural fair associations, we identified a benefit in the form of a possible income tax exemption available to these organizations. We wanted to determine if the Province ensures compliance with the eligibility requirements to claim this exemption.

**4.147** Income tax in New Brunswick is regulated under the *New Brunswick Income Tax Act*. With respect to exemptions however, section 10(1) of the Act states:



***Agricultural Fair Associations may be exempt from income tax under two paragraphs in the Income Tax Act***

***DOF relies on the Federal interpretation respecting income tax exemptions for agricultural fair associations and not-for-profit entities***

*“No tax is payable under this Act by a person for a period when*

*(a) no tax is payable under Part I of the Federal Act on a person’s taxable income because of section 149 of the Federal Act”*

**4.148** Section 149 of the Federal *Income Tax Act* prescribes the rules for exemptions from income tax. There are two sections we believe may apply to agricultural fair associations.

**4.149** Paragraph 149(e) of the Federal *Income Tax Act* provides an exemption to certain organizations, stating:

*“an agricultural organization, a board of trade or a chamber of commerce, no part of the income of which was payable to, or was otherwise available for the personal benefit of, any proprietor, member or shareholder thereof”*

**4.150** In its *“Income Tax Guide to the Non-Profit Organization (NPO) Information Return”*, the CRA defined agricultural organizations for the purposes of this paragraph as *“an entity organized and operated for one or more of the following purposes:*

- *the advancement or furtherance of agriculture;*
- *the betterment of the conditions of those engaged in agricultural pursuits;*
- *the improvement of the grade or quality of their pursuits; or*
- *the development of a higher degree of efficiency in their respective occupations.”*

**4.151** We believe these definitions could include the agricultural fair associations recognized in New Brunswick and may result in their eligibility for this exemption from income tax if verified against applicable CRA criteria.

**4.152** We asked DOF officials if DOF had ever reviewed the agricultural or non-profit status of the agricultural fair associations for income tax purposes. According to DOF, under the terms of the Canada/New Brunswick Tax Collection Agreement (agreement), the CRA is responsible for the monitoring function. They indicated to us that DOF relied solely on Federal interpretations respecting income tax exemptions, including not-for-profit

status. DOF officials told us they had never undertaken audits of these organizations for income tax purposes as this is a CRA responsibility under the agreement.

**4.153** We believe it is important for the Province to work with the CRA to ensure organizations benefiting from income tax exemptions are evaluated for eligibility, as the exemption represents forgone revenue to the Province.

***Recommendation***

**4.154** We recommend the Department of Finance request Canada Revenue Agency undertake audits of Agricultural Fair Associations currently exempted from provincial income tax to verify the eligibility status of these organizations.

***Conclusion***

**4.155** Based on our review, we found there is no monitoring of compliance with agricultural fair association status or not-for-profit status for income tax purposes at the provincial level. Under the terms of the agreement, the Province relies solely on Federal regulations and the CRA to ensure compliance with not-for-profit and agricultural status. This reliance on Federal oversight may result in the provision of provincial income tax exemptions to agricultural fair associations they are not eligible to receive.

## Appendix I – Criteria

We developed four criteria to evaluate provincial oversight of agricultural fair associations.

1. The Department of Agriculture, Aquaculture and Fisheries should monitor compliance with the *Agricultural Associations Act* and Regulations.
2. Service New Brunswick should monitor eligibility of Agricultural Associations for exemptions under the *Assessment Act*.
3. Government should monitor compliance with Not-for-Profit and / or Agricultural Association status for purposes of lottery registration.
4. Government should monitor compliance with Not-for-Profit and/or Agricultural Association status for income tax purposes.

Each criterion was reviewed with the government department responsible in that area.