

REPORT OF THE

Auditor General of New Brunswick

Volume I

2018

AUDITOR GENERAL
OF NEW BRUNSWICK



VÉRIFICATEUR GÉNÉRAL
DU NOUVEAU-BRUNSWICK



Speaker of the Legislative Assembly
Province of New Brunswick

Sir

As required under Sections 12(1) and 15(1) of the *Auditor General Act* I am submitting Volume I of my 2018 Report to the Legislative Assembly.

Respectfully submitted,

Kim MacPherson, FCPA, CA, ICD.D
Auditor General

Fredericton, N. B.
June 2018

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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 2018 Report we include the following chapters:

- WorkSafeNB Governance;
- Addiction and Mental Health Services in Provincial Adult Correctional Institutions;
- Auditor General Concerns – New Brunswick's Fiscal Decline continues; and
- Auditor General's Office – AG Independence Eroded Due to Lack of Resources.

WorkSafeNB Governance

1.3 Chapter 2 of this volume presents our findings regarding oversight and governance practices of WorkSafeNB. We identified several weaknesses in government oversight of WorkSafeNB. We also found gaps in the corporate governance practices adopted by WorkSafeNB's Board of Directors.

1.4 In 2016 WorkSafeNB total assets were valued at \$1.6 billion. Its operating expenses of \$429 million against revenue of \$318 million resulted in a \$111 million deficit. New Brunswick employers fund these operations to support prevention of injuries and ensure their workers are provided adequate compensation and benefits when accidents happen.

Good Governance of a Crown Agency Must Balance Accountability to Government with the Agency's Need for Operational Independence

Board Operations Impeded by Government Delay in Appointment of Board Chair and Vice-Chair

Appointment of a Full-Time Chair Resulted in a Perceived Conflict of Interest and Impacted WorkSafeNB Independence

1.5 WorkSafeNB has a social and financial impact on New Brunswick employers and workers. We chose to examine oversight and governance practices of WorkSafeNB's operations as they affect benefits for workers, costs to employers and the sustainability of the workers' compensation system. I will separately table a second report examining the WorkSafeNB claims management framework later this year.

1.6 In our audit of WorkSafeNB, we found both government and board oversight practices have weakened WorkSafeNB's independence and impeded board effectiveness. In its efforts to enforce better accountability on WorkSafeNB, government has taken actions that compromised WorkSafeNB's independence and hindered its operations. These actions included:

- delays in the appointment of the chair and vice-chair; and
- the appointment of a non-independent full-time chair who had a perceived conflict of interest.

1.7 We found that government delays in appointing a chair or vice-chair in late 2014 resulted in the board being unable to operate effectively. With the board requiring the presence of a chair or a vice-chair to establish a quorum for decision making purposes, these delays in appointments temporarily hampered the board's decision making ability over a period of nearly four months.

1.8 Government is expected to act within anticipated timelines when making decisions that significantly affect the operations of a Crown corporation. Government is responsible for creating an environment in which both the corporation and responsible ministry cooperate, within their mandated roles, to achieve the desired outcomes for all New Brunswickers.

1.9 Crown boards are meant to operate at arms-length from government to, among other things, minimize political interference and allow the board to function as needed to achieve the results and outcomes necessary to meet their legislated mandates.

1.10 We found the appointment of a senior civil servant from a governing department as a full-time board chair not only represents a perceived conflict of interest, but also infringes on this arms-length relationship.

Directors of Crown corporations have a fiduciary duty to act in the best interest of the corporation. They must also be seen to represent the interest of the corporation.

- 1.11** In performing its oversight role, government is expected to facilitate board members' exercise of their fiduciary duty, by refraining from acts that put undue influence on the board's operation whether in fact or appearance. In order to strengthen its oversight over Crown corporations, government must clearly state its monitoring and reporting requirements in the annual mandate letters and then enforce them.

***Crown Corporation
Boards Must Adopt
Governance Best
Practices***

- 1.12** Although WorkSafeNB's board of directors has adopted some governance best practices, our report identified many opportunities for the board to enhance its effectiveness by further implementing more governance best practices. We believe an effective board is a determining factor in the success of New Brunswick's Crown corporations. I encourage all Crown corporation boards in our Province to continuously identify and implement governance best practices that are relevant in their circumstances.

***Addiction and
Mental Health
Services in Provincial
Adult Correctional
Institutions***

- 1.13** Chapter 3 reports our findings regarding addiction and mental health services in provincial adult correctional institutions. Addiction and mental health issues are found to be more prevalent in correctional institutions than in the general population. A concerted effort by all relevant entities is urgently required to design and implement an integrated service delivery approach to provide these vital services to inmates in provincial custody.

***Unacceptable Lack of
Addiction and Mental
Health Services in
Provincial Adult
Correctional
Institutions***

- 1.14** In our audit of Addiction and Mental Health Services in Provincial Adult Correctional Institutions, we found the Department of Health and the Department of Justice and Public Safety do not deliver addiction and mental health services to inmates in provincial adult correctional institutions to improve health outcomes and contribute to safer communities.
- 1.15** Services provided are very limited. They are reactionary and focused merely on stabilizing and easing the symptoms of some addiction and mental health issues. We believe this is important to all New Brunswickers as inmates are released back into the community without being adequately treated, in a state often worse than when they were admitted.

Inmates' Addiction and Mental Health Needs Have "Fallen Between the Cracks"

1.16 We found New Brunswick legislation and regulations are silent on which entity is ultimately responsible for providing addiction and mental health services, in provincial adult correctional institutions. Our interviews revealed confusion and misunderstanding among the entities involved, regarding their respective roles and responsibilities.

1.17 This is a prime example of a vulnerable segment of our society whose needs have fallen between the cracks of government services. Responsibility for providing addiction and mental health services in provincial adult correctional institutions must be clearly stated in legislation. Only then, proper accountability can be established for providing these services with the aim of successful integration of inmates into the community.

New Brunswick is Among the Least Effective in Providing Treatment to Inmates

1.18 A recent jurisdictional scan by the Department of Health revealed that New Brunswick is among the least effective jurisdictions in Canada in providing addiction and mental health services to Provincial inmates.

1.19 All six jurisdictions who responded to the survey indicated they provided addiction and mental health treatment services to their incarcerated residents. For example dedicated addiction and mental health staff provide treatment services inside correctional institutions in other jurisdictions. We found such services are not provided in New Brunswick.

Strong Leadership Required to Break the Silos and Promote Collaboration

1.20 I am deeply concerned that government entities continue to operate in silos on many issues that require collaboration and information sharing, like this one. Because of this, New Brunswick is missing significant opportunities to improve the mental well-being of adult inmates. A multi-departmental governance and accountability structure with strong leadership and clear expectations is required for any meaningful progress to be made in this regard.

AG Concerns – New Brunswick Fiscal Decline Continues

1.21 In Chapter 4 of this Volume, I present a number of important concerns regarding the Province's fiscal state.

Fiscal Problems Left for Future Generations

1.22 Over the past ten years New Brunswick Net Debt has increased almost \$7 billion. New Brunswickers have not seen an annual provincial surplus since 2008. Successive governments have consistently spent more funds than they have collected leaving complex fiscal problems for future generations to resolve. As I have said in my previous reports, the Province's fiscal situation is not sustainable.

New Brunswick has Reached a Critical Fiscal Point

1.23 Bond rating agencies have also noticed New Brunswick's declining fiscal situation and their comments are concerning. In my view we have reached a critical point in New Brunswick's fiscal evolution. Action is needed to address this problem given New Brunswick's economic and demographic challenges.

Legislative Approval for Expenses Obtained After Overspending

1.24 Another area of concern is a trend over successive governments to overspend before obtaining legislative approval. In five of the last ten years, governments have overspent their budget before obtaining approval. In some years government obtained legislative approval well over a year later.

Proper Process Needs to be Followed for Spending Public Funds

1.25 In my view this practice is not acceptable given the original intent and spirit of the *Financial Administration Act*. Proper process needs to be followed when spending public funds and government needs to obtain spending approval from the Legislative Assembly in advance. Chapter 4 contains recommendations to address this situation.

Government is not effectively managing all its long-term P3 contracts

1.26 We also report in Chapter 4 on our work in reviewing long-term P3 contracts. On a positive note, government has taken steps to save over \$17 million by refinancing certain contracts. However, Cabinet allowed the buyout option on the Leo Hayes High School in Fredericton to expire, as there was very little time to evaluate options and arrive at a decision for this significant item not on the government's multi-year capital infrastructure plan. We concluded government is not effectively managing all its long-term P3 contracts.

***Government Indicates
Intent to Release the
Province's Audited
Financial Statements in
Advance of Election***

1.27 Chapter 4 reports on government's intention to release the Province's audited financial statements to New Brunswickers in advance of the September 2018 election. Such information allows people to assess how the government has managed public money and resources. My Office, in conjunction with the Office of the Comptroller, will make every effort to make sure this happens.

***AG's Independence
Eroded Due to Lack
of Resources***

1.28 The role of the AG dates back to Confederation. In New Brunswick, through a series of legislative amendments to the *Financial Administration Act* and the *Auditor General Act*, the independence and authority of the Auditor General is well defined. However, as explained in Chapter 5 of this Volume, I am currently impeded from fulfilling the mandate of the Office. The chronic underfunding of my Office has reached a critical point given constant government expansions.

***Budget Funding is Not
Sufficient to Adequately
Perform the Office's
Legislated Mandate***

1.29 The problem lies in not having sufficient funding to adequately perform the Office's legislated mandate. In my view, my independence is eroded due to my budget constraints. I do not have complete discretion in the performance of the Office's work. Therefore, I am not able to properly hold government to account and I am very concerned the public may not be aware.

***Fundamental Aspect of
the Westminster System
is Being Circumvented***

1.30 If the government chooses to constrain departmental budgets and programs within the executive arm of government, that is their prerogative. However, there comes a point where doing so to a legislative office circumvents a fundamental aspect of the Westminster system of government.

***Funding Decisions for
my Office are
Effectively Made by the
Government we are
Watching Over***

1.31 New Brunswickers need to be aware that while there may be a public expectation that we are fulfilling the role, we are not achieving adequate audit coverage. Even though an all-party legislative committee approves my budget, government members hold the majority vote. Effectively the “watchdog” doing the “watching” is subject to funding decisions made by the government we are watching over.

***New Brunswickers
Should be Concerned as
no Other Office has
Authority of the AG***

1.32 New Brunswickers should be concerned because if my Office is not being funded to hold government to account, there is virtually no other entity (outside the justice system) with the same authority to compel government for evidence and explanations. New Brunswickers need to know the process that is supposed to protect their interests and hold government to account is failing them.

***Funding Process Needs
True Change***

1.33 True change is needed in this broken funding process and I would be remiss if I did not inform the public and the Legislature of how my Office’s mandate is effectively being curtailed at a time when I believe the public needs my Office the most.

Acknowledgements

1.34 I want to thank staff from my Office for their hard work and dedication. 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, FCPA, CA, ICD.D
Auditor General

Chapter 2

WorkSafeNB

Phase I - Governance

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WorkSafeNB

Phase I - Governance

Introduction

Why we are auditing WorkSafeNB

2.1 In February 2017, the Minister of Post-Secondary Education, Training and Labour (Department) requested the Auditor General of New Brunswick (AGNB) conduct a value for money audit in WorkSafeNB. This request was made under subsection 12(1) of the *Auditor General Act*. A copy of the section 12 request is included in Appendix I.

2.2 After reviewing WorkSafeNB operations and considering the concurrent work of others, including the Office of the Comptroller as well as a government appointed task force, the Auditor General decided to focus the audit work in two key areas:

1. Governance of WorkSafeNB and
2. WorkSafeNB claims management.

This chapter will report the results of the governance audit. The audit of WorkSafeNB claims management is scheduled to be tabled later in 2018.

2.3 WorkSafeNB is a provincial Crown corporation governed by a board of directors. According to its 2017-2019 Strategic Plan, it is “*charged with overseeing the implementation and application*” of four provincial Acts governing occupational health and safety and the provincial workers’ compensation system.

The Strategic Plan provides the corporation’s mission as:

“WorkSafeNB is a partner in building a safe and healthy work environment to the workers and employers of New Brunswick and efficiently provides quality client-centered services and fair administration of the legislation”.

Why we chose this topic

2.4 In 2016 WorkSafeNB total assets were \$1.6 billion. Operating expenses of \$429 million against revenue of \$318 million resulted in a \$111 million deficit in 2016. New Brunswick employers fund these operations to support prevention of injuries and ensure their workers are provided adequate compensation and benefits when accidents happen.

2.5 The WorkSafeNB board of directors have faced increasing and conflicting pressure from WorkSafeNB stakeholders. Government has questioned the direction taken by the corporation and made decisions that could further complicate an already complex and diverse organization.

2.6 WorkSafeNB has a social and financial impact on New Brunswick employers and workers. We chose to examine oversight and governance practices of WorkSafeNB's operations as they affect benefits for workers, costs to employers and the sustainability of the workers' compensation system.

Audit Objective

2.7 The objective of this audit was to determine if the WorkSafeNB governance framework is structured to enable the organization to meet its mandate, goals and objectives.

2.8 The criteria we used in completing our audit can be found in Appendix II.

Conclusion

2.9 We have concluded that both government and board oversight practices have weakened WorkSafeNB independence and impacted board effectiveness. The board appointment process controlled by government has impeded WorkSafeNB operations, hindered board governance and ultimately increased cost. While the WorkSafeNB board of directors has adopted some governance best practices, others are yet to be fully implemented.

Results in Brief

2.10 Results in brief are presented in Exhibit 2.1.

Recommendations

2.11 A summary of our recommendations can be found in Exhibit 2.2.

Exhibit 2.1 - Results in Brief

WorkSafeNB Phase I - Governance

Why Is This Important?

- WorkSafeNB has a direct social and financial impact on injured workers, the workforce and employers throughout New Brunswick.
- Strong governance is vital given WorkSafeNB's responsibility for over \$1.6 billion in total assets while providing nearly \$400 million in annual benefits to injured workers.

Overall Conclusions

- Government negatively impacted WorkSafeNB independence and impeded operations
- Lengthy board appointment process hindered board governance and ultimately increased cost
- WorkSafeNB executive compensation not meeting government expectations

What We Found

Government Diminished WorkSafeNB's Independence and Impacted Operations

- Government did not follow legislation when appointing board chair in 2015.
- 2015 board chair appointment resulted in a perceived conflict of interest
- Government delays left key positions vacant (Board chair & CEO)

Board Practices Require Improvement

- Some board practices are improving
- Board too involved in operations rather than strategic direction
- Committees not operating efficiently
- No performance expectations or annual review for CEO
- No succession plans

Compensation and Benefits not Aligned with Government Expectation

- CEO salary 40% higher than Provincial deputy ministers
- Higher executive vehicle allowance
- Vacation and health benefits more generous

WorkSafeNB Strategic Plans Need Improvement

- Strategic planning process is disciplined but strategic plans are inconsistent and incomplete
- Gaps exist between strategic plan and Department expectations

Exhibit 2.2 - Summary of Recommendations

Recommendation	Auditee response	Target date for implementation
Audit Objective – to determine whether if WorkSafeNB governance framework is structured to enable the organization to meet its mandate, goals and objectives.		
<p>2.61 We recommend the Department of Post-Secondary Education, Training and Labour:</p> <ul style="list-style-type: none"> • initiate a process to ensure appointments are completed in a timely manner; • comply with provincial legislation and government policy when recommending the appointment of board members under the Act; and • clearly document the appointment process and provide clear rationale for appointment recommendations made to government. 	<p><i>The Department fully agrees with this recommendation.</i></p> <p><i>The Department currently adheres to government's Agencies, Boards and Commissions (ABC) process which complies with provincial legislation and government policy to ensure timeliness when initiating Board appointments. As part of future processes, the Department will endeavor to further document and outline the rationale for the appointment process and recommendations.</i></p>	<p><i>Immediate and ongoing</i></p>
<p>2.66 We recommend the Department of Post-Secondary Education, Training and Labour ensure future recommendations to government for WorkSafeNB appointments do not create a conflict of interest or result in reduced independence of the corporation.</p>	<p><i>The Department fully agrees with this recommendation.</i></p>	<p><i>Immediate and ongoing</i></p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
2.83 We recommend the Executive Council Office and the Department of Post-Secondary Education, Training and Labour co-ordinate their efforts to provide timely decisions for future WorkSafeNB appointments.	<i>The Department agrees with this recommendation and will work closely with Executive Council Office to ensure improved coordination under the current ABC process.</i>	<i>Immediate and ongoing</i>
2.90 We recommend the Department of Post-Secondary Education, Training and Labour clearly state its requirements and expectations in the mandate letter.	<p><i>The requirement to issue annual mandate letters originated with the enactment of the Accountability and Continuous Improvement Act in 2014.</i></p> <p><i>Although the Department has made progress with respect to this responsibility, the Department agrees with this recommendation and will aim to more clearly outline requirements and expectations in its mandate letters.</i></p> <p><i>The Department will include strategic and operational direction along with performance expectations as required under the Accountability and Continuous Improvement Act and in collaboration with WorkSafeNB.</i></p>	<i>January 2019</i>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.98 We recommend the Department of Post-Secondary Education, Training and Labour comply with the requirements of the Accountability and Continuous Improvement Act by:</p> <ul style="list-style-type: none"> • issuing mandate letters annually; and • enforcing WorkSafeNB submission of annual plan per requirements of the Act. 	<p><i>The Department fully agrees with this recommendation. The Department will work with WorkSafeNB to ensure yearly submissions of an annual plan as outlined in the Accountability and Continuous Improvement Act.</i></p>	<p><i>January 2019</i></p>
<p>2.103 We recommend the Department of Post-Secondary Education, Training and Labour monitor and publicly report on the progress of WorkSafeNB in meeting the requirements and expectations provided in Department mandate letters.</p>	<p><i>The Department fully agrees with this recommendation and will work with WorkSafeNB to develop additional mechanisms to enhance the monitoring of progress related to expectations outlined in the mandate letters.</i></p> <p><i>Consideration will be given to incorporating information in both the Department's and WorkSafeNB's annual reports.</i></p>	<p><i>Immediate and ongoing</i></p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.124 We recommend the WorkSafeNB board of directors review its committee structures and practices to:</p> <ul style="list-style-type: none"> • select participating board members to chair committees; • ensure per diem payments are made only to committee members for committee meetings; • ensure membership is aligned with board needs and competencies are sufficient to address committee requirements; • develop and implement competencies for committee membership; and • develop and implement a plan to evaluate committee performance on an annual basis. 	<p><i>WorkSafeNB agrees with the Auditor General's recommendation. Currently, the number of committees and their Terms of References are under review by the WorkSafeNB Board of Directors. Upon completion of the review, by January 2019, the Board of Directors will:</i></p> <ol style="list-style-type: none"> <i>1. Select a board member to chair each committee;</i> <i>2. Ensure that per diem payments for committee meetings are made only to committee members;</i> <i>3. Ensure that membership is aligned to meet board needs and competencies are sufficient to address committee requirements. Should any committee not have the required level of competency, an external expert will be engaged to act as an independent advisor to the committee;</i> <i>4. Develop and implement the preferred competencies matrix for committee membership; and</i> <i>5. Develop and implement a plan to evaluate committee performance on an annual basis.</i> 	<p><i>January 2019</i></p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.131 We recommend the WorkSafeNB board of directors and the Department of Post-Secondary Education, Training and Labour jointly develop, document and implement a succession strategy to ensure:</p> <ul style="list-style-type: none"> timely recruitment of all board positions, including the chair and vice-chair and, effective staggering of board member terms. 	<p>Response from WorkSafe NB: WorkSafeNB agrees with the Auditor General's recommendation but recognizes that much of the appointment process lies outside of both WorkSafeNB's and the Department of Post-Secondary Education, Training and Labour's scope.</p> <p>The Workplace Health, Safety and Compensation Commission and the Workers' Compensation Appeals Tribunal Act (WHSCC & WCAT Act) currently provides for limited opportunity to stagger board terms as all board member positions, with the exception of the Chairperson and the President and CEO, must be for five years. WorkSafeNB will work with the Department on this matter to consider potential changes to the existing legislation to provide for greater flexibility of board member terms.</p> <p>In the meantime, WorkSafeNB will consult with the Department and current board members with the intent to extend certain board terms, as provided for under the Act, so that board terms currently expiring in July 2019, are staggered and that the principles of a disciplined succession strategy are achieved.</p> <p>Response from the Department: The Department will continue to work with WorkSafeNB to monitor current board member terms and plan accordingly to ensure the effective functioning of the Board.</p> <p>Although there is no specific focus of staggered terms in the legislation, amendments to the WHSCC and WCAT Act came into force in 2016 which deal with board terms. In particular, the first term for all board members, including the Chair and Vice-Chair, was extended from four to five years. Amendments were also made to allow for two additional three year terms rather than a single four year term. Finally, the legislation was amended to allow board members to continue to serve beyond their term expiry date until a replacement member has been appointed to ensure that Board business continues during member transitions.</p>	<p>July 2019</p> <p>Ongoing</p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
2.132 We recommend the WorkSafeNB board of directors develop, document and implement a succession strategy for the President and Chief Executive Officer position.	<i>WorkSafeNB agrees with the Auditor General's recommendation. By June 2019, WorkSafeNB will develop, document and implement a succession strategy for the President and CEO.</i>	<i>June 2019</i>
2.137 We recommend the WorkSafeNB board of directors fully develop, regularly update and utilize a board competency matrix for, at a minimum: <ul style="list-style-type: none"> • evaluating board member development requirements; • identifying development opportunities for board members; and • recruiting new board members to address competency and skillset needs. 	<i>WorkSafeNB agrees with the Auditor General's recommendation and acknowledges the value of updating and utilizing a board competency matrix in the development and recruitment of board members. By December 2018, WorkSafeNB will use a competency matrix:</i> <ol style="list-style-type: none"> <i>1. In the evaluation of board member development requirements; and</i> <i>2. In the identification of development opportunities for board members.</i> <p><i>Additionally, when working with the Department in the recruitment of new board members, WorkSafeNB will rely upon the results of the competency matrix in recommending candidates that will, ideally, address the preferred skill set needs while also taking into consideration the stakeholder composition of the Board of Directors.</i></p>	<i>December 2018</i>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
2.141 We recommend the WorkSafeNB board of directors develop performance expectations for board positions and undertake annual performance evaluations for at least the board chair.	<i>WorkSafeNB agrees with the Auditor General's recommendation. WorkSafeNB will consult with board performance subject matter experts to establish performance expectations for board positions, and will undertake annual performance evaluations in line with best practice for all board members, including the Chairperson. Recommendations will be implemented following this consultation and will be effective June 2019.</i>	<i>June 2019</i>
2.147 We recommend WorkSafeNB provide board information packages well in advance of board meetings and focus information presented to meet the board's decision-making requirements using documentation such as executive summaries.	<i>WorkSafeNB agrees with the Auditor General's recommendation. Board information package criterion are currently being reviewed and revised to ensure that all recommendations and relevant information, as required to make a fully informed decision, are concise and timely. Though most of the anticipated changes will be in place throughout 2018, continuous improvement efforts in this regard will be enduring.</i>	<i>December 2018</i>
2.150 We recommend the WorkSafeNB board of directors develop, document and implement an orientation program for new board members and a development plan for all board members.	<i>WorkSafeNB agrees with the Auditor General's recommendation. The strength of a governing body in the oversight of an organization is partially dependent on an effective orientation program and development plan for board members.</i> <i>In advance of the July 2019 board member term expirations, WorkSafeNB will enhance its existing orientation program and development plan for board members to meet or exceed corporate governance best practice.</i>	<i>July 2019</i>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.160 We recommend WorkSafeNB, as part of its annual planning and reporting processes:</p> <ul style="list-style-type: none"> • fully develop long-term strategic goals and objectives and define measurable targets for all key performance indicators; • include the strategic requirements of the government mandate letter as part of its strategic planning process; • develop an operational action plan designed to implement the long-term strategic direction of the corporation; and • submit an annual plan to the Department focused on goals and objectives it intends to complete over the period of the plan, as required under the <i>Accountability and Continuous Improvement Act</i>. 	<p><i>WorkSafeNB agrees with the Auditor General's recommendations. By January 2019, WorkSafeNB will enhance our strategic planning discipline to:</i></p> <ol style="list-style-type: none"> <i>1. Fully develop long-term strategic goals and objectives for WorkSafeNB – including strategic requirements established in the government mandate letter;</i> <i>2. Define measurable targets for all key performance indicators; and</i> <i>3. Develop operational plans designed to implement the long-term strategic direction of WorkSafeNB.</i> <p><i>WorkSafeNB's strategic plans, operational plans and annual plans will demonstrate alignment with the direction provided by the Department under the Accountability and Continuous Improvement Act.</i></p>	<p><i>January 2019</i></p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.167 We recommend the WorkSafeNB board of directors:</p> <ul style="list-style-type: none"> • establish a CEO performance agreement that ties CEO performance to the corporation's strategy and results; and • conduct an annual CEO performance evaluation against the documented expectations. 	<p><i>WorkSafeNB agrees with the Auditor General's recommendation. The current annual evaluation process for the President and CEO will be enhanced as follows:</i></p> <ol style="list-style-type: none"> 1. <i>Effective December 2018, the Board of Directors will establish an enhanced President and CEO performance agreement for the subsequent year that is tied to the WorkSafeNB strategy and desired results; and</i> 2. <i>By February of each year, the Board of Directors will continue to conduct an annual performance evaluation against the documented expectations, enhanced as outlined in the Auditor General's recommendations.</i> 	<p><i>February 2019</i></p>
<p>2.186 We recommend WorkSafeNB:</p> <ul style="list-style-type: none"> • include comparable New Brunswick public sector entities when undertaking compensation market comparisons in order to meet mandate letter requirements; and • maintain clearly documented rationale for decisions not in alignment with the Department's mandate letters. 	<p><i>WorkSafeNB agrees with the Auditor General's recommendation. A planned five-year review of the compensation market comparison, as conducted by a third party, will take place throughout 2019 for implementation in 2020. In advance of this analysis, WorkSafeNB will consult with the Department on the mandate letter requirements related to market comparisons to ensure alignment.</i></p> <p><i>Should any recommendation stemming from the compensation analysis vary from parameters established within the Department's mandate letter, a fulsome discussion will occur with the Department and be documented accordingly.</i></p>	<p><i>December 2020</i></p>

Exhibit 2.2 - Summary of Recommendations (continued)

Recommendation	Auditee response	Target date for implementation
<p>2.207 We recommend the WorkSafeNB board of directors ensure current travel expense policy is enforced and revise it to:</p> <ul style="list-style-type: none"> • clearly define acceptable board and employee travel expense practices; and • align with public service Part I policy where applicable to board and employee travel. 	<p><i>WorkSafeNB agrees with the Auditor General's recommendation and will ensure the current travel expense policy is enforced and revised to clearly define acceptable travel expense practice.</i></p> <p><i>Given that the adoption of the Government of New Brunswick's Part 1 Travel Expense Policy may apply to the Board of Directors, staff and injured workers, any change management process would be extensive. WorkSafeNB will consult stakeholders about the potential impact of such proposed changes. Consultation is anticipated to be complete by March 2019.</i></p>	<p><i>March 2019</i></p>
<p>2.210 We recommend WorkSafeNB provide full public disclosure of board and executive compensation and expense information.</p>	<p><i>WorkSafeNB agrees with the Auditor General's recommendation. Full disclosure of the executive compensation has been implemented, effective March 2018, and full disclosure of the Board of Directors compensation has been implemented, effective April 2018. In the future, WorkSafeNB executive and Board of Directors compensation will be disclosed on an annual basis.</i></p>	<p><i>Complete as of April 2018</i></p>

Background

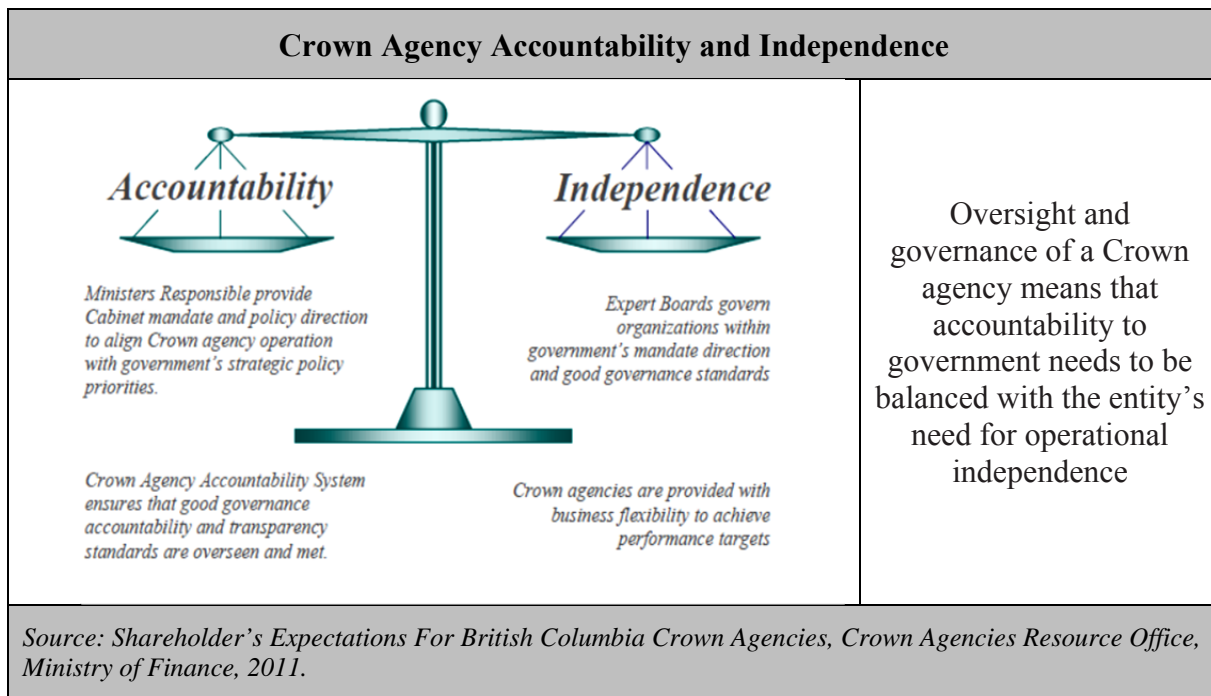
WorkSafeNB

2.12 WorkSafeNB¹ is a Part IV Crown corporation included in the *Public Service Labour Relations Act*. Governing authority for the WorkSafeNB board of directors (the board) is established under the *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* (Act).

Governance of Crown Agencies

2.13 “Governance refers to the structures and processes for overseeing the direction and management of a corporation so that it carries out its mandate and objectives effectively.”² Exhibit 2.3 depicts the required balance in Crown agency accountability and independence.

Exhibit 2.3 - Crown Agency Accountability and Independence



¹ “WorkSafeNB” is a registered trademark of the Workplace Health, Safety and Compensation Commission.

² Office of the Auditor General of New Brunswick. *Atlantic Provinces Joint Audit of Atlantic Lottery Corporation*. Volume II. October 2016.

2.14 Crown corporations, such as WorkSafeNB, must be accountable and transparent to ensure its policies and actions meet government expectations. This must be balanced against the corporation's requirement to be independent in discharging its mandated responsibilities.³

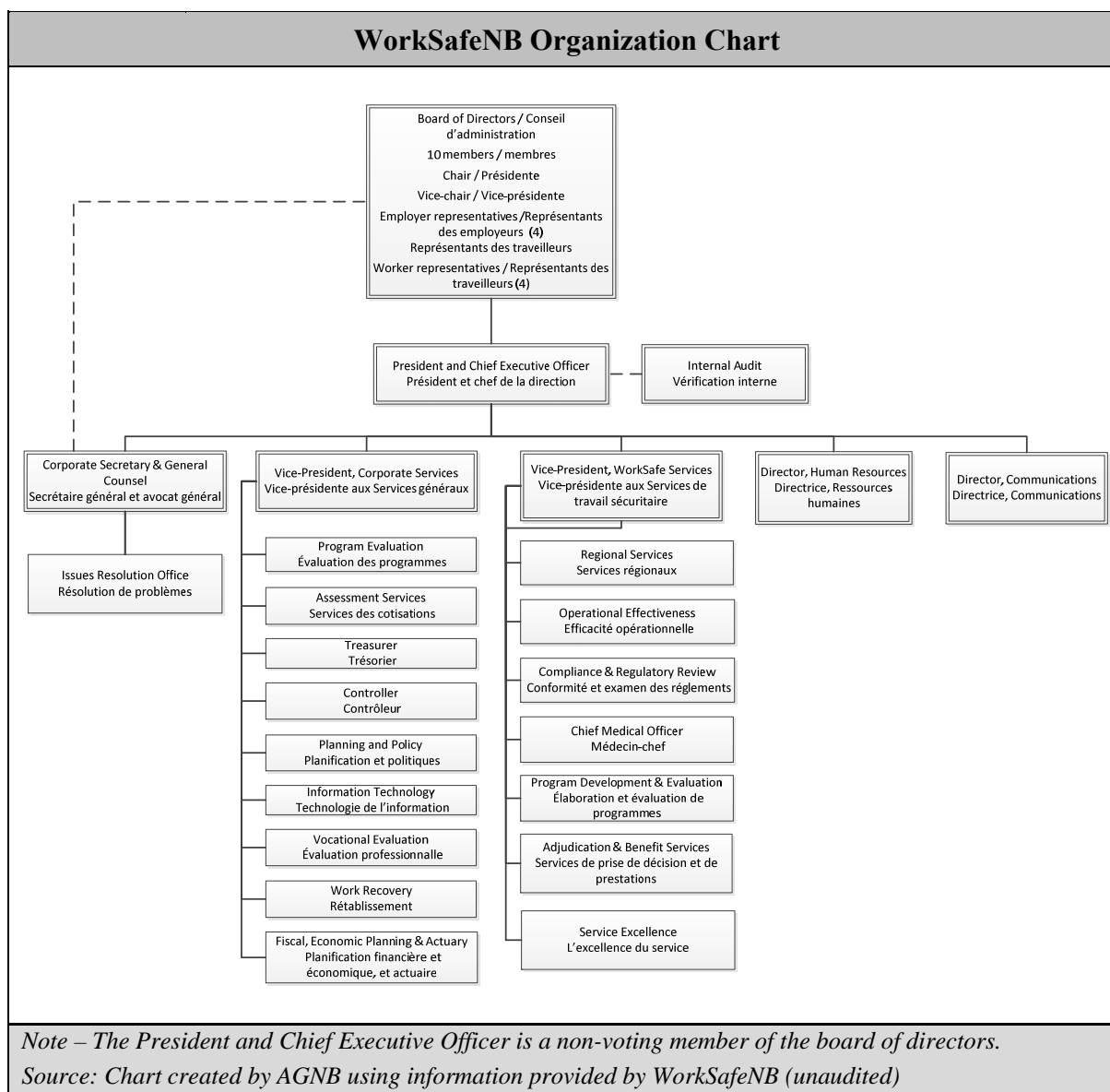
2.15 The organization chart presented in Exhibit 2.4 provides an overview of WorkSafeNB structure. WorkSafeNB employs over 450 personnel and provides regional services from four main locations:

- Saint John
- Dieppe
- Bathurst
- Grand Falls

Appendix III provides a map of regional service locations.

³ Office of the Auditor General of New Brunswick. *Atlantic Provinces Joint Audit of Atlantic Lottery Corporation*. Volume II. October 2016.

Exhibit 2.4 - WorkSafeNB Organization Chart



**WorkSafeNB Board
Represents Key System
Stakeholders**

2.16 The Act establishes board composition and is meant to provide equal representation to WorkSafeNB’s primary stakeholders; workers and employers. As noted in Exhibit 2.4, the board is comprised of 10 members not including the President and Chief Executive Officer:

- four members representing workers;
- four members representing employers;
- a chair; and
- vice-chair.

Both the chair and vice-chair are required by legislation to be independent, meaning the individuals do not represent employers or workers.

The President and Chief Executive Officer is a non-voting member of the board of directors.

2.17 The Minister of the Department of Post-Secondary Education, Training and Labour (Department) is assigned responsibility for the administration of the Act *“except in respect of those powers and responsibilities that this Act confers or imposes on the Commission”*, such as:

- advancing *“the principle that every worker is entitled to a safe and healthy work environment”*;
- proposing *“legislation and practices to promote workers’ health, safety and compensation”*; and
- *“plan for the future of the workers’ compensation system”*.

**WorkSafeNB Required
to Submit Reports to the
Minister of Post-
Secondary Education,
Training and Labour**

2.18 Government proclaimed the *Accountability and Continuous Improvement Act* on August 15, 2014. It applies to all Crown entities and prescribes mandate and reporting requirements between the entity and the responsible minister. As such, it required the minister of the Department to provide a mandate letter to the WorkSafeNB board chair and required WorkSafeNB to provide regular performance reports to the Department.

WorkSafeNB is Responsible for the Workers' Compensation System in New Brunswick

2.19 WorkSafeNB is responsible for administering the workers' compensation system in New Brunswick. Workers compensation in Canada began in 1910 when Justice William Meredith advocated for a no-fault insurance scheme in which "*workers' relinquish their right to sue in exchange for compensation benefits*".⁴ For more information on the Meredith Report see Appendix IV.

2.20 WorkSafeNB provides compensation in various forms to a worker and dependents, as the case may be, when "*personal injury or death is caused to a worker by accident arising out of and in the course of his employment*".⁵ The benefits available to injured workers' and/or dependents in the Province are established in the *Worker's Compensation Act* and delivered through WorkSafeNB policies as approved by the WorkSafeNB board of directors.

Occupational Health and Safety

2.21 WorkSafeNB is also responsible for occupational health and safety programs and regulatory enforcement as required under the *Occupational Health and Safety Act*.

Accident Fund

2.22 The board maintains an accident fund defined in the Act as a "*fund providing for the payment of compensation, outlays and expenses under Part I of the Workers' Compensation Act and administrative costs under this Act and the Occupational Health and Safety Act*". The accident fund is meant to cover the liabilities and administrative costs of the organization in order for WorkSafeNB to meet its mandate.

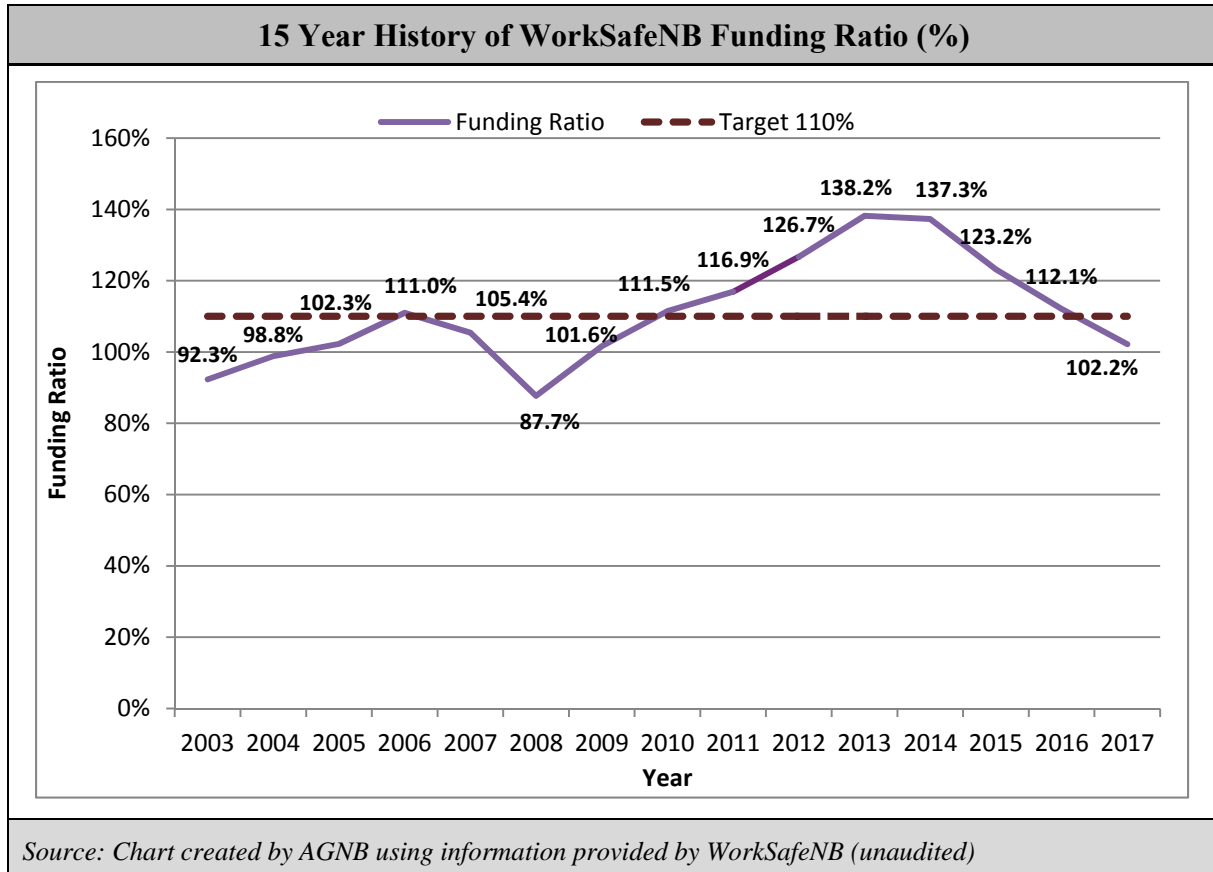
2.23 WorkSafeNB uses a funding ratio to track sustainability of the system. According to WorkSafeNB annual reports, this ratio of assets to liabilities is targeted at 110%.

⁴ Association of Workers' Compensation Boards of Canada (*website*). "*About Workers' Compensation*".

⁵ Province of New Brunswick. *Workers' Compensation Act*, Chapter W-13., S7(1).

2.24 Exhibit 2.5 presents a 15 year history of the actual funding ratio against the 110% target.

Exhibit 2.5 - 15 Year History of WorkSafeNB Funding Ratio (%)



2.25 WorkSafeNB personnel indicated legislation requires the ratio presented in Exhibit 2.5 to be 100%. If the ratio drops below 100%, as it did in 2008, for instance, WorkSafeNB has five years to correct the situation.

WorkSafeNB is Funded by Employers

2.26 With specific exceptions permitted under the *Workers' Compensation Act*, all employers with 3 or more employees in New Brunswick are legislated to participate in workers' compensation and contribute to the accident fund. It is New Brunswick employers who fund WorkSafeNB.

2.27 Employers are divided into two broad categories:

1. Assessed employers are charged a premium estimated to cover current and future costs for accidents occurring in a given year as well as WorkSafeNB operating costs. These premiums contribute to the accident fund.

2. Self-insured employers pay the actual cost of compensation benefits provided by WorkSafeNB to their workers as well as a proportionate share of WorkSafeNB operation and administration costs. The Province of New Brunswick is the main self-insured employer.

Employer Assessment Rates

2.28 WorkSafeNB calculates employer assessment rates once per year based on estimates of current and future compensation benefit costs. According to WorkSafeNB policy, *“WorkSafeNB will ensure that premiums, raised by assessment rates, will be sufficient to cover the estimated total revenue requirement for the assessment year.”*

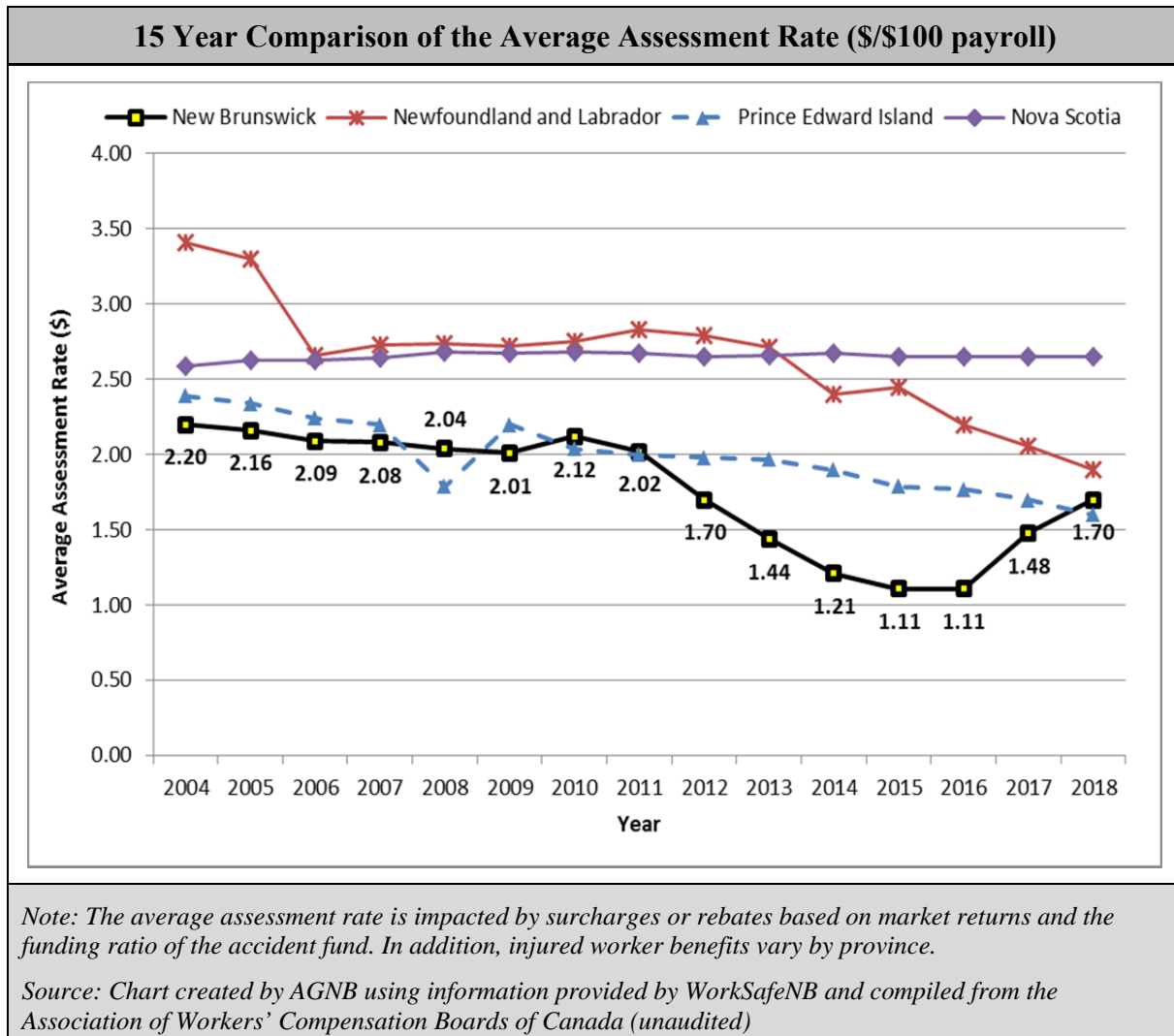
Provisional Average Assessment Rate

2.29 While employers across different industries and classifications have different assessment rates applied by WorkSafeNB, the provisional average assessment rate is often cited in statistics and used to show trends in the rates New Brunswick employers pay.

2.30 WorkSafeNB policy defines the provisional average assessment rate as *“the overall required revenue for the assessment year per \$100 of assessable payroll”*. In other words, it is the total revenue WorkSafeNB will need to collect from employers to cover WorkSafeNB costs for every \$100 employers pay to employees. For 2017, this rate was calculated at \$1.48 per \$100 of payroll.

2.31 Exhibit 2.6 presents a 15-year comparative history of the provisional average assessment rate for Workers' Compensation Boards in the Atlantic Provinces.

Exhibit 2.6 - 15 Year Comparison of the Average Assessment Rate (\$/\$100 payroll)



WorkSafeNB Average Assessment Rate lower than other Atlantic Provinces

2.32 Exhibit 2.6 highlights changes to the provisional average assessment rate since 2004. The WorkSafeNB rate has typically been lower than the other regional organizations. While the WorkSafeNB rate began increasing in 2017, it has not reached the peak that occurred in 2004 and remains lower than two of its three regional counterparts.

Injured Workers are Key Stakeholders

2.33 Injured workers and their families are key stakeholders of WorkSafeNB. Workers injured in workplace accidents and their families are vulnerable and can suffer significant hardship if adequate compensation benefits are not provided. These benefits take many forms from income replacement to health care services and annuities.

Claims Quantity, Cost and Duration are Key Determinants in Overall Compensation System Cost

2.34 Increases and decreases in the overall cost of providing compensation benefits to injured workers drives assessment rate changes. Key determinants such as the number of injured worker claims, the cost per claim, and the duration of claims will impact this rate.

2.35 Balancing the needs of injured workers against the cost of providing the benefits and services required is a primary concern for the WorkSafeNB board of directors as the main governing body overseeing the province's workers' compensation system.

Period of Change for WorkSafeNB

2.36 During the period of our audit, 2015 through 2017, WorkSafeNB faced considerable change. Amendments to the Act resulted in the creation of an independent Workers Compensations Appeals Tribunal. The powers provided to the new appeals tribunal represented a significant challenge to the policy setting practices of the WorkSafeNB board of directors.

Audit Scope

2.37 The scope of this chapter focuses on governance and oversight practices by the WorkSafeNB board of directors and the Department of Post-Secondary Education, Training and Labour.

2.38 Our audit approach included documentation review, analysis, surveys and interviews. Observations, findings and conclusions were formed based on:

- examination of legislation, policy and reports relevant to our work;
- review of documentation provided by various sources including WorkSafeNB and the Department;
- responses to our survey of board members;
- interviews with current and former board members, senior executives and personnel at WorkSafeNB and the Department; and,
- analysis and sample testing as applicable to our work.

2.39 Our audit did not include specific work related to the *Firefighters' Compensation Act*, the *Silicosis Compensation Act* or the *Blind Workers' Compensation Act*.

2.40 Our audit was performed in accordance with Canadian Standard for Assurance Engagements (CSAE) 3001 established by the Chartered Professional Accountants of Canada, and accordingly, we carried out such tests and other procedures as we considered necessary in the circumstances. Other information about the audit can be found in Appendix V.

Key Observations and Findings

2.41 Exhibit 2.7 presents the key observations and findings from our work.

Exhibit 2.7 - Key Observations and Findings

Paragraph	Key Observations and Findings
2.42	<u>Government Oversight of WorkSafeNB – Non-compliant Appointment and Delays Impact WorkSafeNB Operations.</u>
2.46	Board operations impeded by government delay in appointment of board chair and vice-chair.
2.52	Board chair appointment was not compliant with legislation.
2.54	Full time board chair employed by Department but paid by WorkSafeNB.
2.58	Government did not follow policy in appointing board chair.
2.62	Board chair appointment resulted in a perceived conflict of interest and impacted WorkSafeNB's independence from government.
2.70	Government declined WorkSafeNB board's recommendation to reappoint its CEO to a second term.
2.72	CEO appointment delay cost WorkSafeNB approximately \$150,000, including paid leave of former CEO.
2.73	WorkSafeNB spent over \$96,000 in the first recruitment attempt for CEO position.
2.76	WorkSafeNB spent over \$33,000 in additional expenses for a second CEO recruitment effort and has waited over 3 months for government approval of recommendation.
2.78	WorkSafeNB without a permanent CEO for nearly 17 months, impacting WorkSafeNB operations.
2.79	Inappropriate board involvement in operations.

2.87	Department issued mandate letters to WorkSafeNB that included ambiguous requirements and could increase cost to employers.
2.91	Department not compliant with <i>Accountability and Continuous Improvement Act</i> .
2.95	Minister approved annual plan from WorkSafeNB that did not comply with <i>Accountability and Continuous Improvement Act</i> .
2.100	Department is not monitoring WorkSafeNB performance in meeting mandate letter requirements and expectations.
2.104	<u>Board governance practices require improvement.</u>
2.110	The board has developed governance policy and is currently implementing additional best practices.
2.111	Board governance practices require improvement.
2.115	Weaknesses exist in WorkSafeNB board committee practices.
2.116	No competencies have been developed for committee membership.
2.118	Committees are not operating in an efficient manner.
2.122	Board does not evaluate the performance of WorkSafeNB committees.
2.125	WorkSafeNB board has not developed a board or CEO succession plan.
2.127	Board appointments not always staggered to ensure board continuity.
2.134	Implementation of board competency matrix is incomplete.
2.138	The WorkSafeNB board has weak self-evaluation practices.
2.142	Board records to support decision rationale require improvement.
2.145	Quantity and timeliness of board information packages require improvement.
2.148	The board has no documented orientation or development plans.
2.151	<u>Strategic Planning and Risk Management - processes are good but strategic plans could be improved.</u>
2.153	Strategic plans are inconsistent and incomplete.
2.155	Gaps exist between WorkSafeNB strategic plans and Department's mandate letter expectations.
2.157	Board monitoring of WorkSafeNB performance targets requires improvement.
2.161	CEO performance evaluation is inadequate, with no documented performance expectations linked to WorkSafeNB strategies.
2.168	<u>WorkSafeNB Compensation and Expenses do not align with the provincial public service.</u>
2.172	No significant issues with board per diem payments in 2015 and 2016.

2.173	Board chair costs have risen significantly since 2014.
2.176	WorkSafeNB did not include New Brunswick public service organizations in a 2014 compensation benchmarking exercise.
2.181	WorkSafeNB management benefited from new compensation model.
2.185	WorkSafeNB compensation model does not meet Department's mandate letter expectations.
2.187	WorkSafeNB executive compensation exceeds Part I of the New Brunswick public service.
2.193	WorkSafeNB benefits are more generous than Part I of the New Brunswick public service.
2.201	WorkSafeNB senior executive meal claims not always compliant with policy.
2.208	Disclosure of WorkSafeNB salaries and expenses.

**Government
Oversight of
WorkSafeNB**

2.42 The *Workplace Health, Safety and Compensation Commission and Workers' Compensation Appeals Tribunal Act* (the Act) legislates direct oversight of WorkSafeNB operations to the board of directors (board) and administrative oversight of the Act to the Minister of the Department of Post-Secondary Education, Training and Labour (Department).

**Government Appoints
Board Members**

2.43 While significant amendments have been made to the Act since January 2014, including its name, terms of board members and the creation of an external appeals tribunal, Section 8(1) remains the same, stating:

"The affairs of the Commission shall be administered by a board of directors consisting of the following persons who shall be appointed by the Lieutenant-Governor in Council"

2.44 This means all members of the board are appointed by government. We reviewed key government appointments between 2015 and 2017 to WorkSafeNB, expecting to find the appointments complied with the Act and applicable policies and considered recommendations from the board.

**Government
Appointment of Board
Chair Hinders
WorkSafeNB
Governance,
Independence and
Operations**

- 2.45** Instead, we found a number of significant issues regarding government's handling of the board chair appointment process in 2015, including:
- the length of time to appoint the chair impeded board governance;
 - the appointment of a full-time chair was not compliant with the Act;
 - the appointment did not follow government policy; and
 - the appointment impacted WorkSafeNB independence from government and represented a perceived conflict of interest.

In addition, we believe the appointment process used by government does not respect the fourth Meredith principle found in Appendix IV regarding independent administration, meaning “*that the organizations who administer workers’ compensation insurance are separate from government.*”

**Board Operations
Impeded by Government
Delay in Appointment of
Board Chair and Vice-
Chair**

- 2.46** Our analysis of board appointments, review of board minutes, and interviews with WorkSafeNB board members and senior managers found that government delays in appointing a chair or vice chair for almost four months beginning in late 2014 resulted in the board being unable to operate effectively.

- 2.47** Under the *Workplace Health, Safety and Compensation Commission Act* section 9(10) in effect until April 2015, the board required the presence of either the chair or vice-chair to establish a quorum for decision-making purposes.

- 2.48** The board vice-chair position was vacated in late September 2014 and the chair position became vacant in November of 2014. WorkSafeNB senior management indicated the Department, who makes the formal request to government through Memoranda to the Executive Council (MEC), knew the term expiry date well in advance.

**Government
Appointment took Four
Months, Impeding Board
Operations**

- 2.49** The Department MECs for both the board chair and vice-chair appointments in 2015 were dated March 17th and 18th respectively, nearly four months after the prior chair's term expired.

2.50 This delay in making critical position appointments temporarily hampered the board's decision making ability over a period of nearly four months. We believe it is important for government to make timely decisions that do not impede board operations and performance.

2.51 We expected the board chair appointment to be permanent, comply with existing legislation and follow government's own appointment policy.

***Board Chair
Appointment not
Compliant with the Act***

2.52 Our analysis of government documentation found the 2015 chair appointment did not comply with the Act. While Section 8(2) of the Act states "...members of the board of directors shall serve as part-time members..." we found the 2015 appointment of a senior Department civil servant was actually full time.

Appointment of a Full-Time Board Chair

2.53 Documentation we reviewed indicated this appointment would be full-time. We reviewed the documentation provided to identify why a full-time board chair was needed. It indicated the appointment was meant to:

- represent the public interest;
- ensure workers' compensation founding principles are met;
- re-establish the balance between injured worker rights and employer's financial interest; and
- ensure accountability is maintained.

In our view, none of these requirements clearly justified the need for a full time chair.

***Full-time Chair
Compensation Borne by
WorkSafeNB***

2.54 Our work found the board chair spends four days a week at WorkSafeNB and is paid a full-time salary and associated benefits. For the first year of the appointment term this was paid by the Department, but as a result of a letter sent to WorkSafeNB by the Deputy Minister dated March 22, 2016, WorkSafeNB began reimbursing the Department for all costs associated with this position.

2.55 We asked WorkSafeNB management, the board chair and senior officials currently with the Department why a full time civil servant was appointed and WorkSafeNB was paying a full-time salary. We did not receive a complete, consistent response.

2.56 However, the March 2016 letter from the Deputy Minister stated:

“As a result of the requirement for the Department to eliminate one of the Assistant Deputy Minister positions of the Department, I am writing to seek the consideration of the WorkSafe Board to assist the Department to maintain the current assignment of....”

***Costs of Board Chair
Transferred to
WorkSafeNB***

2.57 The result of this letter was to transfer all costs associated with the eliminated position to New Brunswick employers. While costs have been transferred, we noted the chair remains a paid employee of the Province.

***Government did not
Follow Policy in
Appointing Chair***

2.58 The 2015 board chair vacancy was posted under the Agencies, Boards and Commissions (ABC) policy of government. However, government decided not to select from the applicant list and appointed the board chair directly. Documentation we reviewed did not provide specific rationale for this decision.

2.59 We believe government appointments should be timely, open and transparent. We further believe boards should be part of the process, in order to ensure competencies required by a board are included in the recruitment process. This is important to ensure strong, capable boards are overseeing Crown corporations.

2.60 Crown boards are meant to operate at arms-length from government to, among other things, minimize political interference and allow the board to function as needed to achieve the results and outcomes necessary to meet their legislated mandates.

Recommendation

2.61 We recommend the Department of Post-Secondary Education, Training and Labour:

- **initiate a process to ensure appointments are completed in a timely manner;**
- **comply with provincial legislation and government policy when recommending the appointment of board members under the Act; and**
- **clearly document the appointment process and provide clear rationale for appointment recommendations made to government.**

***Board Chair
Appointment Resulted in
a Perceived Conflict of
Interest***

2.62 We believe the appointment of a senior civil servant to the board chair position of a Crown corporation, while still employed by the Crown corporation's governing department, represents a perceived conflict of interest.⁶

***Board Chair not
Independent***

2.63 We further believe the initial appointment of a Department employee to the board chair position in 2015 represented a threat to WorkSafeNB's independence. It was possible the Department could influence WorkSafeNB operations through the board chair.

2.64 Documentation we reviewed supporting the 2015 board chair appointment highlighted a conflict of interest risk as well. The senior civil servant recommended by the Department had been actively involved in addressing injured worker concerns on behalf of government and providing advice to senior government officials.

2.65 Independence from government is important to a board making decisions and overseeing an organization funded by New Brunswick employers. Any perception of a conflict of interest undermines the credibility of the appointment and the position.

Recommendation

2.66 **We recommend the Department of Post-Secondary Education, Training and Labour ensure future recommendations to government for WorkSafeNB appointments do not create a conflict of interest or result in reduced independence of the corporation.**

2.67 All board members we interviewed expressed confidence and satisfaction with the current chair.⁷ They indicated the chair was instrumental in furthering important initiatives, such as increased stakeholder engagement. Our findings related to shortcomings in the appointment process are not intended to be a criticism of any individual board

⁶ "A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities." - OECD Recommendation of the Council on Guidelines for Managing Conflict of Interest in the Public Service. June 2003.

⁷ When we use "current chair" or "current board chair" in this chapter we are referring to the board chair appointed by government in 2015.

member.

***WorkSafeNB CEO Term
Expired in February
2017***

2.68 In an April 2016 meeting the board approved a motion recommending Cabinet reappoint the then CEO for a second five-year term beginning February 28, 2017.

***Board Recommended
Extension of CEO to
Cabinet***

2.69 In a letter dated May 3, 2016 referencing the authority of the board to appoint a CEO under section 10(2) of the Act, the board chair cited a unanimous resolution and requested approval from the Minister to reappoint the existing CEO to a second, five-year term effective February 28, 2017.

***Government Declined
Board Recommendation
to Reappoint CEO***

2.70 It appears government declined this request as a second letter was sent by the chair to the Minister dated July 20, 2016 questioning the government decision to decline the reappointment of the CEO to a second term, as recommended by the board. The letter cited a Memorandum of Understanding created under the *Accountability and Continuous Improvement Act* and signed by a prior Minister and the chair confirming the board's role in appointing the CEO. It further stated:

"...the most significant decision any board can make is the hiring of its CEO, and in this case, that decision was removed from the Board for reasons that remain unclear."

2.71 A final letter from the Minister to the chair over four months after the original request, dated September 13, 2016 provided some reasoning for the decision, stating *"...the importance of the mandate of WorkSafeNB, the direction at present is to have an open competition...which will ensure accountability and transparency in the appointment process..."*

***Appointment Delay Cost
WorkSafeNB
Approximately \$150,000,
Including Paid Leave of
Former CEO***

2.72 On October 28, 2016 the CEO appointed a WorkSafeNB Vice-President Acting CEO, effective October 31, 2016, *"...until such time as a permanent appointment to the position has been made"*. In agreement with the board, the CEO took administrative leave from November 1, 2016 until expiry of his contract on February 26, 2017. The estimated cost of this leave including legal fees and acting pay for a number of WorkSafeNB personnel to cover affected positions was approximately \$150,000.

WorkSafeNB Spends over \$96,000 in Consultant Fees for Initial CEO Recruitment Attempt

2.73 The board undertook a full recruitment effort using an external consultant at a contracted cost of \$75,000 with additional expenses totaling \$21,000 to find a new CEO beginning in November 2016. This initial recruitment process took approximately five months, resulting in a hiring recommendation from the board to the Department.

Board Recommendation for CEO Requires Government Approval

2.74 Subsection 10(2) of the Act states “*the appointment of the president and Chief Executive Officer of the Commission shall be made by the board of directors with the approval of the Lieutenant-Governor in Council*”. While the board has authority to appoint their own CEO they remain dependent on government approval of the appointment before they can actually hire the recommended candidate. Government remains in control of the process.

2.75 WorkSafeNB senior personnel indicated this request for approval was made in late March 2017. However, in early May 2017 the recommended candidate accepted another position and the board was forced to undertake a second recruitment.

WorkSafeNB Spends Over \$33,000 More in Second Recruitment Effort

2.76 The board undertook a second, five month recruitment at additional expenses totaling over \$33,000, ending in a recommendation to government in November 2017. The total consultant cost of the entire CEO recruitment process was \$129,000. Subsequent to our audit work we noted government approved the recommended candidate with an appointment dated February 14, 2018, over three months after the recommendation was made.

Weak WorkSafeNB Appointment Documentation

2.77 We asked WorkSafeNB for documentation related to these appointment recommendations such as letters to the Department requesting appointment approval and communications from government with reasons for declining candidates but they could provide nothing of this nature. According to WorkSafeNB, government did not provide specific reasons for declining other recommended candidates.

WorkSafeNB Without a Permanent CEO for 17 Months

2.78 Overall, WorkSafeNB operated without a permanent CEO from October 31, 2016 to March 25, 2018, a span of nearly 17 months. We believe this is primarily due to lengthy recruitment and appointment processes involving WorkSafeNB, the Department of Post-Secondary Education Training and Labour, the Executive Council Office and

Cabinet.

Inappropriate Board Involvement in Operations

2.79 In our interviews with board members, the chair and WorkSafeNB personnel, we were informed the board was more involved in the corporate operations since 2015. The board chair was often looking into specific operational initiatives to ensure implementation was progressing. This is the role of the CEO of the corporation, not the board.

2.80 However, we recognize the board was in a difficult situation during this period, having little success appointing a new CEO in a timely manner due to the failed initial recruitment and the delay in receiving approval from government for the current appointment.

Delays in CEO Appointment Impacted WorkSafeNB Operations

2.81 We believe these delays impacted WorkSafeNB operations. We were told by WorkSafeNB personnel that significant decisions, such as making changes to the organizational structure, were delayed until a permanent CEO was found.

2.82 We believe timely government appointments are critical to ensure both the board and senior managers are able to respond to challenges as they arise and operate the corporation in an efficient and effective manner.

Recommendation

2.83 **We recommend the Executive Council Office and the Department of Post-Secondary Education, Training and Labour co-ordinate their efforts to provide timely decisions for future WorkSafeNB appointments.**

WorkSafeNB Included under the Accountability and Continuous Improvement Act

2.84 The *Accountability and Continuous Improvement Act* (ACI Act) came into force August 15, 2014, resulting in increased accountability and reporting requirements for WorkSafeNB.

Department Required to Issue Annual Mandate Letters to WorkSafeNB

2.85 The ACI Act required the Department to issue a mandate letter to WorkSafeNB that included both:

- strategic and operational direction; and
- performance expectations of WorkSafeNB.

The ACI Act also requires the mandate letter to be approved by Executive Council before it is provided to a Crown body.

2.86 We reviewed the mandate letters issued by the Department. The direction provided in the September 2017 mandate letter included, among other things:

- “Consider the development of a “*whole person*” approach to claims management, including consideration of the mental health aspect associated with the injury / long-term disability.”
- “Continue to implement a performance excellence program to align with government’s direction on continuous improvement.”
- “Provide timely compensation benefits, medical aid, rehabilitation and safe return-to-work services to injured workers.”
- “Ensure all options are considered to minimize rate increases in 2018.”

Department Mandate Letter Included Ambiguous Expectations and could Increase Costs to Employers

2.87 We believe much of WorkSafeNB’s legislated mandate is represented in the mandate letter. However, we noted certain expectations related to significant matters are ambiguous, such as “*consideration of the whole person approach*”. Whole person care can be defined as “*The extent to which a provider elicits and considers the physical, emotional and social aspects of a patient’s health and considers the community context in the patient’s care.*”⁸ We believe this could exert pressure on the board to respond when they may have had no prior intention to implement the whole person approach.

2.88 Significant decisions of this nature, regardless of intent, impose costs on WorkSafeNB borne by New Brunswick employers. We believe these decisions need to be weighed carefully by the board and implemented in a practical, cost effective manner.

2.89 We believe mandate letters should provide strategic direction, when required, in a clear and concise manner. Expected actions should lead to results which can be

⁸ “Canadian Experts’ Views on the Importance of Attributes within Professional and Community-oriented Primary Healthcare Models.” Lévesque, J.-F., J. Haggerty, F. Burge, M.-D. Beaulieu, D. Gass, R. Pineault and D. Santor. 2011. Healthcare Policy. Vol 7 (Special Issue): 21-30.

evaluated and measured by the WorkSafeNB board and the Department.

Recommendation

2.90 We recommend the Department of Post-Secondary Education, Training and Labour clearly state its requirements and expectations in the mandate letter.

Department not Compliant with Accountability and Continuous Improvement Act

2.91 We expected the Department to comply with the ACI Act in issuing the mandate letters. Our review found the following:

- Department mandate letters were not issued annually as required by legislation; and
- the Department did not enforce WorkSafeNB reporting requirements under the Act.

2.92 Section 3(1) of the ACI Act requires the responsible minister to prepare annually a mandate letter. The first mandate letter issued by the Department, effective April 1, 2015 through March 31, 2016 was signed by the Minister and board chair in May of 2015, approximately 9 months after the ACI Act came into effect.

Department did not issue Annual Mandate Letters

2.93 The second mandate letter was signed by the Minister September 21, 2017, over 17 months after the end date of the first letter. The letter indicated it was effective between June 2017 and December 31, 2018, a span of 19 months. In our opinion, these letters did not meet the annual requirement of the ACI Act.

Annual Plans Required under the Accountability and Continuous Improvement Act

2.94 Section 3(5) of the ACI Act requires that “A mandate letter shall be provided to the Crown body by the responsible minister before the Crown body prepares its annual plan.”

Minister Approved an Annual Plan that did not Comply with the Accountability and Continuous Improvement Act

2.95 While the second mandate letter from the Department was effective in June 2017, the annual plan submitted by WorkSafeNB in response to this letter covered a period from January 2017 to December 2019. This plan would have been developed by WorkSafeNB well before receipt of the mandate letter. While it did not comply with the reporting requirements under the ACI Act, it was approved by the Minister in a September 26, 2017 letter to WorkSafeNB.

2.96 In our view, the practice of issuing mandate letters

under the ACI Act represents good practice by government. However, these letters need to be issued in a manner that aligns with the planning cycle of the Crown corporations.

2.97 We believe the Department needs to comply and enforce compliance with the ACI Act to increase effectiveness of accountability and performance reporting as intended by the Province's legislators.

Recommendation

2.98 We recommend the Department of Post-Secondary Education, Training and Labour comply with the requirements of the *Accountability and Continuous Improvement Act* by:

- **issuing mandate letters annually; and**
- **enforcing WorkSafeNB submission of annual plan per requirements of the Act.**

2.99 Overall, we expected the Department would monitor the corporation's progress in meeting the requirements and expectations of their mandate letter. We interviewed key Department personnel and asked what process was in place to ensure WorkSafeNB was progressing against the expectations in the mandate letter.

Department Not Monitoring WorkSafeNB Performance in Meeting Mandate Letter Requirements and Expectations

2.100 Department personnel we spoke to indicated the Department does not actively monitor or evaluate WorkSafeNB progress against the mandate letter requirements. We were told the Minister may meet with the board twice per year and discuss progress but the Department does not measure how well WorkSafeNB meets the expectations or provide documented feedback to the board.

2.101 We noted the board submitted an unsolicited progress report to the Department in December 2017, highlighting their progress against many of the expectations in the mandate letter, but had received no feedback on this document from the Department by the end of our audit.

2.102 We believe it is important for responsible departments to monitor and provide feedback to the Crown bodies on their performance. There is little purpose to creating mandate letters and other performance directives if no monitoring and reporting on performance is intended.

Recommendation

2.103 We recommend the Department of Post-Secondary Education, Training and Labour monitor and publicly report on the progress of WorkSafeNB in meeting the requirements and expectations provided in Department mandate letters.

WorkSafeNB Board Practices

2.104 We reviewed the structures and practices used by the WorkSafeNB board to oversee the operations of the corporation. We expected the board to follow established board best practices and maintain the composition and competency of the board and its committees to fulfill its governance responsibilities.

2.105 The board is required under legislation to represent key stakeholder organizations by ensuring worker and employer groups are equally represented on the board. We reviewed composition and other key characteristics against other jurisdictions in Canada prior to evaluating the best practices of the WorkSafeNB board.

2.106 Exhibit 2.8 provides a jurisdictional comparison of workers' compensation board structures and characteristics across Atlantic Canada.

Exhibit 2.8 - *Jurisdictional Comparison of Workers' Compensation Board Structures and Characteristics*

Jurisdictional Comparison of Workers' Compensation Board Structures and Characteristics					
	NB	NL	PEI	NS	AGNB Comments
Board Members /Directors	11 or more	10	9	10	NB has one of the larger boards in Atlantic Canada.
Board Composition	Chair Vice-chair Worker and employer representatives President & CEO	Chair Vice-chair Worker and employer Representatives President & CEO	Chair Vice-chair Worker and employer Representatives	Chair Vice-chair Worker and employer Representatives	Board composition generally consistent with other boards. <i>Five other boards have members from the general public.</i>
Voting Rights ¹	Chair can vote to break a tie. Vice Chair can vote.	Chair and Vice Chair can vote.	Chair can vote to break a tie. Vice Chair can vote.	Chair can vote to break a tie. Vice Chair cannot vote.	President/CEO cannot vote in NB.
Board Members	Part time	Part time	Part time	Part time	Majority of jurisdictions have part time positions. <i>Ontario, Quebec and Saskatchewan have full time Chair.</i>
Appointed by Lieutenant Governor (LG) / Government	Yes	Yes	Yes	Yes	Manitoba, Saskatchewan, BC and Yukon require some form of consultation with workers and employers.
Board Member Terms: (Years) ²	Up to 4	Not referenced in act	3	5 for Chair and Vice Chair, 4 for members	All jurisdictions allow appointments for additional terms. <i>NB limits to 2 terms.</i>
<p><i>Note:</i></p> <p>1- WorkSafeNB indicated there is no restriction on the voting rights of the chair under the legislation.</p> <p>2- Terms for WorkSafeNB board members were changed through legislative amendments in 2016.</p> <p>Source: Association of Workers' Compensation Boards of Canada – current to December 31, 2016 (unaudited)</p>					

2.107 Exhibit 2.8 illustrates the similarities and differences between workers' compensation boards across Atlantic Canada. While differences exist, many of the boards are structured in a very similar manner and appointments are made by government.

Overview of Board Best Practices

2.108 We reviewed several sources of board best practices and assessed the degree to which WorkSafeNB board practices compare to key areas of performance.

2.109 Exhibit 2.9 presents an overview of key best practices we reviewed as part of the audit work.

Exhibit 2.9 - WorkSafeNB Board Practices

WorkSafeNB Board Practices	
Board Practice Evaluated	AGNB Finding
Regularly updated board governance policy	Met Expectation
Code of conduct & organization ethics	Met Expectation
Conflict of interest policy	Met Expectation
Board member position descriptions	Met Expectation
Board committee structure and practices	Needs Improvement
Board competency matrix	Needs Improvement
Board and CEO recruitment and succession planning	Needs Improvement
Board performance self-evaluation	Needs Improvement
Board records and decision rationale	Needs Improvement
Board information packages (quality, quantity and timeliness)	Needs Improvement
Board orientation	Needs Improvement
Board development planning	Needs Improvement
<i>Sources for governance best practices are included in Appendix II</i>	

Board has Developed Governance Policy and other Best Practices

2.110 As highlighted in Exhibit 2.9, in our review of board practices between 2015 and 2017, we found the board has developed and implemented some key best practices, including:

- a regularly updated governance policy including code of conduct and conflict of interest guidelines;
- recruitment and interview process for CEO position; and
- board member position descriptions.

Board Governance Practices Require Improvement

2.111 While the board has been improving its governance practices, we identified a number of key areas where we believe further improvement is required.

WorkSafeNB Board Committees

2.112 The WorkSafeNB board is supported by three committees identified in their governance policy as the:

- Financial Services Evaluation Committee;
- WorkSafe Services Evaluation Committee; and
- Fatality Review Committee.

2.113 We focused on the Financial Services Evaluation and WorkSafe Services Evaluation committees due to the regular nature of their function and direct impact on WorkSafeNB operations.

2.114 The roles of these committees are outlined in the WorkSafeNB governance policy:

“The purpose of the Financial Services Evaluation Committee is to enable the Board of Directors to fulfill its governance responsibilities regarding the financial services policies, activities, and reporting under the WHSCC & WCAT Act, WC Act, OHS Act and FC Act. The members of this committee will also fulfill the responsibilities of an audit committee.”⁹

“The purpose of the WorkSafe Services Evaluation Committee is to enable the Board of Directors to fulfill its governance responsibilities by evaluating prevention, compensation, and rehabilitation programs and activities.”¹⁰

Weaknesses in Board Committees

2.115 Our audit identified weaknesses in the operation of the WorkSafeNB board committees, including:

- no competencies identified for committee members;
- committees are not efficient; and
- no evaluations of committee performance.

⁹ WorkSafeNB Policy 41-002 – Governance Statement – Appendices A and B

¹⁰ Ibid.

***No Competencies
Developed for Board
Committee Members***

2.116 We expected the board to have separate documented competency requirements for committee members. We found while their governance statement did have board of director member profiles, no competencies had been specifically developed for the committees.

2.117 Committees carry out relatively specialized functions and require the members to possess the skills necessary to effectively undertake committee responsibilities. Competency requirements are therefore important to ensure committee members have the necessary experience and skills to fulfill the committee's mandate.

***WorkSafeNB Board
Committees are
Inefficient***

2.118 We expected committees would be chaired by an appointed board member and attended by only the number of board appointees required to do the work of the committee. The committee chair would then report back to the board of directors and make recommendations as required. We found committees are always chaired by the board chairperson and attendance at board committee meetings often included non-committee members of the board.

2.119 Having most if not all board members present for a committee meeting defeats the purpose and is less efficient, since the material could simply be discussed once during a regular board meeting.

2.120 During our interviews with board members, some indicated that non-committee members attended committee meetings:

- in order to allow them to get more detail on the materials;
- to allow new board members to gain more knowledge of both WorkSafeNB operations and the functions of the committee;
- to decrease time spent on committee issues at the regular board meeting; and
- because they were already in town for the regular board meetings.

***Non-committee Board
Members paid per Diems***

2.121 When we reviewed per diem charges by board members, we found instances where the board members were paid to attend committee meetings when they were not on the committee. We expected only committee members would be paid to attend committee meetings. While these amounts were not large in relation to the operations of WorkSafeNB, they do represent costs that could have been avoided.

***Board does not Evaluate
Committee Performance***

2.122 We also expected the board would regularly evaluate the performance of the committees. We found the board did not evaluate committee performance during the period examined.

2.123 Evaluating committee performance provides the board of directors with confidence in the ability of committee members to carry out their responsibilities effectively and efficiently. It also allows the board to target board member development in areas such as financial management in order to increase confidence in committee work. We believe this would decrease the need for all board members to attend committee meetings.

Recommendation

2.124 We recommend the WorkSafeNB board of directors review its committee structures and practices to:

- **select participating board members to chair committees;**
- **ensure per diem payments are made only to committee members for committee meetings;**
- **ensure membership is aligned with board needs and competencies are sufficient to address committee requirements;**
- **develop and implement competencies for committee membership; and**
- **develop and implement a plan to evaluate committee performance on an annual basis.**

***No Board or CEO
Succession Plan***

2.125 We expected WorkSafeNB to have documented succession plans for both board members and the CEO position. However, we found no such succession plans existed for these positions.

2.126 For example, in 2014 and part of 2015, the board chair and vice chair position were both vacant at the same time.

Consequently, the board could not form a quorum in order to conduct business for a period of nearly four months. During interviews we conducted, we were told this significantly impacted the board's ability to function, and delayed important decisions of the board.

Board Appointments not Always Staggered

2.127 We noted that board appointments are not always staggered, resulting in a number of board members potentially leaving at the same time. Both the board chair and vice-chair, for instance, were appointed for the same timeframe in 2015. If both had vacated at the end of that term, the board would have been unable to establish a quorum, as was the case in late 2014.

2.128 We also noted four board members have a term expiry in July 2019. While these may be renewed it is poor practice to have many members with the same term end dates. We did note that amendments to the Act in 2016 under subsection 9(8.1) now allows a board member to “...remain in office, despite the expiry of the member's term, until the member resigns or is reappointed or replaced”.

2.129 Failing to stagger terms can negatively affect continuity of operations and impact the board's ability to govern effectively. Multiple board vacancies over a short period can significantly reduce overall experience and knowledge at the board level, resulting in rebuilding effort and inefficient board oversight.

2.130 We believe a succession strategy would reduce uncertainty with board appointments and reduce the risk that multiple members vacating their positions at the same time.

Recommendations

2.131 We recommend the WorkSafeNB board of directors and the Department of Post-Secondary Education, Training and Labour jointly develop, document and implement a succession strategy to ensure:

- timely recruitment of all board positions, including the chair and vice-chair and,
- effective staggering of board member terms.

2.132 We recommend the WorkSafeNB board of directors develop, document and implement a succession strategy for the President and Chief Executive Officer position.

2017 Memorandum of Understanding Included Skills Matrix

2.133 We reviewed the governance policy developed by the board and the Memorandum of Understanding (MOU) signed by the Department and WorkSafeNB, describing each organization's roles and responsibilities. We noted a skills matrix for board members had been developed and attached to the MOU in 2017.

Implementation of Board Competency Matrix Incomplete

2.134 Since the skills matrix was part of the MOU in mid-2017, we expected it would be used to evaluate what was required in new member appointments that occurred after that time. However, when we reviewed the appointments we found no evidence the new board member qualifications were based on the board's required skills and competencies.

2.135 When we asked WorkSafeNB personnel if the matrix was used for the 2017 appointments they indicated it was recently established and would be used in future appointments.

2.136 We were pleased with the recent development of a skills matrix by the board and the Department. We believe the board should further develop, enhance and utilize this information for future board appointments.

Recommendation

2.137 We recommend the WorkSafeNB board of directors fully develop, regularly update and utilize a board competency matrix for, at a minimum:

- **evaluating board member development requirements;**
- **identifying development opportunities for board members; and**
- **recruiting new board members to address competency and skillset needs.**

Weak Board Self-Evaluation Practices

2.138 We expected the board to complete both an overall self-evaluation and member evaluations regularly, but found the board did not complete:

- any overall self-evaluations during the period 2014 to 2016;
- evaluations of the chair and vice-chair; and
- individual board member evaluations.

2.139 While we found no completed board self-evaluation during our audit period, we noted the board had begun a

self-evaluation process in late 2017.

- 2.140** Individual performance evaluations would highlight areas where members require further development. This information could then be used by the board to focus future development efforts for members and improve overall board competency.

Recommendation

- 2.141 We recommend the WorkSafeNB board of directors develop performance expectations for board positions and undertake annual performance evaluations for at least the board chair.**

Board Records and Decision Rationale Support Require Improvement

- 2.142** We examined various minutes of board and committee meetings held from 2015 through 2017. We expected key decisions and their rationale to be documented in board minutes or a record of decisions. We found:

- the board does not keep a separate record of decisions; and
- the minutes were not always detailed and did not contain rationale behind the decisions made.

- 2.143** While the board keeps records of motions and final decisions in the minutes of board meetings, they typically did not provide details including clear rationale for the decision made. The board itself drew attention to this in a December 2016 meeting. We did note improvement in the 2017 minutes over those of previous years. It appears the board had taken steps to improve the minutes prior to the conclusion of our audit.

- 2.144** We believe it is important to keep accurate and sufficiently detailed records to allow an organization to properly document key decisions and provide support for the decisions made by the board.

Quantity and Timeliness of Board Information Packages Requires Improvement

- 2.145** While the information packages we reviewed appeared to be comprehensive, board members we interviewed indicated the overall quantity and timeliness of the information was sometimes problematic. Members indicated they might get a week to review up to 700 pages of detailed information.

- 2.146** Allowing the board members sufficient time to properly prepare for meetings improves the quality of the decision making process and allows meetings to operate more

efficiently.

Recommendation

2.147 We recommend WorkSafeNB provide board information packages well in advance of board meetings and focus information presented to meet the board's decision-making requirements using documentation such as executive summaries.

No Documented Board Orientation or Development Plans

2.148 While we believe WorkSafeNB provides a good orientation session for new board members, we found it was not a well-defined process. It could be improved by formalizing the process with a documented orientation program.

2.149 We also found that WorkSafeNB does not have development plans for assisting board members in obtaining training tailored to their individual needs. This is especially important for new members and those sitting on committees.

Recommendation

2.150 We recommend the WorkSafeNB board of directors develop, document and implement an orientation program for new board members and a development plan for all board members.

Strategic Planning and Risk Management

2.151 We expected the board to undertake a strategic planning process and monitor the organization's performance in relation to its mandate, goals and objectives.

Board Monitors Strategy and Risk Annually

2.152 We observed that the board updates its strategic plan on an annual basis. This is a multi-day endeavor which includes an organization performance review and a review of the corporate risk environment. The result is an updated multi-year strategic plan and corporate risk register.

Strategic Plans are Inconsistent and Incomplete

2.153 While the overall planning process appeared to be well-defined in policy and disciplined in practice, we found the board changed strategies, especially its strategic goals, frequently. At times, the corporation did not appear prepared to fully implement new goals and measure results of strategies effectively. This resulted in strategic plans that were inconsistent and incomplete.

2.154 We noted the Department's mandate letter explicitly states that the responsibilities outlined within are to be included as part of the WorkSafeNB strategic plan. For this reason we expected the strategic plan to address the mandate letter requirements to provide goals, objectives,

key performance measures and targets.

***Gaps Exist Between
WorkSafeNB Strategic
Plan and Department
Mandate Letter***

2.155 Our analysis showed gaps in the WorkSafeNB strategic plan where requirements of the mandate had not been addressed. Further, the mandate letter directs WorkSafeNB to submit an annual plan for publication on the Department's website. We noted the board submitted its multi-year strategy in place of an annual plan. In our view, the annual plan should be separate and distinct from the multi-year strategy.

2.156 It is important that WorkSafeNB be accountable for the entirety of its mandate in order to demonstrate alignment with the direction provided by Department under the ACI Act.

***Board Monitoring of
WorkSafeNB
Performance Targets
Requires Improvement***

2.157 The multi-year strategic plans do contain goals and objectives communicating the strategic direction of the organization. We expected WorkSafeNB to report on key performance indicators in order to demonstrate progress toward their strategic goals and objectives.

2.158 WorkSafeNB produces quarterly accountability reports to publicly report on performance. Our analysis showed the strategic goals have performance measures, but not all performance measures have targets. Further, targets are not always well-defined and clearly communicated.

2.159 Without clearly defined and communicated targets, it is difficult to assess whether WorkSafeNB was successful in achieving its strategic objectives during the reporting period.

Recommendation

2.160 We recommend WorkSafeNB, as part of its annual planning and reporting processes:

- fully develop long-term strategic goals and objectives and define measurable targets for all key performance indicators;
- include the strategic requirements of the government mandate letter as part of its strategic planning process;
- develop an operational action plan designed to implement the long-term strategic direction of the corporation; and
- submit an annual plan to the Department focused on goals and objectives it intends to complete over the period of the plan, as required under the *Accountability and Continuous Improvement Act*.

Inadequate CEO Performance Evaluation Process

2.161 While we expected the board to have developed a well-defined and documented process for evaluating CEO performance, we found this was not the case.

No CEO Performance Expectations

2.162 The CEO position is the critical link between the board's oversight activities and the operations of WorkSafeNB. We found no evidence the board had established performance expectations for the CEO position against which performance could be evaluated in a fair and objective manner.

2.163 We further expected the board to hold the CEO accountable for implementing the corporate strategy. Progress toward meeting strategic goals and objectives should be part of the CEO performance appraisal.

Weak CEO Performance Evaluation

2.164 The only evidence we were provided of a CEO performance evaluation by the board was incomplete, based only in opinion and not linked to the goals and objectives of the corporation.

2.165 We believe the CEO performance evaluation is a critical function for boards. It is imperative the CEO clearly understands the expectations of the board in order to drive operations to meet them.

2.166 A key component of a strategic control system is ensuring alignment with the strategic plan throughout the organization. In our view, linking CEO performance to the

strategy will ensure it is made a priority.

Recommendation

2.167 We recommend the WorkSafeNB board of directors:

- **establish a CEO performance agreement that ties CEO performance to the corporation's strategy and results; and**
- **conduct an annual CEO performance evaluation against the documented expectations.**

**WorkSafeNB
Compensation and
Expenses**

2.168 The 2015-2016 mandate letter provided to WorkSafeNB by the Department included an expectation *“that WorkSafeNB will provide compensation and benefits to its management and non-union staff consistent with that offered for similar work in Parts I, II and III”*. The 2017 letter removed references to Parts II and III. This means government wanted WorkSafeNB compensation and benefits to be comparable to Part I of the provincial public service.

2.169 We reviewed the WorkSafeNB compensation and benefits model, particularly as it relates to the board and senior WorkSafeNB executives. We interviewed human resources personnel from WorkSafeNB and Treasury Board.

2.170 Board compensation is paid on a per diem basis for all board activities including:

- board and committee meeting attendance;
- preparation for board and committee meetings; and
- travel to the location of the board or committee meetings.

**Board Compensation
Unchanged since 1994**

2.171 We examined the per diems paid to board members. We expected that the rate paid to members for their service would be reviewed periodically and adjusted if necessary. We found the current per diem of \$200 for board members and \$400 for the board chair has not been changed since 1994.

**No Significant Issues
with Board per Diem
Payments in 2015 and
2016**

2.172 We tested board per diems for 2015 and 2016 as part of our audit procedures to determine if payments were made per policy. Other than the committee per diem finding noted above, we found no significant issues with per diem

payments to board members.

***Board Chair Costs have
Risen Significantly since
2014***

2.173 We did note that due to the full time nature of the current board chair's compensation, the annual cost for this position increased to about \$150,000, triple the 2014 amounts.

***WorkSafeNB
Compensation System
Reviewed in 2014***

2.174 In 2014, a consultant was hired to assist WorkSafeNB in reviewing the existing compensation model and better align the corporation's compensation with a comparable market.

2.175 We reviewed the results of this work to determine if the new model was comparable to Part I of the provincial public service as stipulated by the mandate letters.

***New Brunswick Public
Service not Included in
Compensation
Benchmarking***

2.176 We found that WorkSafeNB did not include Parts I, II, or III of the provincial public service as part of the market used by WorkSafeNB to benchmark appropriate compensation for positions within the organization.

2.177 The board approved an equally weighted combination of two markets:

- an Atlantic Canada market including both private sector participants and the broader public sector; and a
- Canada-wide market of broader public sector entities.

2.178 When we reviewed the two comparator markets in documentation provided by WorkSafeNB, we noted only two references to Part IV government of New Brunswick Crown Corporations: the "*Atlantic Lottery Corporation*" and the "*NB Power Holding Corporation*". There were no other New Brunswick public sector organizations included in the information provided.

2.179 We asked WorkSafeNB why they had not included the New Brunswick public sector and they provided no clear reason, other than to indicate it was not part of the consultant's market survey.

2.180 We also asked if WorkSafeNB had contacted government to obtain compensation information and ensure the process was consistent with the broader New Brunswick public service processes. WorkSafeNB personnel indicated they had not contacted government during this process.

***Market Benchmarking
Benefited Management
and Professional
Positions***

2.181 Our review of the process and discussions with WorkSafeNB personnel revealed the market selected to benchmark compensation would increase compensation for professionals and managers and decrease compensation for administrative personnel.

2.182 Overall, WorkSafeNB indicated implementation of the 2014 model would result in a net decrease across non-bargaining positions due to significant decreases in administrative salaries. WorkSafeNB could not provide an exact amount of potential savings from payroll decreases.

2.183 The board decided to implement the 2014 model but delay impacts to current staff, who would see decreases in pay, until the position was vacated and new staff hired. Consequently, any savings from the model would be realized when existing personnel left positions. The amount of potential savings would also be impacted by any new positions or changes to existing positions.

***Board Approved
Implementation of New
Compensation Model***

2.184 The board approved implementation of this new compensation model during an April 21, 2015 meeting with implementation retroactive to January 1, 2015. The estimated increase in compensation totaled \$385,000 at that time.

***Board Decision on
Compensation Model did
not meet Mandate Letter
Expectation***

2.185 As noted above, the mandate letter issued by the Department and effective April 1, 2015 expected the board to ensure non-bargaining compensation at WorkSafeNB is consistent with the provincial public service. The documentation we reviewed showed WorkSafeNB senior leaders and the board were aware of this before making their final decision regarding the compensation model. We saw no reference to consideration of the mandate letter expectations in board minutes related to this decision.

Recommendation

2.186 We recommend WorkSafeNB:

- **include comparable New Brunswick public sector entities when undertaking compensation market comparisons in order to meet mandate letter requirements; and**
- **maintain clearly documented rationale for decisions not in alignment with the Department's mandate letters.**

WorkSafeNB Executive Compensation Exceeds NB Public Sector

2.187 As noted above, Department mandate letters included an expectation that WorkSafeNB non-union and management compensation would be consistent with the public service. When we compared WorkSafeNB compensation for senior executives to Part I of the provincial public service we found WorkSafeNB executives are paid more.

2.188 Exhibit 2.10 provides comparison of executive salary scales between WorkSafeNB and the provincial public service, Part I at April 1, 2017. The public sector Part I positions we chose for this exhibit would have similar authority levels to the WorkSafeNB positions.

Exhibit 2.10 - WorkSafeNB to Provincial Public Service Part I Pay Scale Comparison (\$)

WorkSafeNB to Provincial Public Service Part I Pay Scale Comparison (\$)				
Position	Step 1	Step 2	Step 3	Step 4
WorkSafeNB CEO	\$222,278	\$235,352	\$248,428	\$261,503
Deputy Minister II	159,120	167,076	175,422	184,184
Difference	\$ 63,158	\$ 68,276	\$ 73,006	\$ 77,319
Difference %	40%	41%	42%	42%
WorkSafeNB VP	\$152,131	\$161,079	\$170,028	\$178,977
Public service band 12	128,726	130,234	131,820	133,380
Difference	\$ 23,405	\$ 30,845	\$ 38,208	\$ 45,597
Difference %	18%	24%	29%	34%
Notes: 1- WorkSafeNB salary scales effective January 1, 2017. Province of NB salary scales effective April 2017. 2- Government pay scales have more incremental steps than WorkSafeNB. We used the top four steps in the applicable government scale above to match the WorkSafeNB four step scales. Sources: WorkSafeNB and Government of New Brunswick (unaudited)				

2.189 Exhibit 2.10 highlights the differences between the executive leadership at WorkSafeNB and Part I of the provincial public service.

WorkSafeNB Annual Increase are not Merit Based

2.190 WorkSafeNB management told us annual pay increases are not merit based (tied to performance). The increases are awarded annually unless a significant lack of performance is identified and this rarely occurs. WorkSafeNB employees will typically progress from step 1 to step 4 in three years. For the executives noted above, this amounts to an 18% increase in salary in addition to annual cost of living

increases to the scale.

2.191 In addition to our review on compensation, we compared WorkSafeNB benefits for executives and those provided to the provincial public service Part I.

2.192 Exhibit 2.11 presents this comparison, focusing only on the benefits that are appreciatively different.

Exhibit 2.11 - WorkSafeNB to Provincial Public Service Part I Benefits Comparison

WorkSafeNB to Provincial Public Service Part I Benefits Comparison		
Benefit Type	WorkSafeNB	Public Service
Vehicle allowance	CEO - \$1,000 per month Vice-President - \$600 per month	Deputy Minister – approximately \$559. <i>See Note 1 below.</i>
Vacation entitlement	Up to 30 days per year after 19 years of service	Up to 25 days per year after 20 years of service
Sick leave	Accrues at 1.5 days per month to a maximum of 240 days	Accrues at 1.25 days per month to a maximum of 240 days
Health & dental	90% employer paid premiums	Health – 75% employer paid premiums Dental – 50% employer paid premiums
Group life	100% employer paid (2 x salary)	100% employer paid (1 x salary)
Note: 1- Deputy Ministers have options for vehicle allowance. 2- There are differences in the provision of some benefits such as health and dental under the specific plans. Sources: WorkSafeNB and Government of New Brunswick (Treasury Board)		

Benefits Differ from NB Public Sector

2.193 Exhibit 2.11 highlights key differences in benefits between Part I of the public service and WorkSafeNB. Note the benefits shown are generally available to non-bargaining employees in both organizations with the exception of vehicle allowances, as noted.

2.194 We believe the board should ensure the most cost-effective decisions are made when considering compensation and benefits for WorkSafeNB personnel. Further, we believe:

- the provincial public sector should be included in the market benchmarking exercises undertaken during compensation reviews;
- the mandate letter requirements and expectations should be considered prior to making decisions of this nature; and

- the board should maintain adequate records as rationale for taking actions that do not meet the mandate letter expectations.

***Board and Executive
Travel Expenses***

2.195 Since WorkSafeNB is funded by NB employers we believe the board and executive management should operate in a frugal and transparent manner. While travel expense claims are not a significant expenditure for WorkSafeNB, it is important for the board and executive management to demonstrate their commitment to controlling costs in all areas, including their expenses.

2.196 As part of our audit work we examined board and executive travel expenses for 2015 and 2016 to determine if:

- actual expenses claimed were compliant with WorkSafeNB policies; and
- WorkSafeNB policies were consistent with the provincial public service Part I policies.

2.197 We sampled a total of 39 board and senior management travel expense claims in 2015 and 2016 totaling \$58,000 in expenses and representing 25% of the total claims paid to these groups in those years. Our sample was based on high dollar value claims only and the results apply only to those claims tested.

***Meal per Diem Rates are
part of WorkSafeNB
Policies***

2.198 Meal per diem rates are part of WorkSafeNB board and executive expenses policy. As such, we expected to find the per diems were regularly claimed by both board and executive staff.

***Meal per Diems not
Mandatory under
WorkSafeNB Policy***

2.199 We found though, the policy allows claims of reasonable meal expenses in lieu of using the per diem rates. Our sample testing found:

- Board members used per diems only 34% of the time in 2015 and 44% of the time in 2016.
- Executives used per diems only 10% of the time in 2015 but 61% of the time in 2016.

2.200 However, WorkSafeNB has not defined “reasonable” in their policy. When we requested a definition from WorkSafeNB personnel they could provide nothing. Without a definition of this term there is no consistent limit on receipt-based meal purchases at WorkSafeNB.

Group Meal Claims by Senior Staff without Detailed Receipts

2.201 WorkSafeNB policy allows a senior staff member to pay for meals of other less senior personnel and claim reimbursement for that amount. It is expected the senior member will submit a detailed receipt itemizing what was claimed and listing the names of the other personnel. We found the following:

- In 2015 senior executives claimed meals for multiple staff 12 times but provided the required receipts only in 6 instances (50%).
- In 2016 senior executives claimed meals for multiple staff 10 times and provided the required receipts in 8 instances (80%).

Alcohol Claimed

2.202 In addition to our other findings around meal claims we found two instances where alcohol was reimbursed despite being specifically disallowed under WorkSafeNB policy.

Generous Mileage Rates when Compared to Provincial Policy

2.203 We compared the mileage rates in WorkSafeNB to provincial policy and found the mileage rate structure is more generous. For comparison purposes, the current kilometric rates in provincial policy AD-2801 are contrasted to WorkSafeNB rates in the table below:

Kilometric level/fiscal year	Provincial Rate	WorkSafeNB Rate
Each of first 8,000 km/year	\$0.41	
Each of next 8,000 km/year	\$0.38	
Each km in excess of 16,000 km/year	\$0.33	
Each of first 5,000 km per year		\$0.53
Each km in excess of 5,000 km/year		\$0.48

Rental Vehicles Rarely Used

2.204 WorkSafeNB policy does not require personnel to use a rental vehicle but does provide an appendix to the policy with a vehicle rental to mileage calculator. This is meant to allow personnel to determine which is cheaper. In the claims we sampled board members did not use rental vehicles in either year. Our sample included limited use of rental vehicles by two senior executives in 2015 and by one in 2016.

\$10,000 in 2016 Board Chair Mileage Charges

2.205 We believe the use of the least expensive option should be considered in lieu of mileage claims. For example, in the current contract between the Department and the board chair, WorkSafeNB reimburses the chair's daily mileage between Fredericton and Saint John four days per week.

According to WorkSafeNB records this amounted to approximately \$10,000 in 2016. We believe a more economical alternative should have been considered by the Department in this instance.

Inconsistent Board and Executive Expense Practices – Policy Requires Improvement

2.206 Overall, WorkSafeNB could improve travel expense practices in the areas discussed above. It should enforce compliance with the corporation's policy where applicable, further develop policy where needed to address weaknesses and consider better aligning its policies with Part I practices.

Recommendation

2.207 We recommend the WorkSafeNB board of directors ensure current travel expense policy is enforced and revise it to:

- clearly define acceptable board and employee travel expense practices; and
- align with public service Part I policy where applicable to board and employee travel.

Disclosure of WorkSafeNB Compensation and Expenses

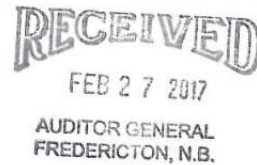
2.208 We examined the WorkSafeNB annual public disclosure of board compensation and expenses as presented on their website. We expected to find annual reporting by board member of expenses and compensation, similar to the practices of the provincial government and other Crown corporations.

2.209 WorkSafeNB published incomplete information on board member and CEO compensation and travel expenses for 2017 in October 2017. Subsequent to our audit period, on March 13, 2018 and again on April 26, 2018, WorkSafeNB published additional 2017 compensation and travel expense information.

Recommendation

2.210 We recommend WorkSafeNB provide full public disclosure of board and executive compensation and expense information.

Appendix I – Section 12 Request Letter



February 22, 2017

Ms. Kim MacPherson
Auditor General of New Brunswick
520 King Street, 6th floor, Suite 650
P.O. Box 758
Fredericton, NB E3B 5B4

Ms. MacPherson:

I understand that you had a recent meeting with Ms. Dorine Pirie, Chairperson of WorkSafeNB and Mr. Tim Petersen, Acting President and CEO, regarding a value-for-money audit.

In 2007-2008, the Independent Review Panel recommended that the "Government of New Brunswick direct the Auditor General to conduct a value-for-money audit of the WHSCC every five years to ensure public accountability of the Commission rather than mandatory periodic reviews by an independent commission". The Board at the time fully supported this recommendation.

Considering the recent significant increases in workers' compensation assessment rates and the concern of further increases due to claiming patterns and duration of claims, as well as the impact to employers and to the provision of efficient and effective services to injured workers, looking at all facets of the organization is crucial.

As such, I would request that the Auditor General move forward as quickly as possible with a comprehensive value-for-money audit of WorkSafeNB, including the Workers' Rehabilitation Center in Grand Bay.

Thank you for considering this request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Arseneault".

Donald Arseneault
Minister

c.c. Dorine Pirie, Chairperson, WorkSafeNB
Tim Petersen, Acting President and CEO, WorkSafeNB

DN/10662

Minister/Ministre
Post-Secondary Education, Training and Labour/Education postsecondaire, Formation et Travail
P.O. Box/C.P. 6000 Fredericton New Brunswick/Nouveau-Brunswick E3B 5H1 Canada

www.gnb.ca



Appendix II – Audit Objective and Criteria

The objective and criteria for our audit of WorkSafeNB governance are presented below.

Both the WorkSafeNB board chair and the acting President and Chief Executive Officer reviewed and agreed with the objective and associated criteria.

Objective	To determine if the WorkSafeNB governance framework is structured to enable the organization to meet its mandate, goals and objectives.
Criterion 1	Post-Secondary Education, Training and Labour should provide a clear mandate to WorkSafeNB and monitor WorkSafeNB's progress in meeting its requirements.
Criterion 2	The WorkSafeNB Board of Directors should follow governance best practices in fulfilling its mandated duties.
Criterion 3	The WorkSafeNB Board should monitor the organization's performance in relation to its mandate and key goals and objectives.
Criterion 4	Expenses paid to board members and management should be consistent with GNB policy and executive compensation should be based on appropriate comparator groups.

Source of criteria: Developed by AGNB based on review of legislation and policies, governance best practices and reports by other jurisdictions' Auditors General


Sources of governance best practices included:

- Canadian Institute of Chartered Accountants (2010). *20 Questions Directors of Not-For-Profit Organizations Should Ask about Board Recruitment, development and assessment*.
- Canadian Institute of Chartered Accountants (2007). *20 Questions Directors Should Ask about Crown Corporation Governance*.
- Canadian Audit and Accountability Foundation (2015). *Practice Guide to Auditing Oversight*
- Australian National Audit Office (2014). *Public Sector Governance: Strengthening Performance through Good Governance*.
- Office of the Auditor General of British Columbia (2009). *Guidelines: Information use by the Boards of Public Sector Organizations*.
- National Audit Office (United Kingdom 2012). *Corporate governance in central government departments: Code of good practice 2011 Compliance checklist*.
- BC Board Resourcing and Development Office (2005) *Best Practice Guidelines BC Governance and Disclosure Guidelines for Governing Boards of Public Sector Organizations*.

Appendix III – WorkSafeNB Regional Offices


WORKSAFE

TRAVAIL SÉCURITAIRE



WorkSafeNB Regional Offices

NORTHWEST	NORTHEAST	SOUTHWEST	SOUTHEAST
166 Broadway Blvd. Suite 300 Grand Falls, NB	Place Bathurst Mall 1300 St. Peter Ave. Suite 220 Bathurst, NB	1 Portland St. Saint John, NB	30 Englehart St. Suite F Dieppe, NB



Toll-Free: 1 800 222-9775
www.worksafenb.ca
Fax: 1 888 629-4722

Source: WorkSafeNB

Appendix IV – The Meredith Principles

The following excerpt was taken directly from “About Workers Compensation” – Association of Workers’ Compensation Boards of Canada (website).

Workers’ compensation in Canada had its beginnings in the province of Ontario. In 1910, Mr. Justice William Meredith was appointed to a Royal Commission to study workers’ compensation. His final report, known as the Meredith Report was produced in 1913.

The Meredith Report outlined a trade-off in which workers’ relinquish their right to sue in exchange for compensation benefits. Meredith advocated for no-fault insurance, collective liability, independent administration, and exclusive jurisdiction. The system exists at arms-length from the government and is shielded from political influence, allowing only limited powers to the Minister responsible.

What are the Meredith Principles?

They can be expressed in different ways. However, there are five basic concepts that underlie most workers’ compensation legislation in Canada today.

1. No-fault compensation, which means workers are paid benefits regardless of how the injury occurred. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury.
 2. Security of benefits, which means a fund is established to guarantee funds exist to pay benefits.
 3. Collective liability, which means that covered employers, on the whole, share liability for workplace injury insurance. The total cost of the compensation system is shared by all employers. All employers contribute to a common fund. Financial liability becomes their collective responsibility.
 4. Independent administration, which means that the organizations who administer workers’ compensation insurance are separate from government.
 5. Exclusive jurisdiction, which means only workers’ compensation organizations provide workers’ compensation insurance. All compensation claims are directed solely to the compensation board. The board is the decision-maker and final authority for all claims.
-

These principles are a historic compromise in which employers fund the workers’ compensation system, and injured workers in turn surrender their right to sue their employer for their injury.

These principles are the foundation upon which the majority of Canadian workers’ compensation legislation is built.

Appendix V – About the Audit

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick (AGNB) on WorkSafeNB Governance Practices. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of WorkSafeNB governance practices.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook – Assurance.

AGNB applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Code of Professional Conduct of Chartered Professional Accountants of New Brunswick and the Code of Professional Conduct of the Office of the Auditor General of New Brunswick. Both the Code of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management's responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the findings in this report are factually based.

Period covered by the audit:

The audit covered the period between January 1, 2015 and December 31, 2017. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of Report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 17, 2018, in Fredericton, New Brunswick.

Chapter 3

Departments of Health and Justice and Public Safety

Addiction and Mental Health Services in Provincial Adult Correctional Institutions

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Departments of Health and Justice and Public Safety

Addiction and Mental Health Services in Provincial Adult Correctional Institutions

Introduction

3.1 Mental health is defined by The World Health Organization as “*a state of well-being in which the individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to his or her community.*”¹

3.2 In Canada, mental health issues have a significant impact on communities and the health care system. One in five Canadians are affected by mental illness annually.² People with a mental illness are three times more likely to have illicit drug problems.³

¹ Promoting Mental Health: Concepts, Emerging evidence, Practice. WHO, 2004

² Smetanin, P., Stiff, D., Briante, C., Adair, C.E., Ahmad, S. and Khan, M. *The Life and Economic Impact of Major Mental Illnesses in Canada: 2011 to 2041*. RiskAnalytica, on behalf of the Mental Health Commission of Canada 2011.

³ Rush et al. (2008). *Prevalence of co-occurring substance use and other mental disorders in the Canadian population*. Canadian Journal of Psychiatry, 53: 800-9.

- 3.3** Mental health and addiction issues are more prevalent in correctional institutions. International and Canadian studies have found the occurrence of mental health and addiction issues in prison is two to three times higher than in the general population.⁴ *“Several populations with higher prevalence rates of mental illnesses such as psychosis, depression, anxiety, and substance-related disorder are over-represented in Canada’s correctional facilities.”*⁵
- 3.4** In New Brunswick, there are five adult provincial correctional institutions accommodating close to 500 inmates at any given time. On average, this is costing the Province \$66,000 per inmate per year. All inmates will be released back into the community. New Brunswick as a whole will be best served if efforts are made to improve the mental health of inmates so they are able to make a positive contribution to the community.
- 3.5** The Department of Health is responsible for health care services for all New Brunswick residents. Under the *Canada Health Act (1984)*, provincial governments are responsible for the management, organization and delivery of health services to residents. This implicitly includes individuals incarcerated in provincial correctional institutions.
- 3.6** Under the *New Brunswick Corrections Act*, the Department of Justice and Public Safety has a legislated obligation to assist in the rehabilitation of inmates.
- 3.7** The *Action Plan for Mental Health in New Brunswick 2011-2018*, called for appropriate response to individuals with a mental health illness who are in conflict with the

⁴ Irina R. Soderstrom PhD (2007) *Mental Illness in Offender Populations*, Journal of Offender Rehabilitation, 45:1-2, 1-17,

⁵ *Mental Health Strategy for Corrections in Canada, A Federal-Provincial-Territorial Partnership*, Canadian Institute for Health Information (CIHI), 2008

law. Commitment 1.3.1 of this plan states “*Ensure that the departments of Health and Public Safety develop policies and protocols for the delivery of mental-health-care services in the provincial correctional system*”.

Why We Did This Audit

3.8 There is a high incidence of addiction and mental health issues in correctional institutions in Canada. Correctional Service Canada research found that over 70%⁶ of federally incarcerated inmates suffered addiction and mental health issues. Statistical information specific to New Brunswick is not available.

3.9 We also noted that not treating mental health and addiction issues can increase the vulnerability of individuals to negative outcomes including re-offending which in turn increases the cost to New Brunswickers. A report prepared for the Department of Health stated: “*in a sample of New Brunswick provincially supervised offenders with mental health issues, 48% generally recidivated and 20% did so violently.*”⁷

3.10 Further, the Ombud report on the Ashley Smith case and many other independent reports have shed light on the problems and the negative outcomes of current practices related to mental health issues in provincial correctional institutions.

3.11 General consensus from stakeholder feedback obtained by the Department of Health and the Department of Justice and Public Safety in 2016 was that mental health services for those in conflict with the law or at risk of offending need urgent improvement.

⁶ Correctional Service Canada Research at a glance, *National Prevalence of Mental Disorders among Incoming Federally-Sentenced Men*, Number R-357, February 2015

⁷ Dr. Mary Ann Campbell, *Integrative Response to the Needs of Justice Involved Persons with Mental Health Concerns: An Overview of Research Supported Addiction, Mental Health, and Correctional Service Delivery*, Centre for Criminal Justice Studies, June 30, 2017

3.12 Proactively addressing addiction and mental health issues in prison is in the best interest of inmates, prison staff and the public. It can help save lives, improve inmate and staff well-being, reduce the risk of reoffending, save money and contribute to healthier safer communities.⁸

Audit Objective

3.13 The objective of our audit was:

To determine if the Department of Health and the Department of Justice and Public Safety (the Departments) deliver addiction and mental health services to provincial correctional institution inmates to improve health outcomes and contribute to safer communities.

Conclusions

3.14 Upon completion of our audit we concluded that:

- The Department of Health and the Department of Justice and Public Safety do not deliver addiction and mental health services to adult inmates in provincial correctional institutions, to improve health outcomes and contribute to safer communities. Services provided are reactionary and limited to stabilizing and easing the symptoms of some addiction and mental health issues.
- The responsibilities of entities involved in providing addiction and mental health services in provincial correctional institutions are not clearly defined.
- The Department of Health and the Department of Justice and Public Safety do not have policies and protocols for the delivery of addiction and mental health services in the provincial correctional system.

3.15 For additional information about the conduct of the audit including approach and criteria, see Appendix I.

⁸ Irina R. Soderstrom PhD (2007) Mental Illness in Offender Populations, *Journal of Offender Rehabilitation*, 45:1-2, 1-17

- Results in Brief** **3.16** Results in brief are presented in Exhibit 3.1.
- Summary of Key Findings** **3.17** Summary of key findings is presented in Exhibit 3.2.
- Recommendations** **3.18** A summary of recommendations can be found in Exhibit 3.3.

Exhibit 3.1 - Results in Brief

Addiction and Mental Health Services in Provincial Adult Correctional Institutions

Why Is This Important?

- There is a high prevalence of addiction and mental health issues in Canadian correctional institutions, and New Brunswick is among the least effective in providing treatment to inmates.
- Inmates are released back into communities without being adequately treated.
- Without treatment inmates pose a risk to themselves and the public.

Overall Conclusions

- Significant shortfalls exist in addiction and mental health services provided to provincial inmates in New Brunswick.
- Responsibilities in providing addiction and mental health services to inmates are not clearly defined.
- Systems, practices, and resources to promote inmate mental health improvement and assist in reintegration are lacking.

What We Found

No Clear Roles and Responsibilities

In regards to providing mental health and addiction services to provincial inmates, there is:

- No clear mandate
- No defined roles and responsibilities
- No service delivery model
- Currently work being done by the Depts. of Health and Justice and Public Safety on an action plan to improve services

Lack of Treatment for Provincial Inmates

- Limited treatment provided only for immediate crisis stabilization
- No addiction treatment
- No counselling or therapy treatment for mental health issues
- Emergency services not consistently available
- Poor information sharing between government entities affects understanding and treatment

Care Ends When Incarcerated

- Discontinued care when individuals transition into custody
- Once incarcerated, prescribed medication is not always continued
- Lack of coordination between government entities to ensure continuity of care
- NB Corrections does not have mental health resources and relies on Regional Health Authority services

No Addiction and Mental Health Screening or Assessment

- Screening and assessment best practice protocols have not been implemented
- Mental health assessments are not done

Exhibit 3.2 - Summary of Key Findings

Paragraph	Key Finding
<i>Roles and Responsibilities</i>	
3.49	Legislation does not provide a clear mandate for addiction and mental health service delivery in provincial correctional institutions.
3.51	Roles and responsibilities are not defined.
3.59	No service delivery model for addiction and mental health services in provincial correctional institutions.
3.62	Limited Service Agreement between NB Corrections and the Regional Health Authorities.
3.68	No monitoring or performance measurement of service delivery to inmates.
3.69	Data is not shared amongst departments and entities.
<i>Screening and Assessment</i>	
3.74	Mental health screening process does not meet minimum standards.
3.83	No recognized screening tool used.
3.85	Lack of specialized training for mental health screening
3.91	Nursing staff do not have access to mental health records.
3.101	Mental health assessments are not being done.
<i>Treatment</i>	
3.108	Addiction and mental health treatment options are limited.
3.111	New Brunswick is among the least effective in providing treatment to inmates.
3.112	Counselling and therapy services are not available in correctional institutions.
3.120	Inmates in custody do not have access to addiction treatment services.
3.127	Emergency mental health services are not consistently available.
3.131	Discrepancies in the use of prescribed drugs and narcotics between institutions.
3.135	Use of segregation without addiction and mental health support.
<i>Continuity of Service</i>	
3.141	Addiction and mental health services are disrupted when transitioning in and out of custody or transferring between institutions.
3.143	Treatment plans are discontinued and patient files are closed upon incarceration.
3.146	Prescribed medications are denied when patients are placed back in a provincial correctional institution.

Exhibit 3.3 - Summary of Recommendations

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.58 We recommend the Department of Health provide clear direction through legislation and regulation as to who is responsible for health services including addiction and mental health services in provincial correctional institutions.	<i>The Joint Standing Committee on Forensic Services will develop a Working Committee comprised of representatives from the departments of Health and Justice and Public Safety, and the Regional Health Authorities. The mandate of the Working Committee will include developing comprehensive solutions to the recommendations of this report. These solutions would identify additional legislation or regulation requirements. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit its final report to the Departments of Health and Justice and Public Safety.</i>	<i>Implementation of the Working Committee June 30, 2018</i> <i>Final report submission June 30, 2019</i>
3.67 We recommend the Department of Health, in consultation with the Department of Justice and Public Safety and other relevant parties, complete an integrated service delivery model for addictions and mental health services in New Brunswick correctional institutions. Existing agreements should be redrafted to meet the requirements of this service delivery model.	<i>Through oversight by the Joint Standing Committee on Forensic Services, the Department of Health has funded two Forensic Clinical Liaison positions that are currently being piloted in Moncton and Saint John. The purpose of these positions is that they serve as and demonstrate the benefits of system coordinators for justice involved individuals, facilitating a collaborative and coordinated approach ensuring the person is referred to the appropriate service which best meets their needs.</i> <i>The mandate of the Working Committee referenced in recommendation 3.58 will include exploring opportunities for improved interdepartmental coordination and collaboration. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.67 to the Departments of Health and Justice and Public Safety.</i>	<i>September, 2017</i> <i>Final report submission June 30, 2018</i>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.72 We recommend the Department of Health and the Department of Justice and Public Safety collaborate to capture and share addiction and mental health data. This data should be used to identify addiction and mental health needs in New Brunswick correctional institutions and develop strategic service delivery plans.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will include reviewing best practices and assessing opportunities to use data and information to support the provision planning of Addictions and Mental Health services in New Brunswick correctional facilities. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.72 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>
3.84 We recommend the Department of Justice and Public Safety (New Brunswick Corrections) in consultation with the Department of Health implement a recognized mental health screening tool in the admissions process.	<i>The Department of Justice and Public Safety, through consultation with the Department of Health, will implement an evidence informed mental health screening tool as part of its admission process.</i>	<i>October 31, 2018</i>
3.90 We recommend the Department of Health, in coordination with the Department of Justice and Public Safety, provide training on mental health screening to nursing staff and admission officers.	<i>The Departments of Health and Justice and Public Safety will collaborate as required, delivering training on the selected screening tool.</i>	<i>September 30, 2018</i>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.93 We recommend the Department of Health ensure nursing staff within a correctional institution receive access to, or notification of, client records in the Client Service Delivery System (CSDS). This will allow validation of treatment history and treatment options.	<i>The Department of Health has begun the process of allowing access to the Addictions and Mental Health Services client database (Client Service Delivery System) for all nursing staff working for the Regional Health Authorities within correctional facilities. This will enhance care for clients by validating treatment history and informing case plans during incarceration.</i>	<i>September 30, 2018</i>
3.100 We recommend the Department of Justice and Public Safety amend its admission process to: <ul style="list-style-type: none"> • eliminate duplication of effort in admissions; • improve the quality of inmate mental health data; and • incorporate best practices in mental health screening. 	<i>As reflected in recommendation 3.84, the Department of Justice and Public Safety, through consultation with the Department of Health, will implement an evidence informed mental health screening tool as part of its admission process. Proposed changes to the admission process will address the concerns noted in recommendation 3.100.</i>	<i>October 31, 2018</i>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.105 We recommend the Department of Health and the Department of Justice and Public Safety ensure inmates flagged from the screening protocol be referred to a qualified mental health professional for a comprehensive mental health assessment to develop a treatment plan.	<p><i>Through oversight by the Joint Standing Committee on Forensic Services, the Departments of Health, Justice and Public Safety and the Regional Health Authorities have been working together to ensure continuity of care for existing clients of Addictions and Mental Health Services while completing their provincially mandated sentence. A pilot project demonstrating the effectiveness of an approach focused specifically on the use of e-health technologies while a client is incarcerated will enhance access to their community based clinician.</i></p> <p><i>The mandate of the Working Committee referenced in recommendation 3.58 will include reviewing best practices and assessing opportunities to enhance care to all offenders identified as experiencing an addiction and/or mental health problem. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.105 to the Departments of Health and Justice and Public Safety.</i></p>	<p><i>October 31, 2018</i></p> <p><i>Final report submission June 30, 2019</i></p>

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.117 We recommend the Department of Health and the Department of Justice and Public Safety collaborate to ensure addiction and mental health counselling and therapy treatment options are available for inmates in provincial correctional institutions.	<p><i>Through oversight by the Joint Standing Committee on Forensic Services, the Departments of Health and Justice and Public Safety and the Regional Health Authorities have been working together to ensure continuity of care for existing clients of Addictions and Mental Health Services while completing their provincially mandated sentence. A pilot project demonstrating the effectiveness of an approach focused specifically on the use of e-health technologies while a client is incarcerated will enhance access to their community based clinician.</i></p> <p><i>The mandate of the Working Committee referenced in recommendation 3.58 will include reviewing best practices and assessing opportunities to improve access to counseling and therapy to all offenders identified as experiencing an addiction and/or mental health problem. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.117 to the Departments of Health and Justice and Public Safety.</i></p>	<p><i>September 30, 2018</i></p> <p><i>Final report submission June 30, 2019</i></p>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.118 We recommend the Department of Health and the Department of Justice and Public Safety use integrated clinical teams for assisting adults in custody, similar to the approach taken in the youth facility.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will also be to review best practices and assess opportunities to enhance care for offenders requiring addiction and/or mental health services. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.118 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>
3.119 We recommend the Department of Health and the Department of Justice and Public Safety support community based addiction and mental health programs to treat inmates inside the correctional institution due to the logistical and security challenges of bringing inmates to community treatment centres.	<p><i>Through oversight by the Joint Standing Committee on Forensic Services, the Departments of Health, and Justice and Public Safety Regional Health Authorities have been working together to ensure continuity of care for existing clients of Addictions and Mental Health Services while completing their provincially mandated sentence. A pilot project demonstrating the effectiveness of an approach focused specifically on the use of e-health technologies while a client is incarcerated in a correctional facility will enhance access to their community based clinician.</i></p> <p><i>The mandate of the Working Committee referenced in recommendation 3.58 will include reviewing best practices and assessing opportunities to enhance care to all offenders identified as experiencing an addiction and/or mental health problem. By June 30th 2019 the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.119 to the Departments of Health and Justice and Public Safety.</i></p>	<p><i>September 2018</i></p> <p><i>Final report submission June 30, 2019</i></p>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.124 We recommend the Department of Health ensure addiction treatment services are made available to inmates in provincial correctional institutions.	<p><i>Through oversight by the Joint Standing Committee on Forensic Services, the Departments of Health, and Justice and Public Safety Regional Health Authorities have been working together to ensure continuity of care for existing clients of Addictions and Mental Health Services while completing their provincially mandated sentence. A pilot project demonstrating the effectiveness of an approach focused specifically on the use of e-health technologies while a client is incarcerated in a correctional facility will enhance access to their community based clinician.</i></p> <p><i>The mandate of the Working Committee referenced in recommendation 3.58 will include reviewing best practices and assessing opportunities to enhance care to all offenders identified as experiencing an addiction and/or mental health problem. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.124 to the Departments of Health and Justice and Public Safety.</i></p>	<p><i>September 2018</i></p> <p><i>Final report submission June 30, 2019</i></p>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.130 We recommend the Department of Justice and Public Safety and the Department of Health ensure all provincial correctional institutions have continuous access to emergency mental health services.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will include examining the roles and capacities of existing emergency services, such as mobile mental health services. The Working Committee will also examine the option of centralized placement of those individuals with high/urgent mental health needs who are incarcerated in correctional facilities across the province. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.130 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>
3.134 We recommend the Department of Justice and Public Safety implement a formulary for medications for use within all provincial correctional institutions. Where possible the formulary should be aligned with drug protocols in Federal penitentiaries.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will include examining options for a formulary, specifically psychiatric and opioid replacement therapy medications, that is consistent with provincial practices. The working committee will also evaluate Section-G-Introduction of Clinical Services of the Adult Institutional Policy to assist in ensuring desired consistency. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.134 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
<p>3.140 We recommend the Department of Justice and Public Safety implement an individualized protocol approach for inmates with mental health issues in segregation such as is used by Correctional Service Canada. Individualized protocols should be integrated into treatment plans and reviewed by mental health professionals.</p>	<p><i>Correctional Services commenced an examination of the use of segregation and the related operational policies and procedures for Adult Offenders during the spring of 2017. The focal point of the review was to determine methods of reducing the use of segregation and identifying less intrusive measures when managing the behaviour of Adult Offenders. Changes to Policy and Procedures were made to reflect these changes in January of 2018.</i></p> <p><i>In order to reduce the amount of Offenders placed in Administrative Segregation conditions of confinement were identified. Each condition of confinement takes place in an area within the correctional facility that allows the immediate needs of the Offender and the related Offender Management Process to be addressed.</i></p> <p><i>The Conditions of Confinement are as follows: General Format; Modified Format; Special Privilege Format; Medical Treatment Format; Clinical Intervention Format and High Security Format.</i></p> <p><i>Administrative Segregation will only be considered after all other placement options are exhausted.</i></p> <p><i>Segregation was designated to be a distinct classification as a result of a disposition of an Institutional Misconduct Charge and only considered after all alternative options to segregation and less intrusive measures have been exhausted. Segregation placements now include three privilege levels of placement designed to encourage positive behavior and provide options for early return to a Unit placement.</i></p>	<p><i>January 2019</i></p>

Exhibit 3.3 - Summary of Recommendations (continued)

Recommendation	Joint Response from the Department of Health and Justice and Public Safety	Target date for implementation
3.151 We recommend the Department of Health and the Department of Justice and Public Safety map out all services currently available to clients with addiction and mental health issues who are also involved in the criminal justice system. This information should then be used when developing the integrated service delivery model.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will explore all existing work and resources related to community mapping. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.151 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>
3.152 We recommend the Department of Health and the Department of Justice and Public Safety develop appropriate protocols to ensure continued services for addiction and mental health clients who are placed in custody in provincial correctional institutions.	<i>The mandate of the Working Committee referenced in recommendation 3.58 will include defining protocols to ensure continued services for incarcerated addictions and mental health clients, in support of solutions such as those referenced in recommendations 3.105 and 3.117. By June 30th 2019, the Joint Standing Committee on Forensic Services will submit a report providing comprehensive solutions to recommendation 3.152 to the Departments of Health and Justice and Public Safety.</i>	<i>Final report submission June 30, 2019</i>

Background

- 3.19** Mental health has been termed the “orphan”⁹ of health care. A study published in 2008 in the *Journal of Chronic Diseases in Canada* estimated the overall cost of mental illness to the Canadian economy at \$51 billion per year. Funding for mental health care has not been in line with its negative economic impact.¹⁰
- 3.20** Inmates in correctional institutions have a disproportionately high occurrence of addiction and mental health issues. They are a particularly vulnerable and marginalized subgroup of the population. Their mental health needs have not been well served in the past.¹¹
- 3.21** Research has also shown that inmates with addiction and mental health issues had worse outcomes while in custody. Addiction and mental health issues reduce inmates’ chances of success in the community. Affected inmates were also found more likely to be reconvicted.¹²
- 3.22** Exhibit 3.4 shows the key entities involved in mental health services for individuals in conflict with the law in New Brunswick.

⁹ Province of New Brunswick, *The Action Plan for Mental Health in New Brunswick 2011-18*,

¹⁰ Centre For Addiction and Mental Health, *Mental Illness and Addictions: Facts and Statistics*, http://www.camh.ca/en/hospital/about_camh/newsroom/for_reporters/Pages/addictionmentalhealthstatistics.aspx

¹¹ Irina R. Soderstrom PhD (2007) *Mental Illness in Offender Populations*, *Journal of Offender Rehabilitation*, 45:1-2, 1-17,

¹² Correctional Service of Canada, *Research Results Mental Health, Quick Facts*, Offender Outcomes.

Exhibit 3.4 – Responsible Entities

Responsible Entities	
Entity	Role
Department of Justice and Public Safety- New Brunswick Corrections	<ul style="list-style-type: none"> Operates provincial correctional institutions Responsible for safety and security of inmates
Department of Health- Addiction and Mental Health Branch	<ul style="list-style-type: none"> Oversees the delivery of addiction and mental health services
RHAs- Community Addiction and Mental Health Services	<ul style="list-style-type: none"> Delivers addiction and mental health services in the community
RHAs – Clinical Services	<ul style="list-style-type: none"> Employs nursing staff and assigns them to correctional institutions
Source: Table prepared by AGNB	

3.23 The Department of Health and the Department of Justice and Public Safety are the two main entities responsible for providing addiction and mental health services to inmates in provincial correctional institutions.

Exhibit 3.5 - Southeast Regional Correctional Center (SRCC) in Shediac NB



Source: Provided by NB Corrections

NB Corrections

3.24 Within the Department of Justice and Public Safety, New Brunswick Corrections Branch (NB Corrections) is responsible for operating provincial correctional institutions and for the safety and security of inmates.

3.25 The corrections branch operates five adult institutions in the province with a budget of \$31 million and a capacity of

546 inmates (See Appendix IV for the location of New Brunswick's correctional institutions). The Department of Justice and Public Safety reported just over 3,600 custodial admissions in 2015-2016 fiscal year. The average sentence (period in custody) in New Brunswick is 76 days.

Exhibit 3.6 - Inside a General Population Unit at SRCC- Shediac, NB



Source: Provided by NB Corrections

3.26 According to the Department of Justice and Public Safety (JPS), there are approximately 500 people in custody at any given point in time. Exhibit 3.7 provides a breakdown of average daily inmate count by institution.

Exhibit 3.7 – Breakdown of New Brunswick's Adult Provincial Correctional Institutions

Breakdown of New Brunswick's Adult Provincial Correctional Institutions			
Provincial Correctional Institutions	Average daily count 2016-2017	2016/2017 Budget (\$Millions)	Average Annual Cost per Inmate (\$000s)
Saint John Regional Correction Center	132	7.7	58
Southeast Regional Correctional Center (Shediac)	169	8.3	49
Dalhousie Regional Correctional Center	64	6.1	95
Madawaska Regional Correctional Center (near Edmundston)	62	5.4	86
New Brunswick's Women's Correctional Center (Miramichi)	43	3.8	88
Total	470	31.2	66

Source: Table prepared by AGNB with Department of JPS data (unaudited)

3.27 The two main types of custody are sentenced and remand. Sentenced custody is for those who were found guilty and sentenced to incarceration for two years less a day.

3.28 Remand applies to individuals placed into custody but have not been sentenced or are awaiting trial. Some individuals will be released, some will be sentenced to provincial custody (two years less a day) and others will be transferred to a federal penitentiary if they are sentenced to two or more years.

3.29 Exhibit 3.8 shows total admission by custody type.

Exhibit 3.8 – Annual Admissions to NB Provincial Correctional Institutions by Type

Annual Admissions to Provincial Correctional Institutions by Type		
Intake Admissions	2015-2016	2016-2017
Adult Admissions	3,611	3,685
% sentenced	55%	53%
% remand and other	45%	47%

Source: Table adapted by AGNB from Department of JPS information (unaudited)

***Theft \$5,000 or under
most common cited
offence***

3.30 The most common reason for incarceration in provincial institutions is for theft under \$5,000 and for administrative breaches, such as breaching a court order (Exhibit 3.9 shows the three most common offences cited from five years of New Brunswick admission data).

Exhibit 3.9 – Common Offences in Provincial Corrections (2012 – 2017)

Three Most Common Offences in Provincial Corrections (2012-2017)		
Description- offence	% of total admissions	Average of Days Served
Theft \$5,000 or under	13.2%	71
Failure to Comply with Conditional Sentence	12.5%	28
Breach of Probation	11.0%	37

Source: Table prepared by AGNB from department of Justice and Public Safety data (unaudited)

3.31 The Department of Health oversees New Brunswick's health care system through strategic planning, funding and monitoring of health services.

***Addiction and mental
health services branch***

3.32 The Addiction and Mental Health Services Branch within the Department of Health oversees the delivery of addiction and mental health services provided by the Regional Health Authorities.

***Regional Health
Authorities***

3.33 The two Regional Health Authorities (Horizon and Vitalité) provide these services through four operational sectors:

- community mental health centres;
- psychiatric units;
- psychiatric hospitals; and
- non-profit organizations and consumer-run programs.

3.34 The Department of Health overall budget for the Fiscal Year 2016-2017 was \$2.7 billion. The amount allocated to mental health services was \$126 million (4.7%).

***Mental Health Strategy
for Corrections in
Canada***

3.35 The Mental Health Strategy for Corrections in Canada, a Federal-Provincial-Territorial Corrections partnership, provided a framework and principles for mental health services. It included a list of detailed outcomes for addiction and mental health service delivery.

3.36 The vision of this strategy is: *“Individuals in the correctional system experiencing mental health problems and/or mental illnesses will have timely access to essential services and supports to achieve their best possible mental health and well-being. A focus on continuity of care will enhance the effectiveness of services accessed prior to, during, and after being in the care and custody of a correctional system. This will improve individual health outcomes and ultimately contribute to safe communities”.*

***Action Plan for Mental
Health in New
Brunswick 2011-2018***

3.37 In 2009 a task force led by Judge McKee completed work to assist the Department of Health in the development of strategic priorities for renewing the mental health system in New Brunswick.

3.38 Recommendations from the McKee task force report were used to create the New Brunswick strategy on mental health (*Action Plan for Mental Health in New Brunswick 2011-2018*). This strategy included initiatives for the Department of Health and the Department of Justice and Public Safety to improve addiction and mental health services in New Brunswick.

3.39 One of the commitments made in the Action Plan was to *“Ensure that the departments of Health and Public Safety develop policies and protocols for delivery of mental-health-care services in the provincial correctional system.”*

3.40 According to the Department of Health much progress has been made in the delivery of community mental health services in New Brunswick. For example the Department of Health and the regional health authorities (RHAs) have implemented Flexible Assertive Community Treatment (FACT) services. These services provide co-ordinated intensive team care to individuals with serious mental illness.

3.41 We were informed there have been successful changes with regard to the youth justice system. These include multidisciplinary teams and counselling and therapy services within the institution.

Scope and Approach

3.42 However these program changes may not have carried over into the adult system. There were indications during our pre-planning that little progress had been made in mental health service for adults involved in the justice system. Particularly for those held in provincial correctional institutions.

3.43 The scope of this audit included adults held in custody in provincial correctional institutions, whether sentenced or remanded. The audit covered the 2016 and 2017 calendar years. However, our analysis of admissions data extended back to prior years as required.

3.44 The scope did not include community corrections, federal penitentiaries, youth facilities or the Youth Justice System.

3.45 Our audit approach encompassed interviews, observations, file reviews and analytical procedures.

3.46 We interviewed selected individuals from:

- Department of Justice and Public Safety –NB Corrections Branch;
- Regional Health Authorities (RHAs);
- Contracted physicians; and
- Department of Health Addiction and Mental Health Branch.

3.47 We performed walkthroughs and inspections of correctional facilities covering admissions, clinical services, segregation and special handling units.

3.48 We reviewed necessary files to corroborate evidence gathered from the audit procedures listed above.

Observations and Findings

Governance and Management Arrangements

Legislation does not provide a clear mandate

3.49 New Brunswick legislation and regulations are silent on which entity is ultimately responsible for providing addiction and mental health services in provincial correctional institutions.

3.50 We found no entity had been mandated to provide mental health and addiction services to adults in provincial correctional institutions.

Roles and responsibilities are not defined

- 3.51** Roles and responsibilities of entities involved in the provision of addiction and mental health services to provincial inmates are not defined, resulting in significant gaps in accountability.
- 3.52** Our interviews revealed confusion and misunderstanding among the entities involved. Regional Health Authorities believed the delivery of health services was being or should be done by NB Corrections. However, NB Corrections considered it within the purview of each physician contracted by the Department of Justice and Public Safety. The physicians felt clinical operations was the responsibility of nursing staff employed by the RHAs. Staff we interviewed within the Department of Health believed the RHAs had some responsibility under existing agreements with NB Corrections.
- 3.53** Other provinces such as Nova Scotia have included in their legislation, responsibility for the provision of health services in corrections.
- 3.54** There has been an international trend to shift responsibility for health care in correctional institutions to health ministries and health authorities. England, Wales, France, Norway and the state of New South Wales in Australia have seen authority for health services in corrections fall under Ministries of Health.¹³
- 3.55** In Canada, provinces such as British Columbia, Nova Scotia and Newfoundland and Labrador have made or are initiating a legislative change to this effect.
- 3.56** This trend was influenced by concerns about the number of mentally ill people in prison and the poor quality of treatment they were receiving.
- 3.57** Addressing addiction and mental health services in a prison environment is complex. No one entity or group can act in isolation. Healthcare and clinical practices must work in conjunction with safety and security constraints. Without clear definition of roles and responsibilities of the

¹³ Irina R. Soderstrom PhD (2007) *Mental Illness in Offender Populations*, Journal of Offender Rehabilitation, 45:1-2, 1-17,

entities involved, accountability may not be established and the mental health and addiction needs of inmates will not be met.

Recommendation

3.58 We recommend the Department of Health provide clear direction through legislation and regulation as to who is responsible for health services including addiction and mental health services in provincial correctional institutions.

No service delivery model for addiction and mental health services

3.59 We found no service delivery model was implemented for addiction and mental health services in correctional institutions.

3.60 Although there is a service delivery model in community mental health services, it is not suitable for service delivery within correctional institutions.

3.61 The unique requirements of delivering services inside correctional institutions require a separate model that encompasses health services along with safety and security needs.

Limited service agreement with RHAs

3.62 Existing Memoranda of Understanding (MoUs) between NB Corrections and the RHAs are limited to the provision of nursing staff to correctional institutions. No similar agreements are in place for delivering addiction and mental health services to inmates.

3.63 NB Corrections does not have mental health clinical staff within its adult facilities. Correctional institutions rely on the RHAs for mental health services such as clinical intervention plans, crisis response and intervention.

3.64 NB Corrections signed a separate MoU with each RHA to govern the employment arrangements for nursing staff in the correctional institutions.

MoUs do not address delivery of addiction and mental health services

3.65 The MoUs only cover employment status and performance expectations of nursing staff. They do not cover delivery of addiction and mental health services. RHAs have no direction or mandate to provide such services.

3.66 Traditionally corrections provided healthcare services within the correctional institutions. Nursing staff were employed directly by Justice and Public Safety. When RHAs were reorganized from eight to two in 2008, nursing staff became employees of the RHAs. However, little consideration was given to the broader provision of health

services in provincial correctional institutions as part of this new arrangement.

Recommendation

3.67 We recommend the Department of Health, in consultation with the Department of Justice and Public Safety and other relevant parties, complete an integrated service delivery model for addictions and mental health services in New Brunswick correctional institutions. Existing agreements should be redrafted to meet the requirements of this service delivery model.

No monitoring and performance measurement

3.68 We found no monitoring or performance measurement of addiction and mental health service delivery to inmates in provincial correctional institutions.

Data is not shared

3.69 We found there is a lack of credible data upon which such monitoring and performance measurement could be based. Existing data is of poor quality and not shared amongst departments and entities. For example, it is not possible to determine how many inmates were admitted with schizophrenia without reading each paper medical file.

3.70 The McKee task force report from 2009 recognized the need for integrated data systems and appropriate “front-end” consent processes to expedite the sharing of information across disciplines and settings. However, this was never implemented.

3.71 Capturing and maintaining accurate and reliable inmate data is necessary for service providers to identify addiction and mental health needs, and develop appropriate strategies for service delivery.

Recommendation

3.72 We recommend the Department of Health and the Department of Justice and Public Safety collaborate to capture and share addiction and mental health data. This data should be used to identify addiction and mental health needs in New Brunswick correctional institutions and develop strategic service delivery plans.

Exhibit 3.10 - Admissions area at Southeast Regional Correctional Centre

Source: NB Corrections

Screening and Assessment

Mental health screening process does not meet minimum standards

3.73 We found NB Corrections has not incorporated nationally accepted practices for screening and assessments into their admissions processes.

3.74 Inmates are screened as part of the standard admission process. However, the procedures in place do not meet recommended best practices or the minimum standards found in the Mental Health Strategy for Corrections in Canada. The admission process includes basic questions from both the admissions officer and the nurse, related to history of mental health and addiction and past treatment.

3.75 *The 2011-2018 Action Plan for Mental Health in New Brunswick* committed the Department of Justice and Public Safety to adopt best practices in screening and assessment.

3.76 We believe adopting mental health screening best practices is necessary to ensure mental health issues are flagged consistently and effectively. Adopting best practices will allow a proactive approach whereby previously undiagnosed mental issues can be identified and treated.

Screening not being used to flag potential issues

- 3.77** Screening is not being used for the purpose of flagging individuals with potential addiction and mental health issues for further in-depth assessment, ultimately leading to a treatment plan.
- 3.78** Screening done by correctional officers is primarily performed to determine the likelihood of risk to the safety and security of the individual or others within the institution. It also helps determine the classification of the inmate impacting placement in the unit.
- 3.79** Screening by nursing staff forms part of a general health assessment. It is used to identify addiction and mental health needs such as likelihood of severe withdrawal symptoms which may require immediate or special attention.
- 3.80** The Corrections Branch currently administers the admissions process within which addiction and mental health screening is conducted. However the Draft Provincial Correctional Nursing Practice Standards requires nurses to provide the addiction and mental health screening.
- 3.81** A recent review of best practices provided to the Department of Health said *“The use of screening measures allows for triaging of cases in which those flagged with possible concerns are referred for more advanced mental health/addiction evaluation to confirm/clarify presenting concerns. Such knowledge then informs appropriate case management and intervention planning within the institutional setting to address identified concerns and facilitate subsequent discharge planning for transitioning to the community.”*¹⁴
- 3.82** Screening is still important for short periods of incarceration even if there may not be enough time in custody for meaningful treatment. With proper screening, institutions can identify addiction and mental health needs and arrange for follow up in the community once released.

¹⁴ Dr. Mary Ann Campbell *Integrative Response to the Needs of Justice Involved Persons with Mental Health Concerns: An Overview of Research Supported Addiction, Mental Health, and Correctional Service Delivery*, Centre for Criminal Justice Studies, June 30, 2017.

No recognized screening tool used **3.83** Neither the admission nor health assessment process uses a recognized mental health screening tool. Use of a standardized screening tool by trained individuals is one of the expected outcomes of the Strategy for Mental Health in Corrections in Canada.

Recommendation **3.84** We recommend the Department of Justice and Public Safety (New Brunswick Corrections) in consultation with the Department of Health implement a recognized mental health screening tool in the admissions process.

Lack of specialized training for mental health screening **3.85** We found neither correctional officers responsible for admissions nor nursing staff receive training in mental health screening.

3.86 An expected outcome of the Strategy for Mental Health in Corrections in Canada is that screening be done by a staff member trained according to the requirements of the mental screening protocol being used.

3.87 This is important to help the person doing the screening identify the potential existence of previously unrecognized or undiagnosed mental health issues. This supports the proactive approach of identifying and treating underlying health issues that may be inhibiting successful reintegration into the community.

3.88 It is encouraging to find that mental health and suicide training is being given to corrections officers. Mental health awareness training has been incorporated into the training academy that all new corrections officers attend. ASIST (Applied Suicide Intervention Skills Training) is provided to all correctional officers. However this does not provide the tools and skillset needed to flag underlying mental health issues during screening interviews.

3.89 However, nursing staff working in the correctional institutions are not included in the mental health and suicide training provided to corrections officers.

Recommendation **3.90** We recommend the Department of Health, in coordination with the Department of Justice and Public Safety, provide training on mental health screening to nursing staff and admission officers.

Nursing staff do not have access to mental health records

3.91 Nursing staff do not have access to mental health databases to validate self-reported information obtained from inmates. Access to, or notification of, related entries in the mental health data base would allow clinical staff to have a more complete picture of mental health issues. It would give them reliable knowledge of past treatment. This would allow for more proactive treatment options.

3.92 Only prescribed medications and methadone are verified with external providers. All other self-reported information by inmates during the admission is not validated against external sources. Other information may be sought after the fact to help respond to acute incidents.

Recommendation

3.93 We recommend the Department of Health ensure nursing staff within a correctional institution receive access to, or notification of, client records in the Client Service Delivery System (CSDS). This will allow validation of treatment history and treatment options.

Inconsistency between institutions

3.94 We found the method for conducting screening interviews differs between institutions. For example, some institutions use an open or public screening area to conduct assessments.

3.95 Exhibit 3.11 below shows the admission screening area in Saint John Regional Correctional Centre (SJGCC). Inmates sit on the fold out bench across from the admission officer's desk and the holding cell. Inmates may feel reluctant to provide private information in such an open setting. Differences in how and where the questions are asked may have an impact on the degree of truthfulness and credibility of information.

Exhibit 3.11 - Admissions area and holding cell at SJRCC

Source: Provided by NB Corrections

Duplication of questions 3.96 The current process followed at all institutions uses an admission checklist form administered by correctional officers. The checklist includes questions such as previous attempted suicides, previous psychiatric treatment and drug use. The medical assessment form used by nursing staff includes similar questions.

Only hard copy information

3.97 Information gathered during the screening processes is kept as hard copy and filed in the respective medical and inmate files. It is not recorded electronically. This makes it difficult to perform any meaningful data analysis for statistical purposes.

3.98 A standalone mental health survey has been added to the process. The survey is administered by the admissions officer conducting the screening. The survey was meant to help address the shortfall in mental health information in corrections.

Survey information unreliable

3.99 However, information obtained has not been used for any further analysis or decision-making. AGNB analysis of the data determined it was not reliable. We found respondents' answers changed between periods of incarceration within the same year. We were informed during our audit that other provinces in Canada have abandoned this survey.

Recommendation

3.100 We recommend the Department of Justice and Public Safety amend its admission process to:

- **eliminate duplication of effort in admissions;**
- **improve the quality of inmate mental health data; and**
- **incorporate best practices in mental health screening.**

Mental health assessments are not being done

3.101 We found mental health assessments are not being done as part of the treatment and reintegration efforts in correctional institutions.

3.102 An expected outcome from the Strategy for Mental Health in Corrections in Canada is that individuals flagged in screening as having potential mental health issues are seen by a qualified health care professional for a comprehensive mental health assessment. The assessment provides a more complete picture of the nature and severity of the inmate's mental health issues.

3.103 A comprehensive assessment includes understanding the interaction between issues and how they may impact behaviour and reintegration efforts. A treatment plan can then recommend the appropriate type of services and supports for the individual.

3.104 A proactive approach to assessments allows potential problems to be addressed before they manifest into acute issues which may pose a higher risk to both staff and inmates.

Recommendation

3.105 We recommend the Department of Health and the Department of Justice and Public Safety ensure inmates flagged from the screening protocol be referred to a qualified mental health professional for a comprehensive mental health assessment to develop a treatment plan.

Exhibit 3.12 - Medical isolation cell at Miramichi Women's Correctional Centre

Source: NB Corrections

Treatment

Treatment not provided

3.106 The Departments do not provide treatment services and supports to meet addiction and mental health needs of adults in custody.

3.107 We believe inmates need to receive the appropriate addiction and mental health treatment in order to improve health outcomes and facilitate their successful reintegration into the community.

Addiction and mental health treatment options are limited

3.108 Treatment options are limited to physician prescribed medications to address the symptoms of addiction and mental health issues. In some acute and difficult cases, intervention may come from informal networks of staff, professionals and volunteers.

3.109 Treatment, services and supports is a key principle of the Mental Health Strategy for Corrections in Canada. The strategy states that a range of appropriate and effective treatment and support services is essential to:

- alleviate symptoms (including risk of self-injury and suicide);
- enhance recovery and well-being;
- enable individuals to actively participate in correctional programs; and,
- facilitate safer integration of individuals with mental health problems into institutional and community environments.

Recent jurisdictional scan of addiction and mental health services

3.110 The Department of Health initiated a survey to collect information on addiction and mental health services provided to inmates in other provinces and territories in Canada. This “jurisdictional scan” was done as part of the Department’s recent initiative to improve addiction and mental health services in the provincial justice system, including in provincial correctional institutions.

New Brunswick is among the least effective in providing treatment to inmates

3.111 The responses we reviewed were from PEI, Yukon, BC, Alberta, Saskatchewan and Manitoba. All six jurisdictions indicated they provide addiction and mental health treatment services for incarcerated residents. Examples include dedicated mental health and addiction staff providing treatment services inside correctional institutions. We found such services are not provided in New Brunswick.

Counselling and therapy services are not available in correctional institutions

3.112 Correctional institutions rely on community mental health resources, within the respective RHAs, to provide addiction and mental treatment to inmates.

3.113 We found the RHAs do not provide counselling and therapy services within the correctional institutions. Mental health practitioners employed by the RHAs do not visit or provide services within the institutions. We did not find any policy or rule that would prevent them from doing so. Officially patients in custody can access the same community based services as any other resident. In practice, the logistical and security requirements of bringing an inmate to a community treatment center make this unfeasible.

Informal practices inconsistent and not sustainable

3.114 In some acute cases, consultation and services are acquired through informal contacts between corrections, clinical staff and mental health professionals. On rare occasions, dedicated staff and their contacts act on their own to provide assistance. They may also reach out to try and make special arrangements to provide assistance once the patient is released.

3.115 However, we believe such informal practices are not capable of providing consistent and sustained treatment options.

3.116 In contrast, the youth correctional facility has multi-disciplinary teams employed within the institution, which include a social worker and psychiatrist. This was part of the improvements made within the youth criminal justice system over the last decade, part of a response to reports

released on the Ashley Smith case.

Recommendations

3.117 We recommend the Department of Health and the Department of Justice and Public Safety collaborate to ensure addiction and mental health counselling and therapy treatment options are available for inmates in provincial correctional institutions.

3.118 We recommend the Department of Health and the Department of Justice and Public Safety use integrated clinical teams for assisting adults in custody, similar to the approach taken in the youth facility.

3.119 We recommend the Department of Health and the Department of Justice and Public Safety support community based addiction and mental health programs to treat inmates inside the correctional institution due to the logistical and security challenges of bringing inmates to community treatment centres.

No access to addiction services while in custody

3.120 Inmates in custody do not have access to addiction treatment services. Individuals suffering from addiction and substance abuse must wait until released before they can begin any treatment process.

3.121 Requests by corrections staff to have RHA community based addiction staff visit the institution for “pre-contemplative” sessions or information sessions have not been actioned. However, as indicated earlier, there is no framework or service delivery model in place to address this need.

Inmates fear if they are denied help they will likely reoffend

3.122 We found evidence inmates have asked for help with addiction while in custody. They recognized that if they are released without treatment they pose a risk to themselves and the public, and will most likely reoffend in order to obtain drugs.

3.123 Due to their social circumstances and mental health and addiction issues, many inmates are not in a position to initiate treatment after release. Inmates are in a better position to respond to addiction interventions while in custody with their basic needs (shelter, security, and food) being met.

Recommendation

3.124 We recommend the Department of Health ensure addiction treatment services are made available to inmates in provincial correctional institutions.

Reactionary mental health treatment process - acute incident response, stabilization and then nothing until next incident occurs.

3.125 Emergency mental health services and crisis intervention are not consistently available at all provincial correctional institutions. No provincial correctional institution has its own emergency mental health resource. The correctional officers and the nursing staff, when on duty, are the first responders in mental health crisis.

3.126 Correctional institutions can call 911 emergency response and hospital emergency services which include mental health professionals. Data on the number of times they have used this service was not readily available.

Emergency mental health services not consistently available

3.127 However, not all community mental health units in the province provide the same level of emergency response to the regional correctional institution. At the time of our audit, mobile mental health crisis teams were not set up in all areas. Where mobile mental health crisis units were available, there was uncertainty around their ability to respond to calls at the correctional institution.

3.128 Saint John correctional institution (SJRC) was the only one we found that included use of this community based service as an option and used it. The mobile mental health unit responded to five calls at SJRC in 2017.

3.129 The forensic team in place to support the mental health court in Saint John is also available to provide emergency support to its clients while they are in custody.

Recommendation

3.130 **We recommend the Department of Justice and Public Safety and the Department of Health ensure all provincial correctional institutions have continuous access to emergency mental health services.**

Discrepancies in prescription of drugs and narcotics

3.131 We found discrepancies in the use of prescribed drugs and narcotics between institutions including provincial correctional institutions, federal penitentiaries and forensic hospitals. Each practicing physician follows their own judgment and clinical determination for the client. The result is differences in treatments and types of drugs prescribed at the institution.

3.132 There are multiple policies and directives governing the use of medications in correctional institutions. They include: Correction's policies, clinical standards and physician orders. This makes it more difficult for staff to determine which policy to follow.

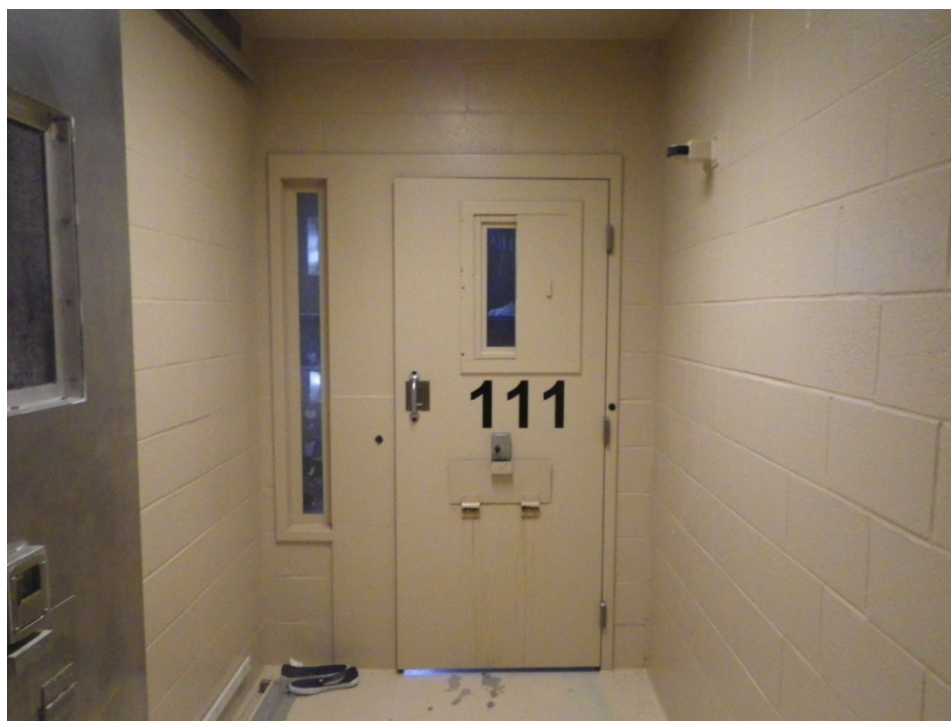
3.133 AGNB's inspection of treatment logs found instances

where patients were told by nursing staff their current medications were not available in prison citing institution policy. However, the physician then later prescribed them that same medication.

Recommendation

3.134 We recommend the Department of Justice and Public Safety implement a formulary for medications for use within all provincial correctional institutions. Where possible the formulary should be aligned with drug protocols in Federal penitentiaries.

Exhibit 3.13 - Outside a Special Handling Unit (segregation) cell at Southeast Regional Correctional Center



Source: Provided by NB Corrections

Use of segregation without addiction and mental health support

3.135 We found a lack of options to support inmates with mental health issues in segregation. Correctional institutions use segregation as an immediate response to manage situations of violent behavior, self-harm, suicide or mental incapacitation. This standard protocol is applied to all inmates regardless of their mental health condition.

3.136 However, once the immediate crisis is stabilized, there is no mental health support available within the correctional institution. The result is often a cycle of segregation causing mentally ill inmates to spend significant time in a segregated environment, further

Incidents of inmates kept in segregation for several months

aggravating the individual's state of mental health.¹⁵

3.137 We found cycles of segregation occurring with inmates with mental health issues in provincial custody. During interviews, we were informed of incidents where individuals were in segregation for several months because of their mental health condition. See Appendix III for examples of cases we found which lead to cycles of segregation and re-incarceration.

3.138 We found one institution is modifying their standard segregation protocols to better respond to individuals suffering from acute mental health issues. For example, they have allowed segregated inmates extended time for socialization and/or providing them with materials such as colouring books. While we consider this is a positive development, it is informal, undocumented and reliant on individual management and staff discretion.

3.139 However, we were informed that in January 2018, NB Corrections completed an examination of its use of segregation and related operational policies and procedures.

¹⁵ R. Kapoor, MD, *Taking the Solitary Confinement Debate Out of Isolation*, The Journal of the American Academy of Psychiatry and the Law 42:2-6, 2014.

Exhibit 3.14 - View inside a segregation cell at Saint John Regional Correctional Centre



Source: Provided by NB Corrections

Recommendation

3.140 We recommend the Department of Justice and Public Safety implement an individualized protocol approach for inmates with mental health issues in segregation such as is used by Correctional Service Canada. Individualized protocols should be integrated into treatment plans and reviewed by mental health professionals.

Exhibit 3.15 - Outside admissions entrance Southeast Regional Correctional Centre



Source: provided by NB Corrections

Continuum of Addiction and Mental Health Care

3.141 We found addiction and mental health services are severely disrupted and often discontinued when inmates transition in and out of custody and are transferred between institutions.

Services disrupted and often discontinued

3.142 There are many systemic factors contributing to this service disruption. They include:

Silo nature of service disrupts treatment

Differences in practices between institutions disrupts treatment

- The silo nature of government services along department and organizational boundaries;
- The lack of clear and consistent addiction and mental health policies and practices in correctional institutions;
- Differences in policies, protocols and treatment practices between provincial and Federal correctional institutions and Psychiatric Hospitals;

- Lack of timely sharing of information between community mental health services and NB Corrections clinical services;
- Community mental health service providers do not visit the institutions to offer or continue treatment services; and
- Logistical requirements of transporting an inmate to a community clinic prevent it from happening. Inmates must be shackled and handcuffed and accompanied by two Correctional Officers.

Treatment plans discontinued and files closed upon incarceration

3.143 When individuals are incarcerated, their existing treatment plans are discontinued and patient files are closed. There is a lack of clear policy on file retention by community mental health services for patients who are in custody. This results in inconsistent actions and discrepancies between service providers on when a file will be closed.

3.144 An exception exists for FACT (Flexible Assertive Community Treatment) team and Forensic Team clients. These patients' files remain open even when placed in custody. There were attempts to continue to follow the patient and continue treatment.

3.145 Drug protocols are different in Federal penitentiaries. This means inmates transferred into provincial custody from Federal penitentiaries will not be able to continue certain prescribed medications to treat their mental health issues.

Prescribed medication denied in correctional institution

3.146 We found prescribed medications are denied when patients are placed back in a provincial correctional institution. From our file review, we found medications for attention deficit disorders were not continued upon transfer to a provincial correctional institution from a Federal penitentiary. The patient's condition worsened and behavioural issues re-emerged. This led to increased incidents and more time in segregation. The individual was released into the community in worse condition than when they were admitted.

3.147 At Restigouche Hospital Centre, treatment and drug protocols differ from provincial institutions. This means drug treatments initiated while at Restigouche Hospital Centre for some mental health issues will not be continued once the patient is placed back in a provincial correctional

institution.

3.148 In the case of methadone treatments, we found close coordination between community providers and the institution both on admittance and release to ensure seamless transition and prevent the interruption of methadone dosages.

3.149 Continuity of care between correctional institutions and community mental health services is important because it reduces the chance that a patient will slip through the cracks and stop getting treatment.

3.150 Disruption in the continuity of addiction and mental health care for inmates puts both the public and the individual at risk. Studies have found that a break in care can put individuals at risk of criminal behaviour and the risks of relapse, hospitalization and suicide.¹⁶

Recommendations

3.151 We recommend the Department of Health and the Department of Justice and Public Safety map out all services currently available to clients with addiction and mental health issues who are also involved in the criminal justice system. This information should then be used when developing the integrated service delivery model.

3.152 We recommend the Department of Health and the Department of Justice and Public Safety develop appropriate protocols to ensure continued services for addiction and mental health clients who are placed in custody in provincial correctional institutions.

¹⁶ Dr. Mary Ann Campbell, *Integrative Response to the Needs of Justice Involved Persons With Mental Health Concerns: An Overview Of Research Supported Addiction, Mental Health, and Correctional Service Delivery*, Centre for Criminal Justice Studies, June 30, 2017.

Appendix I: About the Audit

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on the Departments of Justice and Public Safety and Health's (the Departments) delivery of addiction and mental health services to adult inmates in custody in provincial correctional institutions. Our responsibility was to provide objective information, advice, and assurance to assist the Legislature in its scrutiny of the government's management of resources and programs, and to conclude on whether the Departments' delivery of addiction and mental health services complies in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard on Assurance Engagements (CSAE) 3001 – Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook – Assurance.

AGNB applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Code of Professional Conduct of Chartered Professional Accountants of New Brunswick and the Code Professional Conduct of the Office of the Auditor General of New Brunswick. Both the Code of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management's responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the findings in this report are factually based.

Period covered by the audit:

The audit covered the period between January 1, 2016 and December 31, 2017. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of the report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 17, 2018, in Fredericton, New Brunswick.

Appendix II: Criteria Used in our Audit

Objective

To determine if the Department of Health and the Department of Justice and Public Safety (the Departments) deliver addiction and mental health services to provincial correctional institution inmates to improve health outcomes and contribute to safer communities.

We used the following criteria:

Source of Criteria	<p>Developed by AGNB based on:</p> <ul style="list-style-type: none"> • “Mental Health Strategy for Corrections in Canada”, key elements and expected outcomes of the framework; • “Mental Health and Substance Use Services in Correctional Settings- A Review of Minimum Standards and Best Practices”; • Legislative audit reports from other jurisdictions; New Zealand- “Assess the effectiveness of systems for delivering mental health services to sentenced and remand prisoners”
Criterion 1 Governance & Management	The Departments should have sound governance and management arrangements with well-defined roles, responsibilities, and accountabilities for providing addiction and mental health services in correctional institutions.
Criterion 2 Screening and Assessment	The Departments should screen and assess inmates’ need for addiction and mental health services in a timely manner.
Criterion 3 Treatment	The Departments should provide treatment for identified addiction and mental health needs in accordance with recognized minimum standards
Criterion 4 Transitional Services	The Departments should provide for continued addiction and mental health treatments when admitted into and on release from provincial custody.
Criterion 5 Monitoring and evaluation	The Departments should measure, monitor and report on the performance of addiction and mental health services provided in correctional institutions.

Appendix III: Illustrative Excerpts from Case Reviews

(Warning examples contain graphic details which may be disturbing to some)

In the course of our work we came across numerous examples of individuals in custody with known mental health issues. The cases noted below illustrate the severity of the situation within provincial correctional institutions.

While each situation is unique, these cases are not un-common occurrences. Personal data has been removed or altered to preserve individual privacy.

Inmate A: On remand and released. Records show a history of incarceration. There are existing entries noting mental disability and prior behaviour management problems and suicide attempts.

During current admission the individual admits to having received treatment in the past for mental health issues and previous suicide attempts. Health assessment notes indicate the individual admits to using speed, cocaine, marijuana along with prescriptions for psychiatric medications. Individual reports being diagnosed with schizophrenia.

Individual is sent to Restigouche Hospital Centre for a court ordered 30 day assessment. Copy of assessment shows a diagnosis of paranoid schizophrenia with substance dependency and abuse as well as a history of failure to take medications. The individual is returned from Restigouche Hospital Centre with one prescription for a type of benzodiazepine (a class of psychoactive drug such as diazepam, brand name Valium).

Individual is subsequently released from the provincial correctional institution only to return three months later. Notes indicate the individual is in worse condition and is unsure of what medications or drugs they have taken. The individual is placed in segregation from admissions due to risk of suicide and uncertainty over current state of health.

Inmate B: On remand and released. While in segregation individual was seen naked on the floor, smeared in feces and eating from the toilet. Released a short time after incident. This individual has been in and out of prison and in and out of several psychiatric hospitals, units in both NB and other provinces. During a previous period in custody the individual attempted to commit suicide and was in and out of segregation repeatedly. Log notes indicate the individual was transferred from a federal penitentiary where the inmate had been seeing a psychologist. File entries note the individual complaining about the lack of counselling and inability to get previously prescribed medications, which helped control their behaviour.

Appendix III: (Continued)

Inmate C: Remand then sentenced. Individual has been homeless and in and out of custody. The individual can't live in society due to the voices in their head and how easy it is to be convinced to commit a crime. The individual wants to stay in segregation because they are easily influenced by others to commit crime. Individual does not want to live like this anymore, they want to die.

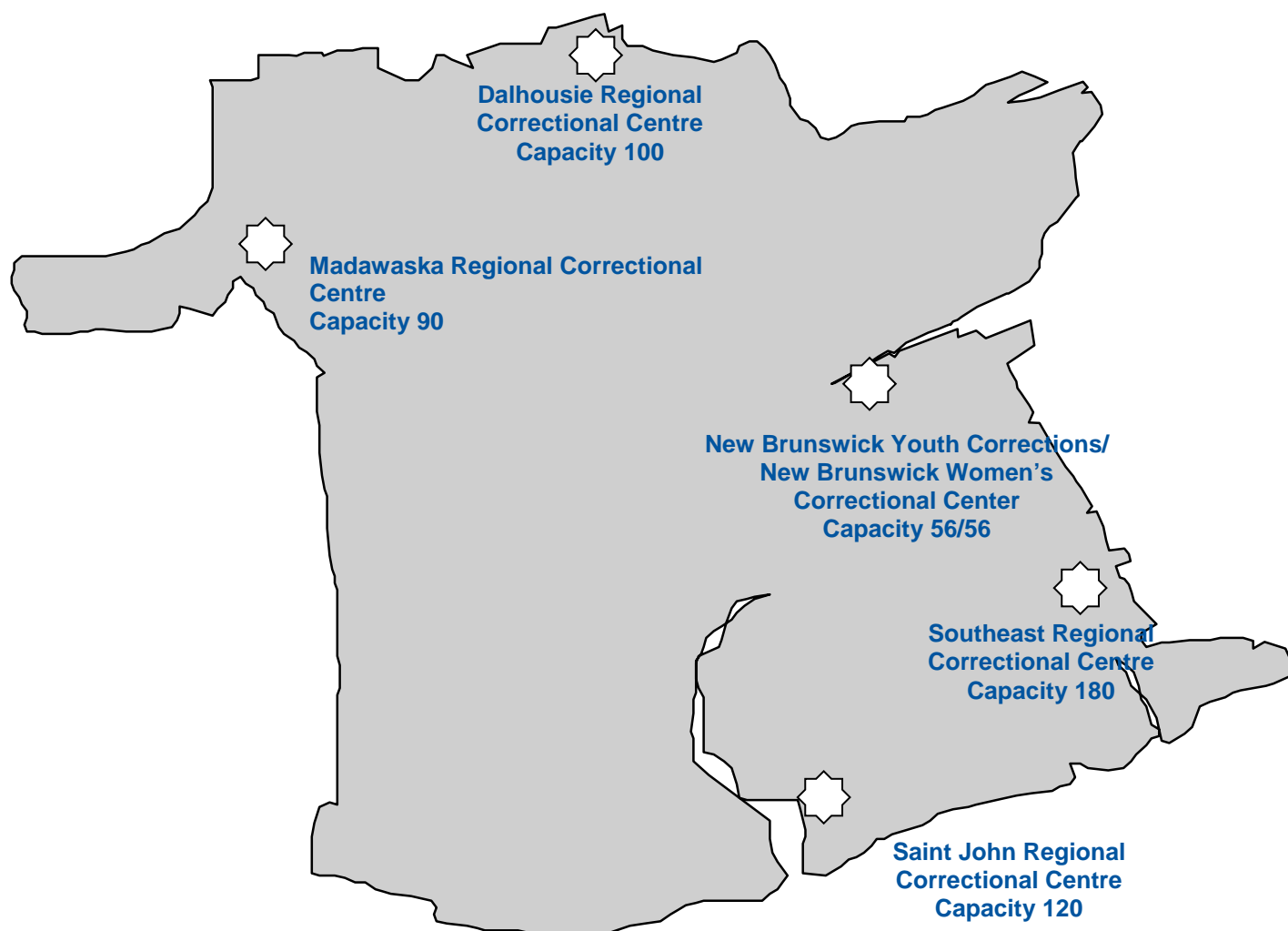
Individual put in segregation and on checks. Cycle repeats of self-harm and suicide attempts whenever taken out of segregation.

In an institution in another province had been put on an anti-psychotic drug that had helped but not able to get it in current NB provincial prison.

Most recent court ordered mental health assessment found they were fit to stand trial and criminally responsible. Although the assessment recommended follow up with mental health and addiction services, this did not happen while in custody.

Inmate D: Diagnosed with paranoid schizophrenia. Inmate was placed in medical segregation. After a few months his condition deteriorated to the extent he could no longer perform basic functions like getting dressed. He was having severe hallucinations. During that one period of custody he spent six months in segregation. File indicates little or no mental health support was provided while in segregation.

Appendix IV: Location of Provincial Correctional Institutions



Source: Provided by NB Corrections

Chapter 4

Auditor General Concerns: New Brunswick's Fiscal Decline Continues

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Auditor General Concerns: New Brunswick's Fiscal Decline Continues

List of Concerns

- 4.1** In this chapter, I am reporting on a number of important concerns. Some concerns are new findings while others relate to matters from past reports. My concerns include:
- continuing provincial deficits;
 - releasing the Province's audited financial statements before next election;
 - delayed financial reporting by economic development agencies;
 - governments spending before obtaining legislative approval; and
 - government is not effectively managing all its long-term P3 contracts.

Summary of AG Concerns

- 4.2** A summary of the Auditor General's concerns is presented in Exhibit 4.1.

Recommendations

- 4.3** A summary of recommendations can be found in Exhibit 4.2.

Exhibit 4.1 – Auditor General's Main Concerns

Auditor General Concerns: New Brunswick's Fiscal Decline Continues

Main Concerns:

- continuing provincial deficits and increasing Net Debt;
- releasing the Province's audited financial statements before next election;
- delayed financial reporting of economic development agencies;
- governments spending before obtaining legislative approval; and
- government is not effectively managing all its long-term P3 contracts.

What We Found

Province to Have 11th Consecutive Deficit

- Net Debt has increased \$7 billion in last 10 years.
- Bond rating agencies give negative outlook
- New Brunswick has highest Net Debt among comparable provinces.
- New Brunswick ability to address fiscal decline is more limited than other provinces.
- No immediate plan to address fiscal decline, nor Net Debt reduction target.

Release the Province's Audited Financial Statements Before Next Election

- This will allow New Brunswickers to judge how the government has managed public money and resources.
- These were released in advance of the last two elections.

Governments Spending Before Obtaining Legislative Approval

- In five of last ten years, governments overspent budgets before obtaining legislative approval.
- Approval is obtained sometimes over a year later.
- Amendments to the *Financial Administration Act* are needed.
- Made recommendations to Treasury Board.

Management of Long-term P3 Contracts

- \$17 million saved by obtaining lower interest rates on three existing P3 contracts.
- Cabinet allowed a significant school buy-out option to expire.
- Government is not effectively managing all its long-term P3 contracts.

Exhibit 4.2 - Summary of Recommendations

Recommendation	Department's response	Target date for implementation
4.33 We recommend Treasury Board prepare and submit Supplementary Estimates or Special Warrants before departments overspend their approved budgets.	<i>Supplementary estimates and special warrants are obtained in accordance with the Financial Administration Act.</i>	N/A
4.34 We recommend Treasury Board pursue legislative amendments to the <i>Financial Administration Act</i> to align with current accounting practices.	<i>Treasury Board, Office of the Comptroller will review the Financial Administration Act and make appropriate recommendations based on our findings.</i>	2019

Continuing Provincial Deficits

Negative outlook from bond rating agencies

4.4 Continued deficits, increased spending, and government's delayed plan to balance the books has resulted in a negative outlook by bond rating agencies.

4.5 This negative outlook could eventually affect the Province's ability to raise cash (issue bonds), as New Brunswick bonds may be less attractive to investors. The reaction of the rating agencies should be a major concern to government.

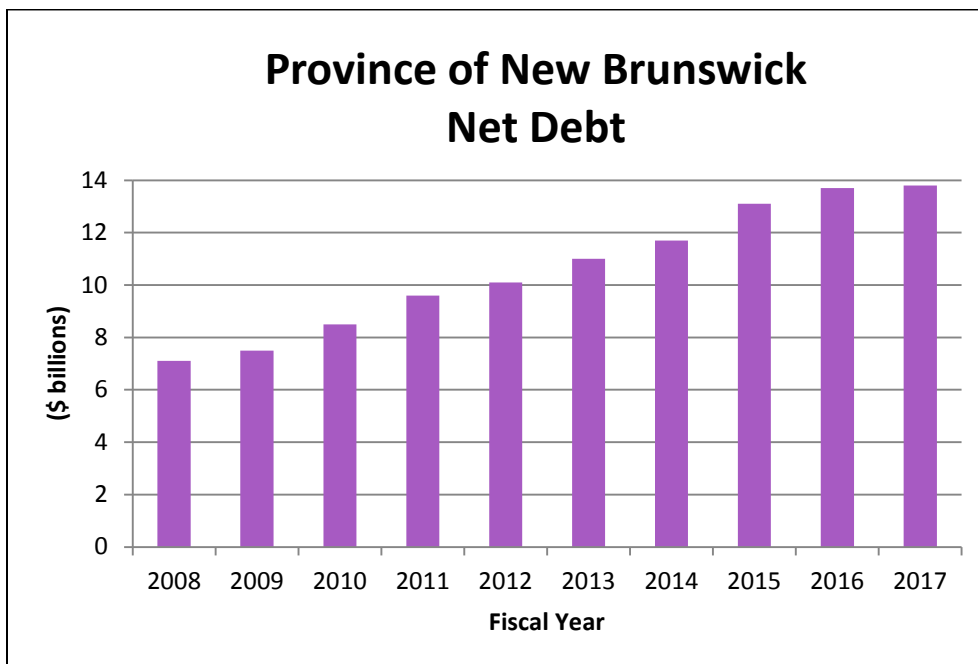
4.6 The Dominion Bond Rating Service (DBRS) recently downgraded the Province's rating trend from stable to negative. In a recent press release DBRS states, "*New Brunswick's 2018 budget once again delays the return to balance in favour of new spending ahead of the September 2018 provincial election.*"

4.7 Moody's Investor Service also recently stated "*...the stalled progression on deficit reduction is credit negative for the province which has not posted a balanced budget since 2007-2008 and is not planning a balanced budget until 2021-2022, resulting in one of the longest period of continued deficits among Canadian provinces following the 2008-2009 financial crisis.*"

Net Debt increased \$7 billion in 10 years

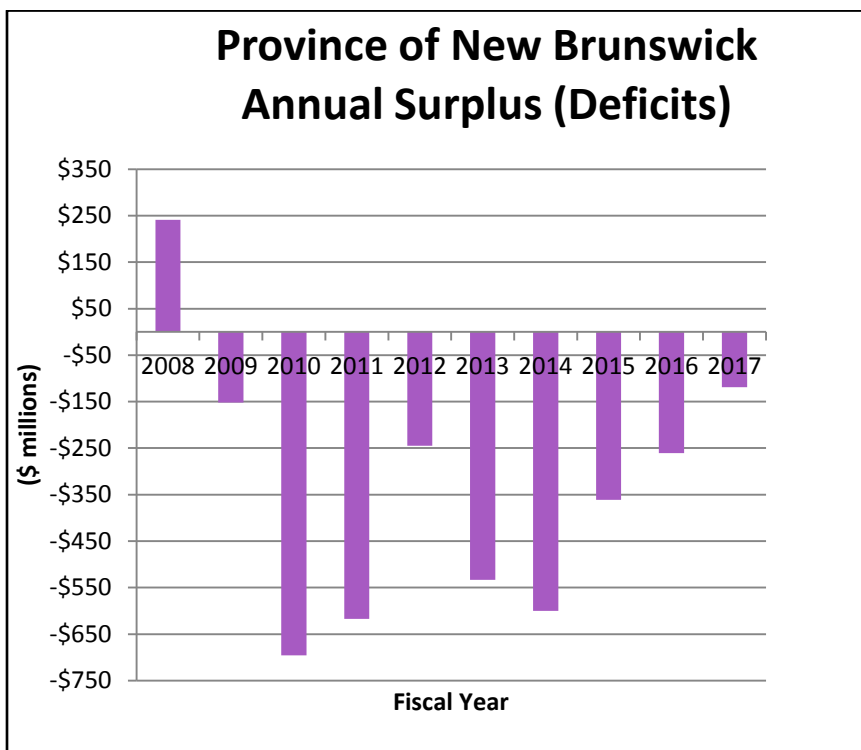
4.8 Over the past ten years, as shown in Exhibit 4.3, Net Debt has increased almost \$7 billion. This is as a result of current and past governments spending more than they collected. Exhibit 4.4 shows the Province's deficits in the last ten years. The Province's revenue and expenses in the last ten years is presented in Exhibit 4.5.

Exhibit 4.3 - Province of New Brunswick Net Debt



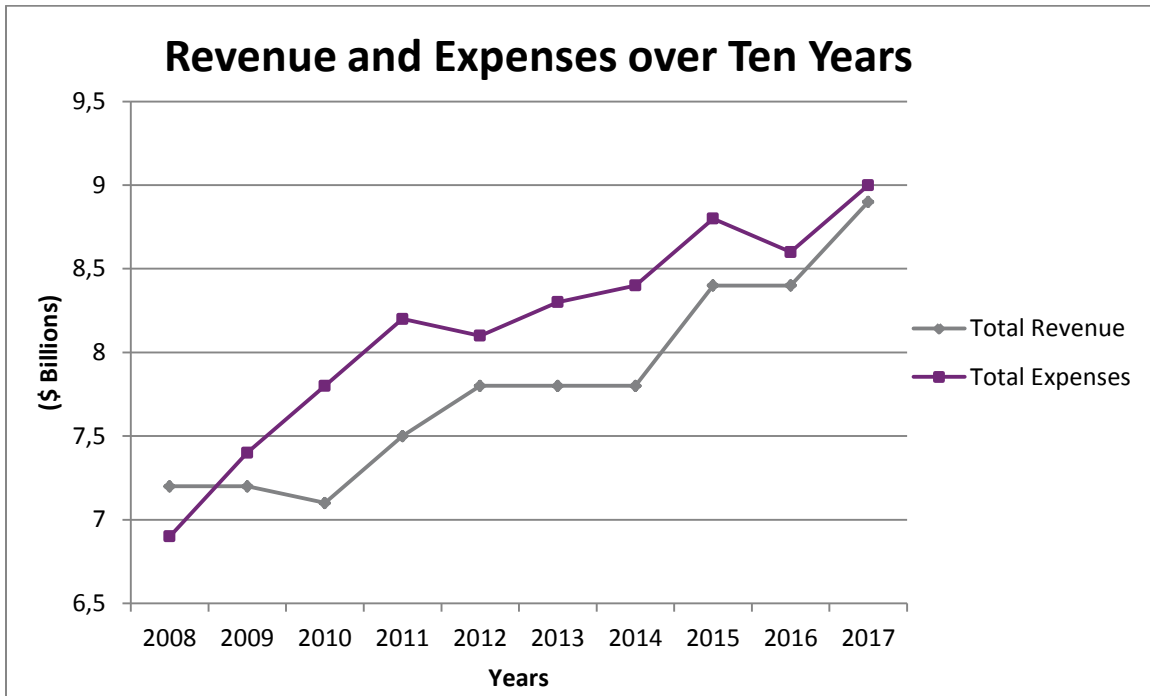
Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.3

Exhibit 4.4 – Annual Surplus (Deficits)



Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.1

Exhibit 4.5 – Revenue and Expenses over Ten Years



Source: AGNB

4.9 Despite governments actions (such as tax increases, program changes and reducing civil service benefits), deficits and increases to Net Debt continue. Government's budget for 2019 plans for \$14.5 billion in Net Debt, with a deficit of \$189 million. This will be the eleventh year of consecutive deficits.

4.10 As I have reported repeatedly, this trend is not sustainable. If this continues, eventually governments will not be able to provide the same level of programs and services such as health care, education, roads, schools and hospitals.

4.11 Action is required to address this problem and I again encourage government to set targets to eliminate deficits and reduce Net Debt.

What is the impact to New Brunswickers?

4.12 An even higher demand will exist on future generations to pay for past expenses.

4.13 We found in our November 2017 report, the Net Debt per New Brunswicker is higher than other provinces with similar populations or economies.¹ Each New Brunswicker's share of the Net Debt is expected to grow to \$19,000 by 2019. The table from our November 2017 report is in Appendix I.

4.14 New Brunswick's ability to reduce Net Debt is more limited than other Provinces given challenges such as aging and declining population, high unemployment rates and slow economic growth.

4.15 New Brunswick also had the highest Net Debt as a percentage of Gross Domestic Product (GDP)² among comparable provinces,³ which indicates high net debt and low activity in the economy. This percentage (41%) has increased since 2008 outpacing other provinces such as Nova Scotia, Manitoba, and Saskatchewan. The table from our November 2017 report shows this trend in Appendix I.

Province paid \$700 million in interest in 2017

4.16 In 2017, the Province paid \$700 million in interest on its overall funded debt⁴ of \$16.5 billion. If this interest cost was a department, its budget would be larger than the Department of Transportation and Infrastructure.

What happens when interest rates increase?

4.17 If the interest rate goes up by 1%, the Province estimates in three years, the annual interest expense would increase by \$60 million. Such an increase would further restrict government program spending.

¹ Volume IV November 2017 Chapter 2, Exhibit 2.11 comparing New Brunswick, Manitoba, Nova Scotia, Saskatchewan.

² Gross Domestic Product (GDP) measures the value of all final goods and services produced in an economy in a given period of time.

³ Volume IV November 2017 Chapter 2, Exhibit 2.13 comparing New Brunswick, Manitoba, Nova Scotia, Saskatchewan.

⁴ The Province's overall funded debt is referred to as 'Funded Debt' in its financial statements. Funded Debt is the total amount the Province is legally required to repay and make interest payments to creditors. This differs from Net Debt, which is an accounting calculation presented as total liabilities less financial assets.

Reversing the fiscal decline will be difficult especially in New Brunswick

4.18 I remain concerned the Province has no immediate plan to address the continuing fiscal decline. The longer the decline continues, the harder it will be to reverse, especially in New Brunswick.

Releasing the Province's Audited Financial Statements Before the Next Election

Release the audited financial statements before next election

4.19 I encourage the timely release of the Province's audited financial statements in advance of the upcoming September 2018 election. The audited results are important to allow New Brunswickers to judge how the government has managed public money and resources. The audited financial statements should be available before the next election.

4.20 As I stated in my November 2017 report, the Province's audited financial statements were released in advance of the last two elections. Recent discussions with government audit committee⁵ indicate its intention to publish its audited financial statements prior to the election. We continue to work with the Office of the Comptroller and will make every effort to make sure this happens.

Delayed Financial Reporting by Economic Development Agencies

Delayed reporting by ONB, RDC, and PHL is disappointing

4.21 The lack of timeliness of financial reporting by economic development Crown agencies including Opportunities New Brunswick (ONB), Regional Development Corporation (RDC), and Provincial Holdings Ltd. (PHL) is disappointing. Ongoing delays result in outdated and less relevant information for decision-makers and New Brunswickers.

4.22 ONB published its 2017 annual financial report almost a full year after the financial year was over. The other two agencies still have not posted their 2017 reports as of

⁵ The audit committee is a group established to meet and discuss significant audit matters. The committee is chaired by the Minister of Finance and includes six other members.

May 16, 2018, the date of writing this report.

PHL has not reported financial information since 2014

4.23 I am particularly concerned that PHL has not published its financial information since 2014. I feel it is inappropriate for a provincial agency to go three years without public reporting. This is especially important given PHL's investment in the New Brunswick Naval Centre located in Bas-Caraquet.

4.24 Once again, we encourage these agencies to publish timelier reports in the future. Ongoing public reporting delays makes it difficult for people to assess what and how the provincial agencies are doing. Publically funded agencies have a duty to be transparent (open) and accountable (answerable) to the public as well as the Crown Corporations Committee.

Governments Spending Before Obtaining Legislative Approval

4.25 We found in our work, governments have not been consistently following the proper process when spending public funds. Governments need to obtain approval from the Legislative Assembly prior to spending public funds.

4.26 In five of the last ten years, governments have over spent their budgets before obtaining this approval. In some years, governments obtained legislative approval well over a year later. In one instance, in 2015, this was for \$357 million. Our findings are in Appendix II.

Why is this happening?

4.27 The *Financial Administration Act* (the FAA) describes the process for how government can spend money. The Act states “no payment is to be made out of the Consolidated Fund without the authority of the Legislature.”

4.28 The word “payment” does not represent today's accounting practices and is outdated. It could be misinterpreted because accounting information is recorded when a financial transaction occurs, not just when cash (“the payment”) is paid.

4.29 For example, if you buy something but do not pay for it until later, the financial transaction already exists even though you have not made the cash payment.

4.30 In my view, the intent and spirit of the FAA is to obtain approval from the Legislative Assembly before the

financial transaction occurs, not just when cash is paid.

- 4.31** Throughout the year, governments can obtain Legislative Assembly approval with a 'Supplementary Estimate' or a 'Special Warrant.' This can be obtained for unexpected overspending not known when the budget was set.

What should they do?

- 4.32** If governments require more funding due to end of the year accounting adjustments or other unforeseen circumstances, then a final Supplementary Estimate can be obtained after year-end. This was the practice from 2008 to 2011 as shown in Appendix II, when governments obtained timely approval during and after the year ended. It appears since 2011 there has been a change in what is considered appropriate.

Recommendations

- 4.33** We recommend Treasury Board prepare and submit Supplementary Estimates or Special Warrants before departments overspend their approved budgets.
- 4.34** We recommend Treasury Board pursue legislative amendments to the *Financial Administration Act* to align with current accounting practices.

AG Review of Long-Term P3 Contracts

Lower interest rates obtained on three contracts saved over \$17 million

4.35 We reviewed four recent financial decisions for existing public-private partnership⁶ (P3) contracts. We wanted to see whether the long-term P3 contracts were being well managed with the taxpayer in mind.

4.36 I am pleased to report the Province was proactive in saving over \$17 million (present value in today's dollars) by obtaining a lower interest rate for:

- Eleanor W. Graham Middle School in Rexton ;
- Moncton North School; and
- Moncton Court House.

4.37 In these cases, Cabinet approval was not needed to change to a lower interest rate.

Cabinet allowed a significant school buy-out option to expire

4.38 In the case of the Leo Hayes High School in Fredericton, however, Cabinet direction was needed regarding a time-sensitive option to buy the school. We found, in this case, Cabinet knowingly allowed the option to purchase the school to expire.

4.39 According to the financial analysis and options prepared by the Departments of Education and Early Childhood Development and Transportation and Infrastructure, the lowest cost option was to purchase the school in 2019.

4.40 The analysis presented four more options including different combinations of extending the contract term, purchasing or building a new school in the future. Among the options, it was evident there was a wide range in the tens of millions of dollars, thus indicating the significance of the decision.

⁶ A public-private partnership (PPP or P3) is a contract between a public sector entity and a private sector entity that outlines the provision of assets and the delivery of services. Examples of public-private partnerships in New Brunswick include highways, schools, court houses and health facilities.

Government is not effectively managing all its long-term P3 contracts

4.41 Cabinet opted not to make a decision, and withdrew the Departments' proposal from the Cabinet agenda. The option in the contract to purchase the school has since expired.

4.42 We found the options were presented to Cabinet a month before the expiry date. We were informed this was not enough time to allow Cabinet to consider alternatives and evaluate options of this decision involving tens of millions of dollars for a project that was not in government's multi-year capital infrastructure plan.

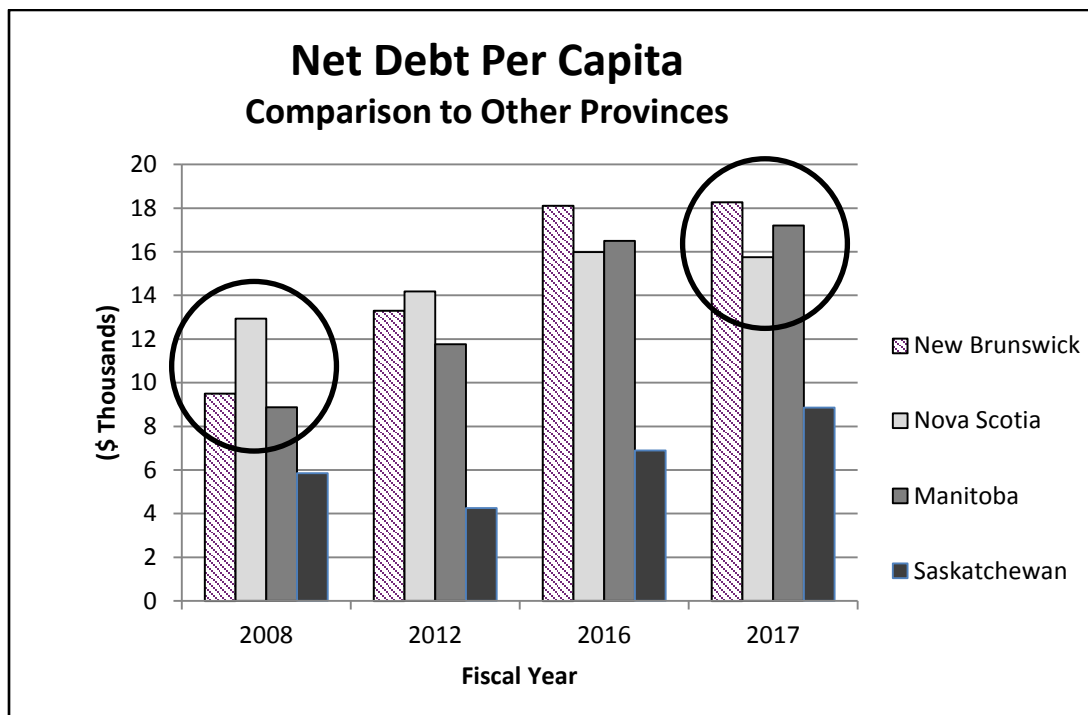
4.43 Cabinet decided more information was required (such as demographic and aging infrastructure analyses) to make such a significant budget decision, as it related to the long-term educational and public infrastructure needs in the community. In addition, Cabinet had to consider the impact of displacing other capital projects included on the multi-year capital infrastructure plan.

4.44 Overall, we found Cabinet allowed the school buy out option to expire as there was very little time to evaluate options and arrive at a decision for a significant item not on the government's multi-year capital infrastructure plan. We have therefore concluded government is not effectively managing all its long-term P3 contracts.

4.45 Without proper tracking and management of long-term P3 contracts, government may end up making significant decisions that are not always in the public interest.

Appendix I – Information from the 2017 Auditor General's Report, Volume IV

The following information was presented in the 2017 Auditor General Report Volume IV, Chapter 2.



Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.10 (modified)

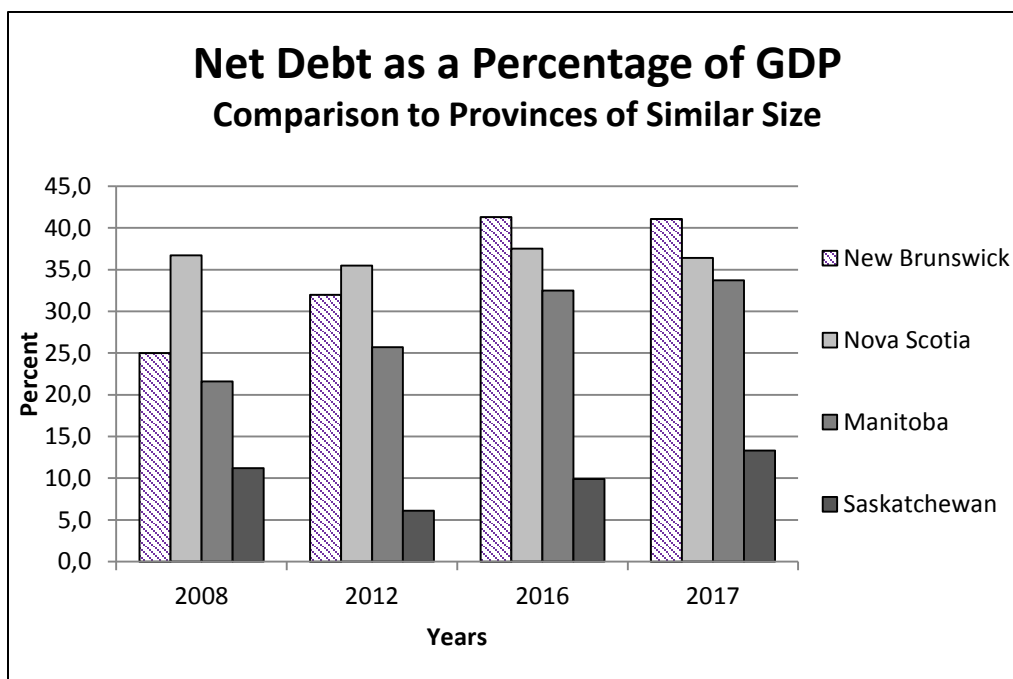
Net Debt Per Capita Comparison to Other Provinces*				
(\$ thousands)				
Province	2008	2012	2016	2017
New Brunswick	9.5	13.3	18.1	18.3
Manitoba	8.9	11.6	16.5	17.2
Nova Scotia	12.9	14.2	16.0	15.8
Saskatchewan	5.8	4.2	6.9	8.8

Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.11

*Amounts from provinces' 2017 financial statement discussion and analysis where available. For those provinces where this indicator was not published in the same format, information was obtained on population from Statistics Canada as of July 1 within the fiscal year (i.e. 2017 was July 1, 2016 population). Numbers have been rounded for presentation purposes.

Appendix I – Information from the 2017 Auditor General's Report, Volume IV *(continued)*

The following information was presented in the 2017 Auditor General Report Volume IV, Chapter 2.



Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.12

Net Debt as a Percentage of GDP Compared to Other Provinces (percent)					
Province	2008	2012	2016	2017	% Increase (Decrease) from 2008 to 2017
New Brunswick	25.0	32.0	41.3	41.1	64.4%
Manitoba	21.6	25.7	32.5	33.7	56.0%
Saskatchewan	11.2	6.1	9.9	13.3	18.8%
Nova Scotia	36.7	35.5	37.5	36.4	(0.8%)

Source: 2017 Auditor General Report Volume IV, Chapter 2, Exhibit 2.13

Appendix II – Supplementary Estimate Details

Supplementary Estimates that have received approval from Legislative Assembly since 2008

Year ended March 31	During Year		After Year Ended		
	Approval Date	Estimate Amount (\$ millions)	Approval Date	Estimate Amount (\$ millions)	# Months
2017	*	*	16-Mar-18	65	12
2016	*	*	05-May-17	57	14
2015	*	*	28-Jun-16	357	15
2014	06-Jun-13	16	*	*	*
2013	*	*	21-May-14	209	14
2012	*	*	20-Dec-12	92	9
2011	17-Dec-10	124	21-Dec-11	166	9
2010	26-Feb-10	198	17-Dec-10	67	9
2009	19-Dec-08	299	26-Feb-10	101	11
2008	20-Dec-07	64	19-Dec-08	99	9
	28-Mar-08	202			

Source: Legislative Assembly web site, Date Supplementary Appropriates Acts received Royal Assent

*Blank indicates no Supplementary Estimate obtained.

Chapter 5

Auditor General's Office – AG's Independence Eroded Due to Lack of Resources

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Auditor General's Office – AG's Independence Eroded Due to Lack of Resources

Introduction

5.1 Virtually every government Office and department is experiencing challenges to adequately fund programs and services. In a similar sense, the Auditor General (AG)'s Office has also had significant budget challenges for many years over successive governments. The 2018-2019 AG Office budget is \$2.3 million with a staff complement of 26.

Underfunding of AG Office has reached a critical point

5.2 However, the chronic under funding of my Office has reached a critical point given constant government expansions.

AG is effectively impeded from fulfilling the mandate of the Office

5.3 In my view, my Office is not funded to do sufficient audit work for the taxpayers of New Brunswick given the size of government and its operations. Currently, I am effectively impeded from fulfilling the mandate of the Office.

Summary of AG Concerns

5.4 A summary of my concerns is presented in Exhibit 5.1.

*Exhibit 5.1 – Summary of AG Concerns***AG Independence Eroded Due to Lack of Resources****Why Is This Important?**

- Chronic under funding of the AG Office has reached a critical point given constant government expansions.
- Past and current New Brunswick AGs have requested budget increases
- A lack of budget is curtailing the AG's ability to fulfil the mandate and eroding AG independence.
- Government has effective control of the AG Office budget and therefore limits what the AG Office can audit as well as how much work the AG can do.
- Other AGs in Canada have the same situation in a general sense, however, their budgets have not been constrained as here in New Brunswick.

AG Concerns**Why should New Brunswickers care about a lack of AG Office funding?**

- AG Office is the only Office with authority and access to examine government (outside the justice system)
- Current situation indicates a lack of transparency and does not serve the needs of its citizens for open review of government decisions and performance
- The process that is supposed to protect the interests of taxpayers and hold government to account for management of public resources is failing

Why is a budget increase necessary?

- AG is effectively impeded from fulfilling her mandate. The necessary work cannot be done.
- Adequate audit coverage on government operations cannot be achieved

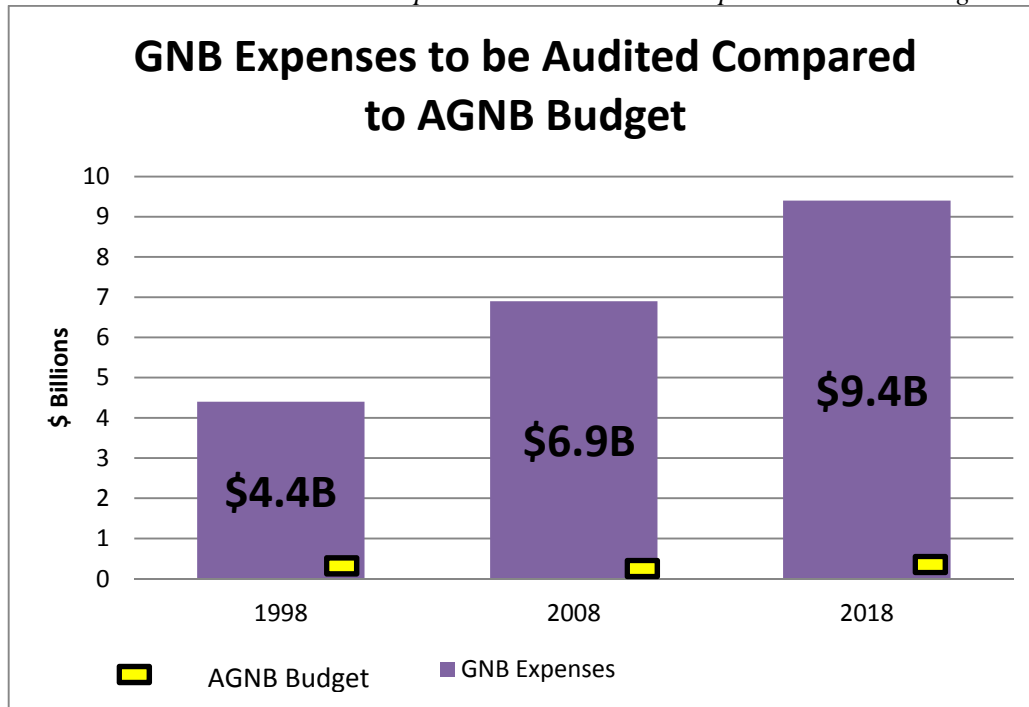
How does New Brunswick compare to other provinces?

- AG budget of \$2.3 million for 2018-2019 is the smallest in Canada (except for PEI).
- Only \$2.80 per resident in 2018 goes to fund AG Office (NS = \$4.06; NL = \$7.36)
- Smallest budget increase needed to equalize NB AG to other provinces = \$1 million

What work is not getting done?

- No performance audits in many departments and Crown corporations within the last five years
- Lack of audit of new Crown corporations and new third party contracts to provide government services, such as Vestcor, Cannabis NB, Medavie (Extra-Mural)

Exhibit 5.2 – 1998-2018 - GNB Expenses to be Audited Compared to AGNB Budget



	1998	2008	2018
Government Expenses to be Audited	\$4.4 Billion	\$6.9 Billion	\$9.4 Billion
AGNB Budget	\$1.6 Million	\$1.9 Million	\$2.1 Million

Exhibit 5.3 – Past five years AG Budgets & Budget Requests

	2018-2019*	2017-2018**	2016-2017	2015-2016	2014-2015
AG Budget	\$2.3 Million	\$2.1 Million	\$2.1 Million	\$2.1 Million	\$2.1 Million
AG Budget Request	250,000	500,000	Atcon Funding	100,000	386,000
Actual Budget Increase	125,000	Denied	Denied	Denied	Denied

*For 2018-19 AG asked for \$250,000 over each of the next four years

**For 2017-18 AG asked for \$500,000 over each of the next two years

- Past Budget Requests** 5.5 Exhibit 5.2 shows that AG funding has not kept pace with increases in size of government operations. Over a 20 year period from 1998-2018 the size of government operations has more than doubled and far outpaced the small growth in my Office's budget. Specifically, the size of government operations my Office is responsible to audit has grown by \$5 billion but the AG budget has only grown by \$500,000.
- Last five years of AG budget requests denied** 5.6 The history of my Office's last five years of budgets and budget requests is presented in Exhibit 5.3. It is important to note past AGs have consistently requested more funding for the Office. This exhibit also shows all of the last five year's budget requests from my Office were denied.
- 5.7 For 2018-2019 my Office was fortunate to receive a small budget increase of \$125,000. While the amount of the increase was not close to my funding request of \$ 1 million over four years (\$250,000 increase in each of the next four years), the increase was a slight improvement over prior years. For example, in the previous four fiscal years (2014-15 to 2017-18), there was no budget increase awarded.
- How the Current System Works** 5.8 Many of the exhibits and charts presented in this chapter were contained in a budget presentation I made to the Legislative Administration Committee on December 12, 2017.
- 5.9 The Legislative Administration Committee is the group of MLAs from the three political parties tasked with administrative oversight functions for the Legislative Assembly. As a Legislative Officer (and not a Department) it is appropriate that my Office's budget request be presented through this committee.
- Government has the inherent ability to limit AG Office work through the budget process** 5.10 However, the makeup and working of this committee is such that the government has "final say" in the size of my Office budget. As my Office audits the government this presents an inherent conflict. Effectively, the government controls my Office's budget and therefore limits what my Office can audit (in terms of projects of great size or complexity) and ultimately how much work we can do.

Exhibit 5.4 – Annual AG Office Budget Amounts for Comparable Provinces (\$ millions)

	2013 - 2014	2014 - 2015	2015-2016	2016-2017	2017-2018	2018-2019
NB	2.1	2.1	2.1	2.1	2.1	2.3
PEI	1.8	1.8	2.1	2.0	2.1	2.1
NS	3.7	3.8	3.9	3.8	3.9	4.2
NL	3.4	3.6	4.0	3.9	3.9	3.8
SK	7.9	8.2	8.2	8.2	8.2	8.2
MB	6.9	6.9	6.9	7.1	7.2	7.3

5.11 Other AGs have the same situation in a general sense, however, as Exhibit 5.4 shows their budgets have not been constrained as is here in New Brunswick.

Model used for funding Atcon cannot and should not be the norm

5.12 In one past instance, when a significant audit project (e.g. Atcon) was involved, I made a decision to do the audit regardless of the budget constraints because of the importance and significance of the work. As a result, my Office went over budget by approximately \$200,000 in 2016-2017. This situation cannot and should not be the norm. My Office needs to be adequately funded on a sustained basis.

Why is a Budget Increase Necessary?

5.13 I believe part of my Office's value to the Legislative Assembly and New Brunswick taxpayers lies in our role of holding government to account for its actions and reporting on government performance and spending.

AG Office not able to obtain adequate audit coverage at current funding level

5.14 As a "watchdog" for government accountability and spending, there is a public expectation that my Office is adequately fulfilling its role by having suitable audit coverage. However, as matters presently exist, my Office is not able to obtain adequate audit coverage.

Successive governments have effectively impeded AG Office from fulfilling its mandate

5.15 In effect, successive governments can and effectively have impeded my Office from fulfilling its mandate by not funding it properly. My Office is intended to serve the Legislative Assembly and the citizens of New Brunswick and we are not adequately resourced to do so.

What Work is Not Happening Due to a Lack of AG Office Funding?

5.16 There are a number of significant projects not occurring due to a lack of budget. The items noted below form part of the reasoning in concluding the mandate of the Office has been impeded:

- no performance audits in certain departments within

last five years;

- no performance audits in certain Crown Corporations within last five years;
- lack of audit of new entities and new third party contracts;
- not identifying inefficiencies and risk management recommendations; and
- not performing in depth follow-up on prior year recommendations.

Further details are provided in the paragraphs that follow.

No performance audits in certain departments within last five years

5.17 There are a number of government departments/agencies which we have not been able to complete a performance audit on in the last five years such as universities, Emergency Measures Organization, Post-Secondary Education Training and Labour, Tourism, Heritage and Culture, Intergovernmental Affairs and Aboriginal Affairs. For larger departments like Education and Health our audit coverage is minimal.

No performance audits in certain Crown Corporations within last five years

5.18 As well, there are a number of Crown Corporations we have not completed performance audit work in the last five years including: NB Liquor, Financial Consumer Services Commissions, both Community Colleges, Regional Development Corporation, and Ambulance New Brunswick, etc.

Lack of resources to audit new entities and new third party contracts

5.19 In addition, there are new entities as well as new third party contracts and arrangements for which we need to ensure adequate audit coverage. This cannot be done in the existing budget envelope. Examples: Vestcor, Cannabis NB, Medavie (Extra-Mural).

AG constrained to only 3-5 performance audits per year

5.20 We are constrained and limited to only 3-5 performance audits per year due to a lack of resources. However, we believe public expectation is that we are able to provide reasonable audit coverage in all these areas.

Cost saving opportunities identified remain on our pending project list

5.21 We also find a number of cost saving opportunities in our work and as government implements our recommendations. These remain on our pending project list that we cannot resource due to lack of budget.

Lack of resources to perform in depth follow-up on prior year recommendations

5.22 Our resources are not sufficient for adequate work on follow-up of implementation of prior year recommendations. If resourced to do more follow-up work it would likely encourage implementation of recommendations.

Lack of resources to report routinely on significant areas of government operations

5.23 Our resources are not sufficient to report to MLAs and taxpayers routinely on significant areas of government operations. We believe New Brunswickers would be better served by having more frequent audits on larger departments where significant funds are spent.

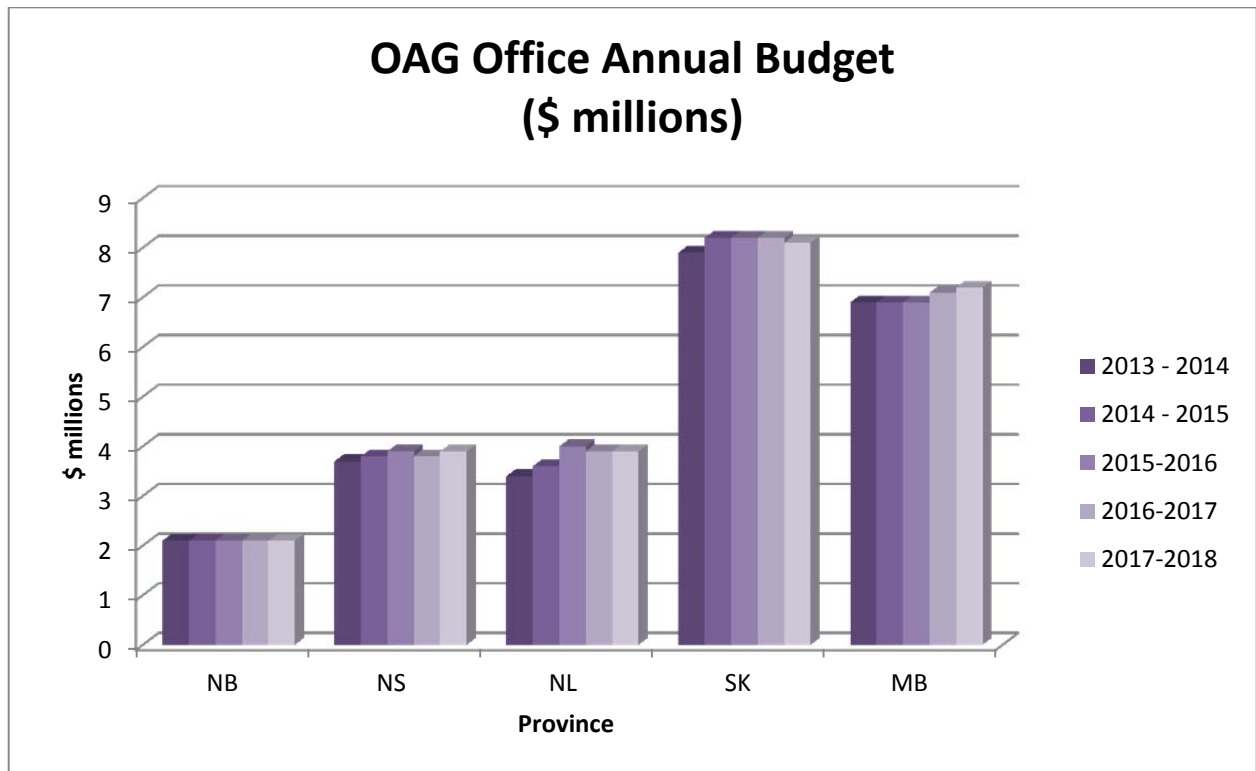
Lack of resources to proceed with financial and IT audits on our pending project list

5.24 There are also financial audits and IT audits on our pending project list that we cannot perform due to lack of budget. IT systems and security are a significant area of risk for the Province.

How Do We Compare?

5.25 Exhibit 5.5 shows annual AG Office budget amounts for New Brunswick and certain other provinces for the last five years.

Exhibit 5.5– Annual AG Office Budget Amounts for Comparable Provinces (\$ millions)

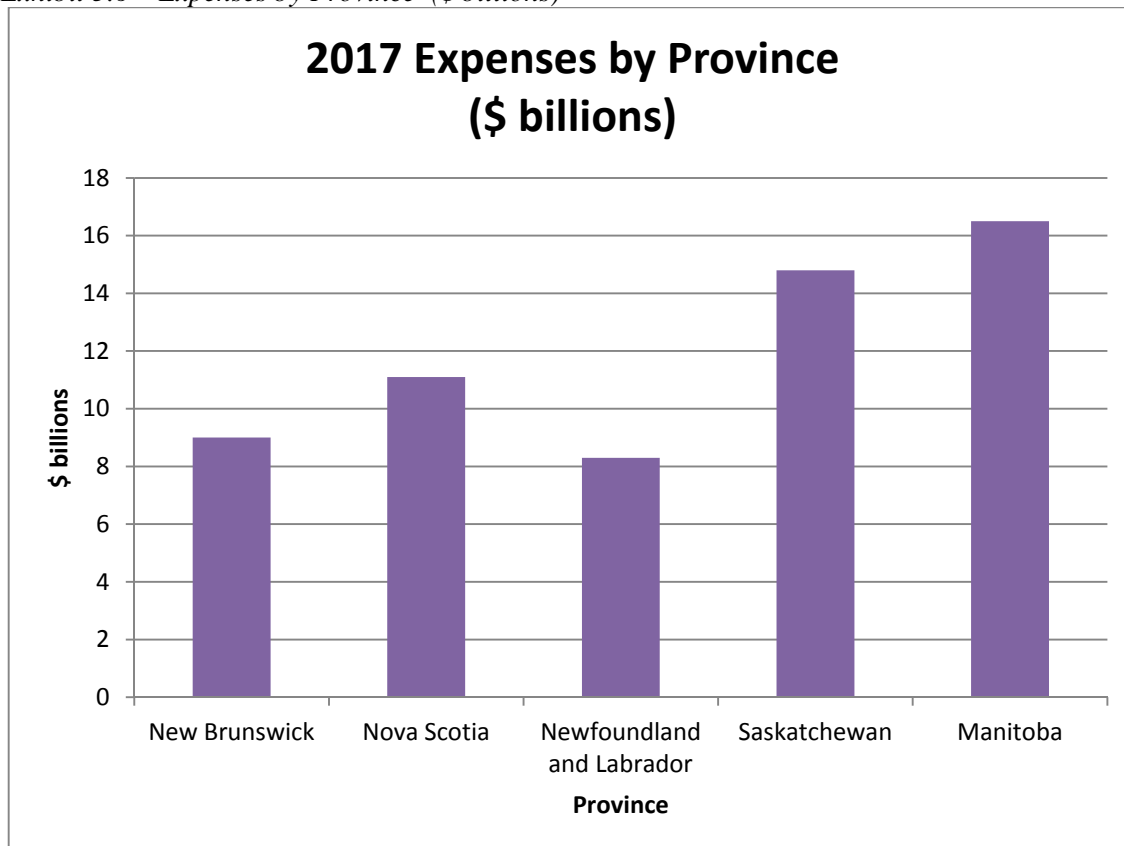


5.26 Exhibit 5.6 shows corresponding expenses by province. With this information, a comparison can be done of government expenses requiring audit to AG Office annual budgets.

My Office's funding is not appropriate for the size of government operations

5.27 While New Brunswick ranks last in AG Office funding, government expenses to be audited are quite large compared to Nova Scotia and Newfoundland & Labrador.

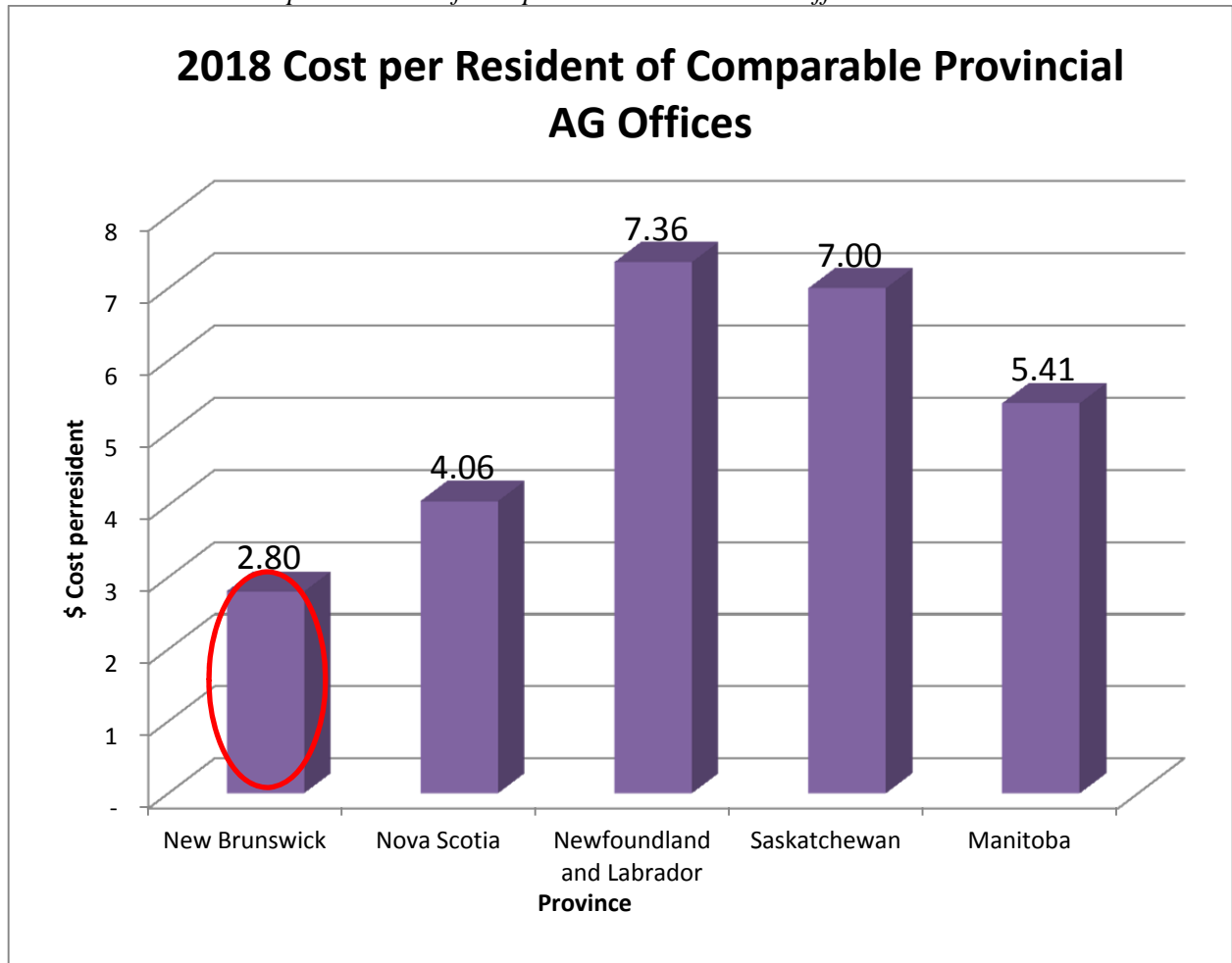
Exhibit 5.6 – Expenses by Province (\$ billions)



New Brunswick AG ranks last in cost per resident among comparable provinces

5.28 Exhibit 5.7 presents the cost per resident of comparable provincial AG Offices. At \$2.80 per resident, New Brunswick ranks last to comparable provinces in funding and support of its AG Office.

Exhibit 5.7 – 2018 Cost per Resident of Comparable Provincial AG Offices

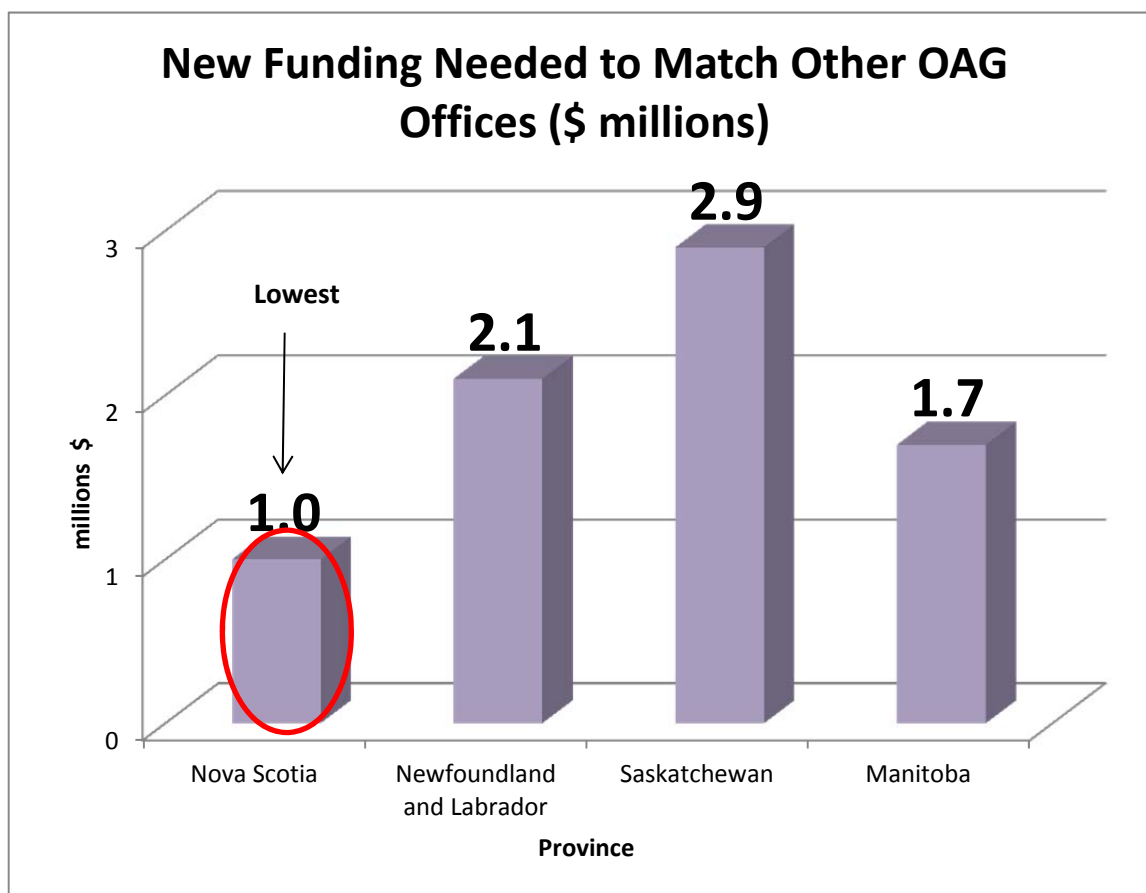


How can our budget be fixed?

5.29 An increase of \$1 million over four years in our annual budget would help restore equity, balance and fairness, as well as allowing us to better address the demands of the mandate and the expectations of New Brunswickers.

5.30 Exhibit 5.8 shows an increase of \$1 million over four years would at least allow for parity with Nova Scotia in terms of funding my Office relative to the size of government.

Exhibit 5.8 – New Funding Needed to Match Other AG Offices (\$ millions)



**as at budget figures for 2017-18*

Why Should New Brunswickers Care About a Lack of AG Office Funding?

The process to hold government to account is failing New Brunswickers

5.31 In the Westminster system of government such as we have in Canada and New Brunswick, the AG Office is not a department of government. My Office serves the public and the elected members as a legislative office. This is an important distinction because my Office reports to the Legislative Assembly and the New Brunswick taxpayers on the government's accountability and performance.

5.32 If my Office is not funded to an appropriate level, it cannot do an adequate job in its role. The process to hold government to account for its management of public resources is failing New Brunswickers as significant government programs are not subjected to routine and regular audit with public reporting.

Virtually no other entity has the same authority to compel government for evidence and explanations

5.33 New Brunswickers should be concerned because if my Office is not being funded to hold government to account, there is virtually no other entity (outside the justice system) with the same authority to compel government for evidence and explanations.

Conclusion

5.34 Citizens derive value from our Office in how we promote transparency and public reporting. The citizens of New Brunswick are well served in having a strong independent Auditor General Office that is properly resourced to adequately audit government operations.

5.35 I believe the value my Office has brought to taxpayers and the Province in making recommendations on difficult and complex issues is evident in files such as: property tax assessment, Atcon and NB Power Point Lepreau refurbishment. These all demonstrate how my Office brings cost-saving and risk-mitigating recommendations.

5.36 New Brunswickers need to be aware that while there may be a public expectation that we are fulfilling the role, we are not achieving adequate audit coverage. Moreover, the “watchdog” doing the “watching” is subject to funding decisions made by the government we are watching over. I believe it is important for the public to understand that, in my view, my Office is not adequately resourced to do the job they are counting on us to do.

Office mandate is effectively being curtailed at a time when I believe the public needs my Office the most

5.37 True change is needed in this broken funding process and I would be remiss if I did not inform the public and the Legislature of how my Office's mandate is effectively being curtailed at a time when I believe the public needs my Office the most.

No signs of significant change

5.38 I have been hopeful since my ten year AG mandate began on December 1, 2010 the Office's budget problem would be addressed. Time is rapidly passing and that hope is diminishing. There are no signs of the significant change so desperately needed.

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