



**HOUSE OF ASSEMBLY
NEWFOUNDLAND AND LABRADOR**

**1st Report
of the Standing Committee
of
Public Accounts
47th GENERAL ASSEMBLY**

May 13th, 2013

Standing Committee on Public Accounts
House of Assembly, Newfoundland and Labrador
47th General Assembly, First Session

Chair

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Vice Chair

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Christopher Mitchelmore, MHA, The Straits – White Bay North

Kevin Parsons, MHA, Cape St. Francis

Introduction

The Standing Committee of Public Accounts for the 47th General Assembly of the Newfoundland and Labrador House of Assembly was struck on April 3, 2012. The Chair, Jim Bennett, M.H.A. and Vice-Chair, David Brazil, M.H.A., were elected on April 26, 2012. The Committee, in consultation with the Auditor General of Newfoundland and Labrador, has reviewed the Report of the Auditor General for the year ended March 31, 2011.

Pursuant to Standing Order 65(5), the Committee has chosen to report on the following items selected for consideration:

Report of the Auditor General, Fiscal Year Ended 31 March 2011

Paragraph 2.4 – Western School District, Department of Education

Paragraph 2.6 – RNC Firearms, Department of Justice

Paragraph 2.7 – Growing Forward Program, Department of Natural Resources

Paragraph 2.10 – Provincial Lottery Licensing, Service NL

Paragraph 2.12 – Marble Mountain Development Corporation, Department of Tourism, Culture and Recreation

In accordance with subsections 31 (1) and (2) and section 47 of the *House of Assembly Accountability, Integrity and Administration Act*, the Committee has met with the Clerk of the House of Assembly to review the Clerk's role as Accounting Officer. The Committee has also reviewed the Annual Report of the House of Assembly Management Commission as prepared by the Speaker of the House of Assembly in accordance with Section 51 of the *House of Assembly Accountability, Integrity and Administration Act*.

The Committee met on the following occasions to discuss selected matters arising from the Auditor General's reports and other Committee matters:

April 26, 2012

May 24, 2012

June 7, 2012

July 24, 2012

November 16, 2012

The Committee held public hearings on the following dates to review items from the Auditor General's Report with the Auditor General and his officials and representatives of the Departments or Agencies to which the report related:

August 29, 2012 – Marble Mountain Development Corporation

September 20, 2012 - Western School District

October 16, 2012 – Royal Newfoundland Constabulary and Service NL

October 17, 2012 – Growing Forward Program, Department of Natural Resources

The Committee thanks the representatives who appeared at the hearings on behalf of their Departments and Agencies, the Ministers, the staff of the Committee, the Clerk and former Clerk of the House of Assembly, and the staffs of the Broadcast Centre, Hansard and the Clerk's office for their assistance.

The Committee is indebted to the Auditor General and his officials for their guidance.

Finally the Committee thanks the Speaker of the House of Assembly, the Honourable Ross Wiseman, M.H.A., for his continued support and cooperation.

The Standing Committee on Public Accounts has the honour to present this, the First Public Accounts Committee Report of the 47th General Assembly, to the House of Assembly.

Respectfully Submitted,

Jim Bennett, M.H.A

Chair, Public Accounts Committee

Witnesses appearing before the Committee:

Office of the Auditor General

Terry Paddon, Auditor General
Sandra Russell, Deputy Auditor General
Claude Janes, Audit Principal
Jayme Martin, Audit Senior

Marble Mountain Development Corporation

Robert Pike, Chair

Department of Natural Resources

Keith Deering, ADM, Agriculture
Jim Evans, Forestry and Agrifoods Agency
Janice Gill, Manager, Agriculture Business Services
Cindy MacDonald, Director, Agriculture Business Development

Royal Newfoundland Constabulary

Deputy Chief Alban Singleton, Patrol Operations
David Hickey, Executive Director, Support Services
Michael MacPhee, Audit Manager

Service Newfoundland and Labrador

Julian McCarthy, ADM, Consumer and Commercial Affairs
Jerry Burke, Director, Consumer Affairs

Western School District

Dr. Ross Elliott, CEO/Director
Brian Feltham, Associate Director of Education, Finance
George Keeping, Associate Director of Education, Human Resources
Brian King, Comptroller
Sarah Battcock, Manager Purchasing

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Report of the Auditor General, Year Ended 31 March 2011

Paragraph 2.4 – Western School District Department of Education

Introduction

The Committee met on June 7, 2012 to review the Report of the Auditor General for the Year Ended 31 March 2011. The Committee selected Paragraph 2.4: Western School District (Department of Education), for further investigation. At its July 24th, 2012 meeting, the Public Accounts Committee agreed to hold a public hearing based upon the Report of the Auditor General and the District's response to questions sent to them by the Committee. The following is a summary of the findings from the Report of the Auditor General, followed by a summary of the findings from the public hearing held on September 20th, 2012.

Auditor General's Findings

Reference: Paragraph 2.4 – Western School District, Department of Education, Report of the Auditor General for the year ended 31 March 2011.

The Report stated:

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

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

vehicle fleet. Issues were also identified with the monitoring and control of capital assets. In particular:

Human Resources

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

Recruitment

- None of the 11 competition files reviewed had complete documentation on the competition process, including 2 files which did not contain adequate documentation to support why the District had rehired retired teachers instead of other candidates.
- In 7 of 24 personnel files reviewed, there was no documentation present to indicate that a competition had been held when the individual had been appointed to the non-teaching position.
- 3 teaching positions were filled for the 2009-10 school year without a job competition although the District was aware of the vacancies prior to 1 August of the particular year.
- 2 teaching positions were filled without any documentation in the competition file to indicate that a competition had been conducted for the 2010-11 school years. Although District staff indicated the vacancies occurred after 1 August, there was no documentation in the file to support this.
- In 7 instances, the District created and filled positions without the required Treasury Board classification approval being requested. In 4 other instances, the District filled positions that had not been classified until after employees

had been appointed to the positions. Time periods ranged from 1.5 to 51 months after the position was created and filled.

Compensation

- In 2 instances, there was no documentation that the required approval of the Director of Education or the Board of Directors of the Western School District (the Board) was obtained for upscale hiring.
- The District did not follow the direction of the Department of Education in compensating a former Assistant Director of Finance when the school districts were reduced from 11 to 5 districts. As a result, the employee was overpaid \$97,308 for the period September 2004 to December 2010.
- In 2 instances, employee salaries were adjusted retroactively after the positions were classified by Treasury Board but the change was incorrectly applied before the effective date resulting in an overpayment of \$10,590.
- In 6 instances, employees were not provided salary increases or step progressions for periods from 11 to 23 months after the employees were entitled to the increase.
- In 1 instance, a salary differential was not correctly applied resulting in an underpayment of \$3,740 up to 31 March 2011.
- In 2 instances, pay increases for apprentice electricians were not correctly calculated resulting in an overpayment of \$6,094.

Leave and Overtime

- Employee leave was not always recorded accurately. The leave database was not accurate and, as a result, leave balances had to be determined manually when required. Furthermore, leave carry forward balances were not always calculated in accordance with Government policies and collective agreements.
- Overtime was not always adequately controlled. Overtime reports were not always completed and approved as required and some staff was permitted to track the accumulation and use of their own overtime.

Expenditures

We identified the following issues with regard to District expenditures:

Public Tender Act

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

- The District did not comply with the *Public Tender Act* in that required public tenders were not called for 5 purchases totaling \$444,658 including 3 regular bus contracts, 1 special needs bus contract and a recycling contract.
- The District did not comply with the *Public Tender Act* in 2 instances where the required Form B was not completed for expenditures the District determined were sole source purchases. Therefore, the Government Purchasing Agency was not notified as required and consequently the House of Assembly was not informed. These instances included garbage collection totaling approximately \$50,000 per year and the purchase of an

annual software license with support totaling approximately \$14,700 per year.

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

Travel

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

Cell Phones

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

- The District maintained a list of individuals who were assigned cell phones; however, the listing was not up-to-date and did not include all information such as cell phone plan information, serial number of phone and issue date.
- 4 cell phones were either not used or not used enough to warrant the purchased plans which cost \$1,256 for a total of 62 minutes.

- A senior executive was provided with two cell phones. One of these cell phones (a Blackberry) was provided in January 2010 in order for the executive to access business' e-mail and calls while on vacation. The cost during the vacation period was \$518; however, since that time the phone had not been used. Until the plan was cancelled in May 2011, the cost to the District was \$798 for 14 months for which there was no usage.
- Employees were not always requested, as required by the District's cell phone policy, to reimburse the District for personal cell phone usage included on bills. One maintenance employee incurred costs totaling \$178 above the monthly plan during a vacation to the United States in November 2010, without any documentation of a review or reimbursement for personal costs. Another maintenance employee incurred costs totaling \$256 for the period from 15 August to 14 September 2010 with 1,522 minutes above the monthly plan of 600 minutes, without any documentation of a review or reimbursement for personal costs. A manager incurred costs totaling approximately \$350 for the period from August to October 2010 with 1,922 minutes above the monthly plan of 1,200 minutes, without any documentation of a review or reimbursement for personal costs.

Other

Our review also identified the following:

- The District paid a municipal tax bill two weeks after the discount date, resulting in an additional \$750 expense.
- In November 2010, the District was billed and paid \$500 plus HST for a rented telephone company router that was left at the school by the company when the school, where it was located, was closed. As a result of our inquiries in February 2011, the router was located at the District office in

Corner Brook. District staff indicated they were not aware that the District had been charged for the missing router. In May 2011, the District received a refund for returning the router in March 2011.

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

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

- 11 instances of; liquor purchases totaling approximately \$700 for school functions;
- 9 instances totaling \$4,200 for purchases without any invoices;
- \$760 for gift certificates, donations and memberships for staff;
- \$400 for payments to the Principle's son to perform routine tasks at the school;
- Personal cell phone costs paid from September 2005 to June 2009 for the Principal; and
- TV, 3 VCRs, 3 DVD players, 1 digital camera, 1 desk, 1 laptop computer, 1 artificial Focus tree, 1 storage cube, 2 LCD HDTV's and a wicker chair set were purchased but could not be located at the school. The cost of these items totaled approximately \$3,500.

Capital Assets

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

- The District had not documented the procedures for the control of capital assets including proper recognition for financial statement purposes, safeguarding, and write-downs.
- Except for computers and smart boards, physical identification methods, such as tagging, were not used to identify furniture and equipment as District property.
- There was no capital asset ledger maintained for furniture and equipment. There was no physical examination of capital assets to verify the existence of all furniture and equipment.
- The District could not readily identify what land was included in the land cost of \$2.0 million reported on its 2010 financial statements. As a result, the District could not readily identify what land it specifically owned, what land was in excess of the District's needs, and whether any excess land should be disposed of.
- A review of the District's January 2011 listing of insured buildings identified 9 buildings which had been sold and one leased building (Board office) at a total replacement cost of \$74.1 million that were still included on the listing. As the buildings were still included on the insurance listing it would be assumed that a portion of the insurance premiums paid by Government on behalf of the District related to these buildings.

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

Vehicle Expenses

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

District-owned Vehicles

- The District did not formally monitor each vehicle's operating cost and kilometres driven to determine if utilization issues were present that required follow-up.
- Mileage log books were not always completed as required. For example, one of the 3 log books reviewed was not completed for the period July 2009 to December 2010 and another log book was not completed for the period September 2010 to December 2010. None of the log books were signed as reviewed by the employees' supervisor.

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

Personal Vehicles

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

Fuel Credit Cards

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

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

Summary of Evidence

The following evidence was adduced during the public hearing held on September 20, 2012.

Human Resources

Recruitment

The Committee questioned the District about findings from the Auditor General's Report related to incomplete information in employee personnel files and job competition files. The District reported that their internal processes have become much more efficient since the review by the Auditor General. The District has now specified the information to be included in competition files and has communicated these specifications to human resources managers and education officers. The District also informed the Committee that the human resources managers and education officers have undergone training in order to enhance their understanding of the collective agreements and staffing procedures in place in the District. It was reported that since the formation of the Western School District, the District has worked with the Department of Education and Government to help identify the needs and right-size the organization. The Assistant Director of Education stated that he was confident that the District now has the ability to address the weaknesses identified by the Auditor General.

Recommendation

The Committee recommends that the District continue to formalize human resources and financial processes and procedures and continue to train staff and strengthen their awareness of the procedures and that the District continue to review employee and competition files in order to ensure completeness.

Compensation

The District informed the Committee that procedures are now in place to ensure that employees are hired into positions with correct classifications based upon Treasury Board approval. In response to questions from the Committee about the upscale hiring of employees, the District advised that Treasury Board approval is given before any offer is made to the employee.

Leave and Overtime

The District advised that an online program to track overtime and leave has been established. This program has allowed the District to review employee submissions and cross-reference the data to leave request forms. As a result of the Auditor General's Report, employee leave and overtime forms are now pre-approved and fully documented. Processes have been put in place to enable staff to review employee files and leave balances for completeness on a monthly basis and to carry out a complete file review when an employee resigns or retires. The District's internal auditor also reviews files on a random basis to help determine the success of the new procedures. In addition, the Assistant Director of Education advised that an alert system in the online program is being examined. This system would notify the Department once an alert related to leave balances or step progressions was identified in the system.

Recommendation

The Committee recommends that the internal auditor review employee files and cross reference the data therein with job competition files, leave request forms, overtime approval forms and the online time-keeping system, to ensure that the files are complete.

Expenditures

Public Tender Act

The Committee questioned the District about five instances in which the Auditor General found that the *Public Tender Act* had not been followed. The District advised that a number of the issues identified in the Auditor General's Report related to busing contracts that were approved by the Department of Education or were related to existing contracts that were extended on the basis that the vendor was thought to be the only source for the service. The District advised that the policies have changed since the Report of the Auditor General to ensure compliance with the *Public Tender Act* and that a number of the contracts identified have since gone to public tender to be renewed.

The Committee also inquired about the Auditor General's finding related to insufficient information on file for a number of contracts and contractors. The Associate Director of Education advised that a new software package had been created to track the documentation required and obtained for contracts. The Department noted that this new software package had substantially improved the systems in place but that there are still challenges in some areas.

The District provided the Committee with documentation outlining the values and contract information for a number of busing contracts and the documentation used to extend certain busing contracts. The Committee and the Auditor General had concerns about the adequacy of the approval documentation that was used to support a decision not to proceed with a public tender to extend the contracts. The Associate Director of Education advised that it was the Board's interpretation of the *Public Tender Act* at the time that after reorganizing an area of the district they could make route changes in current contracts without a public tender. The District informed the Committee that before the start of this school year, all busing contracts were awarded upon public tender as directed by the Department of Education. The

Associate Director of Education also advised that in cases where there is reorganization the District will proceed to public tender.

Recommendations

The Committee recommends

that the District secure formal documentation from the Department of Education upon approval of busing contracts or contract extensions and

that the District provide sufficient oversight to ensure that purchasing staff and individual school staff continue to follow financial management rules such as those requiring adherence to the *Public Tender Act*.

Travel

The District advised the Committee that they had made changes to their travel advance policy. A review of time frames for travel claim reimbursement from the Department of Education was also carried out. The District reported that the new measures and review have made a considerable difference in their success in recovering trip advances in a timely manner. The District also reported that they have tightened protocols related to travel claims and have strengthened awareness of the rules through communication with employees.

Cell Phones

The District explained to the Committee the context of a number of findings of the Auditor General related to cell phone usage and under-utilization. The District advised that the phones in question were utilized by staff travelling internationally, staff travelling to schools in Southern Labrador and staff situated at a remote outdoor education camp on a seasonal basis.

Other

The Committee questioned the District on the findings of the Auditor General related to the purchase of liquor for school functions. The District advised that since the review by the Auditor General, the District internal auditor had reviewed the practices of the schools in the district and informed all schools that there would be no tolerance for the purchase of alcohol.

The District provided information to the Committee related to spending issues which were identified by the District and referred to an external consultant and the Royal Canadian Mounted Police. The Associate Director of Education advised that a number of procedures have since been put in place to review school accounts: the District has hired an internal auditor and created a standard chart of accounts. The District has also provided in-service training to principals, vice-principals and secretaries in the district with respect to school accounting policies and procedures.

In response to questions from the Committee related to the Homestay Program, the District advised that the program position identified by the Auditor General had been assigned additional ATIPPA duties prior to the end of the Programme. After the Department of Education issued a directive to the District to phase out the Homestay Programme, the employee assisted with the implementation of the directive and transitioned to the ATIPPA duties.

Capital Assets

In response to questions about the policies and procedures relating to capital assets, the District advised that a number of processes were in place before the Report was issued and that there was a plan in place to improve upon the current ledger system. A capital asset ledger system was in place which enabled the District to track capital assets such as furniture, computers, interactive white boards and land. The District reported that all leased and owned assets in the Corner Brook area had been

monitored properly and the information had been entered in the correct inventory ledgers. The District also advised that they planned to introduce a software package tied to the capital asset ledger system in order to improve tracking and manage changes to the capital asset listings.

Vehicle Expenses

District-owned and Personal Vehicles

The District advised that they have a formal evaluation process to determine the need for an employee to utilize a District-owned vehicle as opposed to a personal one. The District has carried out two assessments of the cost efficiency of the usage of lease-owned as opposed to personal vehicles and determined that the usage of personal vehicles was the more cost efficient. A third extensive assessment has been planned on utilization and costs of all the District-owned vehicles. The District also advised that assessments on the need for District-owned vehicles are conducted at least once a year in order to ensure that they are providing schools with the services required.

Recommendation

The Committee recommends that the District proceed with a planned comprehensive analysis of the costs associated with district-owned vehicle usage versus personal vehicle usage.

Fuel Credit Cards

The District gave the Committee an overview of the processes in place for the monitoring of fuel card usage. The fuel cards are assigned to a particular bus or individual and are monitored by the district comptroller. Card usage and gas slips are monitored by the comptroller on a regular basis. The cards from the District's largest supplier can also be monitored online so that officials can ascertain which

ones are active, where they are assigned and the purchases for which they have been used. The Assistant Director of Education believes that the District is now well able to track card usage.

Findings and Recommendations

Having reviewed the Auditor General's Report and the District's testimony at the public hearing, the Committee has determined that the District has sufficiently addressed or commenced the process of addressing many of the recommendations of the Auditor General's report. While the Committee notes that the District has made progress they recommend:

that the District continue to formalize human resources and financial processes and procedures and continue to train staff and strengthen their awareness of the procedures;

that the District continue to review employee and competition files in order to ensure completeness;

that the internal auditor review employee files and cross reference the data therein with job competition files, leave request forms, overtime approval forms and the online time keeping system to ensure that the files are complete;

that the District secure formal documentation from the Department of Education upon approval of busing contracts or contract extensions;

that the District provide sufficient oversight to ensure that purchasing staff and individual school staff continue to follow financial management rules, such as those requiring adherence to the *Public Tender Act* and

that the District proceed with a planned comprehensive analysis of the costs associated with district-owned vehicle usage versus personal vehicle usage.

Report of the Auditor General, Year Ended 31 March 2011

Paragraph 2.6 – RNC Firearms Department of Justice

Introduction

The Committee met on June 7, 2012 to review the Report of the Auditor General for the Year Ended 31 March 2011. The Committee selected Paragraph 2.6: Royal Newfoundland Constabulary (RNC) Firearms (Department of Justice), for further investigation. At its July 24th, 2012 meeting, the Committee agreed to hold a public hearing based upon the Report of the Auditor General and the RNC's response to questions sent to them by the Committee. The following is a summary of the findings from the Report of the Auditor General, followed by a summary of the findings from the public hearing held on October 16th, 2012.

Auditor General's Findings

Reference: Paragraph 2.6 – RNC Firearms, Department of Justice, Report of the Auditor General for the year ended 31 March 2011.

The Report stated:

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

In a report tabled on 3 March 1998, a Select Committee (the Committee) of the House of Assembly recommended that the arming policy of the RNC be amended to permit members on operational duty to wear side arms as part of the regular uniform. Based on this recommendation, the RNC provided side arms to their members and issued a Firearms Policy. As of November 2011, a total of 734

firearms were included in the RNC inventory system, consisting of 536 hand guns, 143 rifles and 55 shotguns.

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

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

- firearms and ammunition inventory not accurate;
- non-compliance with Firearms Policy;
- Firearms Policy infractions not being properly followed up;
- inspections of firearms storage lockers not performed;
- personnel and equipment inspections not properly reported;
- training not being completed as required and training database not accurate;
- Use of Force Review Board not active; and
- No Select Committee formed to review arming policy.

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

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

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

Controls over Firearms and Ammunition

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

three instances where there were differences between the amount of ammunition located within the Corner Brook armory and the inventory report, e.g. 525 rounds of 12 gauge ammunition listed in the inventory system could not be located in the armory; and three instances where there were differences between the amount of ammunition located within the Labrador West armory and the inventory report, e.g. 266 rounds of 40 caliber operational ammunition listed in the inventory system could not be located in the armory.

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

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

The 2011 firearms audit completed internally by the RNC's Audit Manager found serious issues with regards to firearms locker security. The report stated that while each locker has a key, there have never been controls in place that would have prevented the duplication of keys and/or ensured the returning of keys when a locker change occurs. It was also found that when keys are missing and no spares are

known to exist, the lock cylinder is replaced by cylinders that are sometimes duplicates of other firearms storage lockers held at the RNC. RNC officials indicated that there was one instance when a member could not locate their firearm because it had been removed from their firearms storage locker by another member on a different shift because the two lockers were in close proximity and had identical keys.

Non-compliance with the Firearms Policy

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

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

How Firearm Use is Monitored

RNC officials provided 1,034 uses of force reports to support the 1,115 use of force incidents reported between November 2009 and November 2011. Of the 1,034 uses of force reports that were available, we found that 17 were not signed as evidence

the required review by the District Inspector/Divisional Commander and none of the 1,034 reports evidenced the required review by the Firearms and Use of Force instructors. Given that some use of force reports could not be provided and the lack of review of available reports, the RNC may be missing opportunities to identify inappropriate uses of force.

We also found that the Use of Force Training Database is neither accurate nor complete. As a result, we could not rely on the information contained within the database to demonstrate whether members were in compliance with the RNC's Use of Force Policy, or whether they had received all required training. We reviewed information entered into the database for 2010 and 2011, and found the following:

- 45 instances where the date for training was entered incorrectly; and
- 413 instances where training was completed but not entered into the database.

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

Annual Firearms Audit Reports

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

provide assurance that members complied with the RNC's Firearms Policy for those three years.

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

Summary of Evidence

Controls over Firearms and Ammunition

The Deputy Chief advised that, in response to the Auditor General's Report, the RNC has hired an audit manager and an inspections officer. The Audit Manager gave the Committee an overview of the changes that had taken place since the Auditor General's Report had been issued and since he had been hired in January 2012. He advised that a review of internal controls had been carried out and detailed armoury inventory procedures had been developed with the assistance of the Use of Force Training Unit. The Audit Manager and Use of Force Training Unit also reconcile the armoury system quarterly to confirm that the system quantities match the actual quantities in the armoury. In addition to hiring an Audit Manager, the RNC has assigned a full-time sergeant to be responsible for quarterly inspections and to assist the audit manager in dealing with matters relating to the firearms policies.

The Deputy Chief told the Committee that he believed that as a result of the work of the Audit Manager and Use of Force Training Unit, many of the weaknesses identified and concerns expressed by the Auditor General had been addressed. The Deputy Chief also informed the Committee that they had determined, in a follow-up inspection to the Auditor General's Report, that there was no indication that any firearms or ammunition were actually missing. The Deputy Chief advised that in response to the findings in the Auditor General's Report the RNC had put in place

policies to tighten controls during staff transfers such that personnel being transferred must turn in their use of force equipment and then have it reassigned to the new location.

Non-compliance with the Firearms Policy

In response to questions from the Committee regarding the switching and expiration of OC spray, the Deputy Chief advised that there are times during ongoing training when a member may inadvertently take the wrong OC spray canister. These errors are usually rectified during firearms locker inspections. The Deputy Chief informed the Committee that one of the tasks of the officer assigned to carry out inspections is to inspect lockers quarterly. Reported findings are used to aid in policy development. The Deputy Chief advised the Committee that while on occasion a member may leave his/her duty belt and use of force equipment in his/her personal locker, the location is still secure, and that at no time are other employees, staff or the public at any risk. The Deputy Chief informed the Committee that they were working with the consultants on the redevelopment of headquarters on the acquisition of lockers for the new headquarters building.

The Deputy Chief outlined the process relating to quarterly locker inspections, biannual personnel inspections and yearly equipment inspections carried out during annual qualifications. The Deputy Chief advised that any breaches or potential breaches in policy are reported through the chain of command to him. Any disciplinary action taken is commensurate with the breach.

How Firearm Use is Monitored

The Committee asked a number of questions related to the firearms training that members must undergo annually. The Audit Manager informed the Committee that the Sergeant in charge of the Use of Force Training Unit is responsible for the updating of the spreadsheet that tracks the training of each member in the RNC.

The Audit Manager advised that on an ongoing basis the tracking spreadsheet will be reviewed for completeness against source documents such as training logs.

The Deputy Chief described the yearly training requirements for members of the RNC. Each member is required to complete an annual firearm recertification as well as one of three other modules that are rotated on a yearly basis. All members of the RNC are required to complete the firearm recertification and there have been cases in which members coming back from leave were not permitted to go into an operational role unless training was completed. In response to questions from the Committee the Deputy Chief also spoke about the Police Studies Program developed in partnership with Memorial University and the comprehensive training that new cadets now receive.

In response to questions from the Committee related to Use of Force training reports the Deputy Chief outlined the improved review process. Monthly reports are compiled by each division within the RNC by the applicable inspectors and signed by the divisional superintendent after review. The forms are forwarded to the Office of the Chief of Police and reviewed by the applicable Deputy Chief. The Deputy Chief can refer the reports to the Use of Force Board and the Use of Force Training Unit to so that they can address any training weaknesses identified. The Use of Force Review Board will now review cases where a supervisor has identified a use of force incident as being a training matter or a remedial training matter.

Findings and Recommendations

It appears to the Committee that the findings and concerns expressed in the Report of the Auditor General have been addressed.

The Committee recommends however that the House of Assembly review the recommendation of the Report of the Select Committee on the Arming Policy of the Royal Newfoundland Constabulary which recommended that

e) the arming policy be reviewed at the end of five years by a Select Committee of the House of Assembly.

In light of the lapse of time since the Select Committee's report was tabled, and given that this matter has been mentioned in a number of reports of the Auditor General reports, it is recommended that the House of Assembly consider referring the question to a select or standing committee for review in order to put the matter to rest.

Report of the Auditor General, Year Ended 31 March 2011

Paragraph 2.7 – Growing Forward Program Department of Natural Resources

Introduction

The Committee met on June 7, 2012 to review the Report of the Auditor General for the Year Ended 31 March 2011. The Committee selected Paragraph 2.7: Growing Forward Program (Department of Natural Resources), for further investigation. At its July 24th, 2012 meeting the Committee agreed to hold a public hearing based upon the Report of the Auditor General and the Department's response to questions sent by the Committee. The following is a summary of the findings from the Report of the Auditor General, followed by a summary of the findings from the public hearing held on October 17th, 2012

Auditor General's Findings

Reference: Paragraph 2.7 – Growing Forward Program, Department of Natural Resources, Report of the Auditor General for the year ended 31 March 2011.

The Report stated:

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

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

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

Assessment and Approval

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

- A total amount of \$1.306 million was approved and paid to three related parties (\$500,000, \$500,000 and \$306,000). In cases where related parties are involved, the Implementation Committee (IC) is required under the Program Guide to consider the benefit to the industry, the amount of funding previously received, and the availability of existing funds; however, there was no documentation to indicate that these factors were considered.
- A total of \$1.08 million was approved for three producers/processors and associations' projects which did not meet eligibility requirements for funding under the Program. One of the three applicants was approved for funding of \$500,000 even though they did not meet the requirement of operating a commercial farm or an agricultural processing facility. There was no documentation to indicate why the IC approved the funding when three different departmental staff had recommended that the application be rejected. Reasons given by the Department staff for the recommended rejection included that: the company was ineligible for funding under the Program because it was a land clearing company and did not generate

farm sales; the company was in a weak financial position; and that the funding would create unfair competition.

- For the other two applicants that did not meet the eligibility requirements for funding, one producer had not completed the required Environmental Farm Plan (EFP) within the five years before being approved, and another did not have the required environmental certificate of approval for farm operations. There were 6 other approved projects where confirmation that the Epps had been completed was not on file at the Department at the time of our review.
- A total of \$830,145 was approved for 5 projects even though required information was missing from the application, such as ownership in related companies (3), information related to an Environmental Farm Plan (1) or whether there were arrears owing to Government (1).
- A total of \$1.34 million was approved for 5 projects even though the documentation to support expected project costs of \$272,779 was inadequate. Examples include the absence of quotes (3), and the inclusion of HST and an incorrect application of exchange rates, both of which are ineligible costs (2). Although included in approved funding, the FIST and incorrect exchange rate amounts were not paid out when the funding was disbursed.
- A total of \$1.97 million was approved for 9 projects even though the required checks were not completed by the Department to determine whether the applicants or related entities had arrears owing to Government.
- The decisions of the IC and the discussion as to how these decisions were reached were not documented in the Committee minutes. Although a

Record of Decision (ROD) was prepared from meeting notes and signed by the chairperson, the ROD was not reviewed by the Committee to identify and correct any discrepancies.

Payments

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

- Holdbacks totaling \$84,732 were not deducted from payments for 3 projects. Contrary to the Program Guide and the contribution agreement, a holdback was not deducted from a claim payment for 1 project. In addition, holdbacks were not deducted for 2 projects where the required project reports were not provided to the Department prior to the disbursement of the final payment.
- An amount of \$6,750 was paid to 1 applicant for site development and video production before the work was completed. This should not have been paid as it was a pre-payment and therefore, was not in compliance with the contribution agreement. Furthermore, the required on-site inspection for these activities was not completed until after the payment had been made, and the Department did not receive a copy of the video until more than one year and five months after the funding was paid.
- An amount of \$27,117 to cover third party labour costs was paid to one applicant even though there was no proof of payment provided.
- Although inspections are required prior to payment, there was inadequate documentation to support the completion of inspections for 5 of the 23 projects which required such inspections. There was one inspection certificate not completed for 1 project and the other 4 projects' had

information missing on the inspection certificate, such as serial numbers of equipment or sizes of the buildings.

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

Monitoring

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

- Although the Department sometimes requires applicants to submit project reports, the reports submitted for 2 of the 3 projects administered by the Department contained errors and were not adequate in that there was no comparison of actual expenses to budgeted amounts, little comparison of actual results to targets for performance indicators, and a lack of adequate explanation for any variances. Of the remaining 5 project reports required to be submitted, 1 was not submitted and another was submitted over 5 months late.
- Monitoring activity was not always adequate to determine whether project deliverables were met. Project reports or follow-up on 15 projects could have provided beneficial information had they been completed. Applicants for 3 of the 15 projects offered to provide final reports in their application;

however, the Department did not require such reports in the contribution agreements, and reports were never submitted.

- The Department's database of projects was not up to date. The database indicated that 9 of the 30 projects reviewed were incomplete; however these projects had been completed.
- The Department's Performance Report submitted to the Federal Government for 2009-10 indicated that 26 of 34 Program targets were not met. Only 3 of the 26 targets had comments to indicate why they were not met.
- The Department did not claim the full amount eligible from the Federal Government under the Bilateral Agreement for the year ended 31 March 2011. The Department received \$465,046 less than the amount eligible for funding from the Federal Government due to a difference in the Federal/Provincial allocation percentages used.

Summary of Evidence

1. Assessment and Approval

1 A. Funding to Related Parties

Related Party policy not considered

Much of the discussion at the hearing centred on the funding paid to three related entities in the amount of \$1.306 million or \$806,000 above the maximum funding, under the guidelines, of \$500,000 per applicant. As the Auditor General reported there was no documentation indicating that the related party policy had been considered. Also, a Committee member pointed out, the funding had been approved by the Implementation Committee (IC) although it had been rejected by staff.

An official told the Committee that it is not unusual to fund related entities, especially in the agriculture industry. It is common in the farming industry for related families to be engaged in the industry carrying out different types of operation.

The Assistant Deputy Minister stated, in response to a Committee question about the approval of a payment rejected by staff, that while the Implementation Committee gives full consideration to the opinions of staff members, they take a broader view of matters, which may lead them to a conclusion different from that of the staff. The IC has ultimate discretion about funding recommendations. An official agreed that the Department should have documented better the reasons for selecting a project rejected at another stage of the process. For the most part the IC would agree with a staff recommendation. If they did not the staff would know why as the managers attended IC meetings.

The Auditor General, in answer to a question from a Committee member, stated that the reasons for rejection listed in the Report were the view of the staff, not the Auditor General. The Auditor General's concern was the absence of documentation indicating the reasons for the IC's decision. The Auditor General stated that there is no question but that funding of related entities is countenanced by the agreement. The Auditor General added that the question for the auditors was whether the IC had adequately considered the related party matter and whether the payment of \$1.3 million to a related group supplanted the application of another applicant for funding.

An official informed the Committee that notwithstanding the view of a staff member that a particular entity was ineligible for funding, as they were engaged in land clearing only, land clearing is considered agricultural activity and such activity had been funded before.

Further, an official informed the Committee that land clearing is related to forage production. Forage is very expensive to import. Recently because of drought on the Mainland it has been difficult to buy forage at all. Responding to a question about

the appropriateness of allocating funding for land clearing equipment when there is similar equipment in the area, an official pointed out that certain very large pieces of equipment are not easily moved from place to place. Also, given the interplay between the weather and the farming industry in this Province, it is important to have the necessary equipment at hand during the short weather window.

Another question related to the weak financial position of one of the entities that had been funded. The Committee was told that the Department would fund such an entity in the interest of improving its profitability and innovative capacity.

The Department will not be modifying its related companies' policy for the purpose of the current agreement but it is something that has been discussed internally and at the negotiating table in connection with the new agreement.

Excess funding affects availability of funding to other producers

The Auditor General observed that while the Department has discretion in allocating funding, the policy indicates they should take certain factors into account including the availability of funding. Further the Report noted that in three years the request for funding had exceeded the amounts available. The Auditor General questioned the funding, in light of the foregoing, to the three related entities.

An official stated that companies not funded in one year could still be funded in another year.

General comments

In response to a question about why preference would be given to a large, existing company rather than weaker new entrants the Committee was told that submissions are processed in the order received. However this is not the sole criterion considered.

The Department advised that they are developing programme criteria and guidelines which will address eligibility and programme funding limits.

The question of conflict of interest on the part of the Implementation Committee was raised by a Committee member. A Department official explained that when the appointments are made there is a responsibility for the members to declare any conflict of interest they might have. There has never been an incidence of conflict of interest between the Committee or a member thereof and a project proponent.

In respect of possible competition with existing businesses in the approval of funding for land clearing equipment the Department told the Committee that all producers may apply for funding. The Department does not fund land clearing equipment for companies involved in other types of business, such as construction.

While the related entities being discussed in this segment of the hearing are larger players the Department has funded many smaller projects.

1 B. Eligibility

A member questioned the Department about the eligibility criteria for applicants as the Auditor had stated that three of twenty-seven applicants were approved although they did not meet the requirements. It appears that there was a difference of opinion on this matter between the Department and the Auditor General. An official advised that the Department had deemed a particular enterprise an agriculture facility. The Department agreed that the programme guide is not clear in its guidelines relating to eligibility.

1 C. Documentation

Applications incomplete

In the case of an application form from which information was missing regarding an applicant's interest in another company, the Department suggested that the applicant may have sent in several applications the first of which would have included the information in question. The project managers should have ensured that the information was provided in all applications. If an applicant withholds information, such as the fact that he/she is in arrears with Government, for example, Government would not enter into a contract with him/her. Now the arrears check is being done as a matter of course.

Documentation for project costs not adequate

The Department requires quotes in order to ensure applicants have properly costed their projects. In the case of three projects referred to in the Auditor General's Report which were approved although quotes were not available for some of the costs the Department stated that the absence of quotes was an oversight on the part of the programme manager. The programme manager would now have to sign off on, date and initial the file sheet to indicate that the quotes have been submitted.

A Committee member enquired about the changes the Department has made to ensure documentation related to applications, project costing and arrears checks are complete.

An official informed the Committee that the Department is now documenting the information and monitoring processes formally whereas before their approach was more ad hoc. Officials fill in a document indicating when information is received. The document is kept on file. Programme accountants carry out a second check; another check is done by a manager of cost-shared agreement and a fourth is done by the Manager of Agriculture Business Services.

While the Department has not done a formal review of the implementation of the recommendations of the Auditor General officials have prepared a work plan to address the issues. The ADM stated that the work plan would be shared with the managerial officials. A Committee member stated that the absence of documentation indicating whether or not the Department had considered factors such as the benefit to the industry, the amount of funding previously received and the availability of existing funds in connection with the payment of \$1.306 million to the three related entities was unacceptable, a blatant misuse of power.

The Department, an official explained, did have documentation relating to these matters but the Minutes did not include information on the discussion that had taken place. There was a record of the decision only. The Department is now recording the requisite information. In the Minutes there is a section in which they record dissenting opinions as between staff and IC.

There was some discussion of the appropriateness of supporting with funding an entity in the land clearing business which had been clearing land for related companies. An official stated that land development is considered a priority and producers are having difficulty finding persons to carry out this work.

In respect of ensuring payouts are correct the Department advised that they request quotes on projects. When HST was inadvertently included in the approval in one instance cited the amount was not paid out to the applicant.

In another case cited by a Committee member payment arrears checks were not done on applicant companies which had received funding. The Department advised that these checks are not a requirement of the agreement but rather a Treasury directive of government. The failure to carry out the checks was an oversight.

2. Payments

Holdbacks not applied

A committee member questioned officials on the oversight which was responsible for the failure to apply holdbacks. An official explained that there was an initial interim payment made, which is permissible in order to help the applicants cash flow. The oversight occurred at that point. The final claim was not paid until the project was completed. There was insufficient monitoring at that stage which has been rectified in response to the recommendation of the Auditor General.

The Auditor General's finding that the data base was not being kept current has been addressed. The manager of cost-shared agreements is now monitoring this information and noting when files are closed.

Funding paid before work completed

In response to a question about payment made before it should have been as the project was not finished an official told the Committee that the applicants were being reimbursed for costs incurred and the Department had withheld the holdback until the project was completed.

If a project appears to be taking longer than it should the Department will withhold programme funding from other projects from an applicant.

Project claim forms late

An official told the Committee that the programme guide stipulates that claim forms are to be submitted within thirty days. However, the official added, there are many reasons for which an applicant might be late. Given the nature of the industry the Department is reluctant to deny reimbursement whenever a claim is late. Officials work with clients to try to encourage them to be timely. While the Department cannot guarantee there will never be any late claims they do their best to remind clients of the requirements.

3. Monitoring

Eligible amounts not claimed

In response to a Member's question about the failure of the Department to claim the full amount available under the Bilateral Agreement for the year ended 31 March 2011 an official explained that the agreements are entered into in multi-year phases such that funding moves across years. There is an allowance which permits the Department to carry forward 25 percent from year to year, however this cannot be done in the last year of an agreement. In the year reported on, in order to obviate lapsing, the Department had made a new budget submission allowing them to carry forward funding not spent. The reconciliation, which cannot be completed until spending has started, had not taken place. Once that process had begun the Department claimed the funding. The Department assured the Committee that all available funds have been provided. The Department will try to eliminate the lapsing of funding in the future.

Targets not met

In response to a question about the failure of the Department to meet their targets an official explained that initially they allocated funding based on what the uptake would be. While they have the ability to transfer money among programmes the start was late so they did not make these adjustments. For the next year they did make the adjustments and that continues.

Reports submitted but not adequate

A Committee member questioned Department officials about the variance found by the Auditor General between budget amounts and actual expenditures for two projects. The explanation in both cases was that there was a vacancy. The positions have since been filled.

Project reports or follow-up not always completed

While the Department does not require a report on all projects they do require a report in certain cases.

The Auditor General told the Committee that his point in mentioning reports was that while the Department has discretion in the matter of requiring reports there are projects for which it would be beneficial for the Department to have follow-up reports.

The Department keeps track of projects through a monitoring spreadsheet which is tabled for the IC to review. If a project requires a report the managers contact the applicants and help them if need be. In some cases staff did some extra analysis and assessment of certain projects. If a report is incomplete the Department sends it back to the applicant requesting them to provide the additional information required with a thirty-day time limit.

Projects not completed as proposed

In the case cited by a Member in which the Department approved a project for the purchase of four greenhouses whereas the applicant purchased only three at a higher price an official explained that the proponent had to use a different supplier so the project changed in scope. If there is a change in project scope now the matter is referred to the IC for an amendment. Agricultural officers carry out on-site visits to ensure that projects are proceeding as planned.

Security

A Committee member suggested that it would be prudent of Government to take security over tangible assets in order to protect its investment. The Department advised that if a project is not completed the company may not dispose of an asset it has purchased with agreement funding. If an entity goes bankrupt it must repay Government the full amount of funding provided with interest. It is Government's position that the administrative burden of requiring security would not be cost effective, given the history of the programme, as such cases are rare.

Findings and Recommendations

The Committee finds that there was considerable laxity in the way in which the agreement was being administered in respect of documentation. The individual weaknesses may not seem significant but when the Programme is viewed as a whole the implication of the lapses is troubling.

The Committee notes that the Auditor General stated in answer to a Committee member's question that he believed the Department was responding positively to his recommendations and taking the appropriate action to address the weaknesses he had reported on. The Auditor General stated however that he would have to do a follow-up review to ascertain categorically that there have been improvements but added that it appeared to be the case.

The Committee further notes, with approval, the Department's confirmation that the improved procedures and practices have been put in place for the agreement reported on and will be continued in future agreements.

Regarding the allocation of funding to related entities, the Committee acknowledges that the Auditor General's finding on the matter relates to the lack of information indicating that the Department had taken the requirements into consideration, not to the policy of allocating funding to such entities.

The Committee notes with approval that the Department, based on the information provided at the hearing, is addressing or intends to address certain weaknesses referenced by the Auditor General. In particular

- Records of Decision are being included in the Minutes;
- funding is no longer being carried forward;
- documentation now indicates whether requirements of agreement are being met;

- holdback requirements are being applied;
- the data base is kept current;
- the guidelines for eligibility will be clarified;
- arrears checks are being carried out;
- adjustments have been made to ensure targets are met;
- files are being completed;
- quotes are being checked;
- managers are proactive in ensuring that clients submit claim forms;
- project scope changes are referred to the Implementation Committee;
- late claims are monitored;
- the Department will revisit the guidelines for funding for related entities;
- the Department will discuss the possibility of changing the public/private funding ratios for different classes of applicant.

The Committee notes further that the Department has taken under advisement the Auditor General's comments about eligibility for the Programme and the way in which funding is allocated with a view to considering making adjustments in the next agreement.

The Committee also notes that the Department has acknowledged that the guidelines governing the allocation of funding are in need of clarification.

Finally the Committee notes that the Auditor General stated that the Department has taken his recommendations seriously and that they appeared to be taking appropriate action to improve the administration of the Programme.

Recommendations

In respect of matters that may not have been addressed by the Department the Committee recommends that:

- the Department continue to ensure that applicant files include documents, Records of Decision, File Completion Checklists, project plans, financial information, and evaluation reports;
- the Department conduct an internal review of all the application files to ensure completeness as the Program is now almost at an end;
- as the new Growing Forward Program is implemented, the Department ensure that the best practices put in place to address the concerns the Auditor General had with the first Growing Forward Program are documented to ensure that the new Program is fully compliant with the agreement and rules therein;
- the Department review the related parties rules to ensure that in the event related parties are provided with program funding, documentation exists to demonstrate clearly that the related party issue was fully discussed during funding approval;
- the department review the first-come first-served policy with respect to the consideration of applications for funding;
- the Department carry out a review of current files to ensure that known related parties are properly identified on the applications and that all applicable documentation is included in the files of each related party;
- the Department explore mechanisms for securing assets purchased by applicants with grant funding and that
- the Department ensure that their policies relating to the awarding of funding are well publicized for the benefit of potential applicants and the general public.

Report of the Auditor General, Year Ended 31 March 2011

Paragraph 2.10 – Provincial Lottery Licensing Service NL

Introduction

The Committee met on June 7, 2012 to review the Report of the Auditor General for the Year Ended 31 March 2011. The Committee selected Paragraph 2.10: Provincial Lottery Licensing (Service NL), for further investigation. At its July 24th, 2012 meeting, the Committee agreed to hold a public hearing based upon the Report of the Auditor General and the Department's response to questions sent to them by the Committee. The following is a summary of the findings from the Report of the Auditor General followed by a summary of the findings from the public hearing held on October 16th, 2012.

Auditor General's Findings

Reference Paragraph 2.10 – Provincial Lottery Licensing, Service NL, Report of the Auditor General for the year ended 31 March 2011.

The Report stated:

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

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

In 2009-10, the Division issued a total of 3,249 licences, with gross proceeds generated by those resulting lotteries of \$54.1 million, and net proceeds, after prize payouts and expenditures, of \$11.2 million. Licences issued include:

242 bingo events; 68 break open ticket events; 167 bingo/break open ticket events; 2,335 ticket events; 377 games of chance events; 13 Monte Carlo events; and 47 sports events.

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

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

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

Application Approval and Processing

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

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

Approval of licence applications by those not designated

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

Incomplete and outdated information on applications

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

Licences approved with unapproved intended uses of proceeds

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

Business plans not received

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

Licence Monitoring

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

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

Our review indicated the following issues with licence monitoring:

Financial reports submitted late or not at all

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

Of the sample of 55 licences reviewed and requiring financial reports to be submitted within the fiscal year ended 31 March 2011, financial reports were not received by their due dates for four of the licences. One licensee who had an overdue financial report had not yet submitted it as of 30 November 2011, at which time it was 13 months overdue. During these 13 months, the Division had issued 10 new licences to this licensee.

Licensee reporting requirements do not fully address legislation

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

Licensing auditor position vacant

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

On-site inspections not performed

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

No audited statements required of licensees

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

Lotteries operating without a licence

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

Performance Measurement and Monitoring

No performance measures or reporting requirements

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

Information Management

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

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

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

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

- Expenses and prize payouts: understatement of \$34.5 million, or 85.4% of total actual expenses and prize payouts of \$40.4 million for that year; and
- Net proceeds: understatement of \$2.8 million, or 22.9% of total actual net proceeds of \$12.2 million for that year.

Statistics are currently being re-compiled for years earlier.

Other Findings

Policies and procedures not well defined

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

File Completeness

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

Summary of Evidence

Licensing process from application to final report

An official of the Consumer Affairs Division, Consumer and Commercial Affairs Branch of the Department of Service NL, which is responsible for charitable gaming,

described for Committee members the way in which licences are issued: Applicants must fill out a form specifying the type of lottery they wish to run, the date and location of the event, the prize payout and the anticipated proceeds. They must signify that they have a separate lotteries trust account in a registered financial institution. Once the Charitable Gaming section is satisfied that the information is complete and accurate the licence is issued fairly quickly. After the lottery event has taken place the organization must submit a financial report indicating the amount of money taken in, the prize payout, expenses incurred and proceeds realized.

When an organization applies to operate a lottery the Trade Practices and Licensing Division provides them with a copy of the rules and Regulations enacted governing the process.

While the Division does not mandate that organizations running lotteries be incorporated, incorporation is encouraged.

Application Approval and Processing

Approval of licence applications by those not designated

An official explained to the Committee that the Minister must designate the employees who may approve licences. The Division is reviewing its practices to make sure that the employees who approve licences are designated by the Minister as required. The Department does not see any need to change the process. The Minister advised the Committee in a letter to the Chair and Vice-Chair that the Director and Manager of Consumer Affairs have delegated signing authority for lottery licences. The signature of the Director is electronically appended to all licences. The Minister stated that there are no procedural changes required.

Incomplete and outdated information on applications

In response to a question about the quality of the information on the application forms an official stated that the Division strives to ensure that information is supplied

as required. However, the witness added, there are bound to be exceptions. Officials correct errors that come to their attention and stress to their staff members the importance of ensuring that information is correct and complete before they issue licences.

Recommendation

The Committee recommends that applicants be required to provide all necessary information before a licence is issued or renewed.

Licences approved with unapproved intended uses of proceeds

A Committee member asked the Department how they ensure that funds are used as per the licence. An official told the Committee that applicants must state the purpose for which the funds will be used. If the use is not acceptable the licence is not issued. Once the event is over the licensee files a report which indicates the amount taken in, expenses and net proceeds for the intended use as approved by the Department. The Department accepts the word of the licensee unless there is a complaint alleging that the proceeds have not been used as intended. The Department advised that they will conduct reviews to ensure that only applications for lotteries with approved uses for the proceeds will be approved.

In the three cases referred to by the Auditor General in which a licence was approved based on an unapproved intended use of the proceeds the Division had informed staff that a mistake had been made and had taken steps to ensure that this error would not recur.

Business plans not received

A Committee member questioned officials about the requirement for submitting business plans. An official explained that they require a business plan for lotteries which award very large prizes, such as the popular new house lotteries. If the

officials think the lottery will not be successful the Division requires a prize guarantee to ensure the public is protected.

In the case of two instances of failure to submit a business plan for lotteries with significant prizes the Division found that one staff member had been responsible for vetting the applications. The error was corrected.

Recommendation

The Committee recommends that the procedures manual stipulate clearly the category of application for which a business plan is required.

Licence Monitoring

Financial reports submitted late or not at all

An official pointed out that the applicant organizations are not composed of business people or professionals. Rather, they are volunteers raising money for good causes. The boards of these non-profit groups change from time to time, a fact which must be taken into account by officials when making decisions about the requirements, the Committee were told. If a licensee is late in submitting its financial report the Department takes into consideration the harm that is done by the failure to submit the report on time, or at all, in deciding whether or not to take action.

The Division constantly follows up with organizations to secure information required, including financial reports.

In response to a question about the collection of fees the Division advised that if a report is late the collection of fees is late. The Division works with licences to ensure the fees are paid.

Division officials do sometimes have to deny an organization a licence because of their failure to submit a financial report. The smaller organizations running one-time events are more likely to be denied a licence in these circumstances.

Recommendation

The Committee recommends that the procedures manual specify the time line for submitting financial reports and the penalties for failure to comply.

Licensee reporting requirements do not fully address legislation. The Division and the Auditor General have a difference of opinion regarding the Division's compliance with legislative requirements. The officials believe that they are complying. They do give the organizations check lists to fill out with respect to the requirements in the Regulations. However the reports do not indicate whether licences have trust accounts, whether licence numbers are shown nor whether two witnesses are present at media bingos for example.

Recommendation

The Committee recommends that the procedures manual specify the reporting requirements required to address the legislation.

In their response to the Auditor General's findings Department officials stated that they are anticipating finalization of classification and recruitment of an Enforcement Officer for the Division. Once this position is filled they expect that reporting and compliance with regulations should be enhanced. As of the date of the hearing the position had not been filled and the Division was not able to tell the Committee when the position might be filled.

Recommendation

The Committee recommends that the Division make every effort to fill the vacant Enforcement Officer position.

It is the Auditor General's opinion that because the report required for licencees does not include certain requirements in the legislation the Division cannot ensure that the licencees are complying with certain Regulations.

Licensing auditor position vacant

The Auditor General reported that the position of licensing auditor had not been filled, with the result that the Division is behind in its review of financial reports. An official explained that the position was funded through the Opening Doors programme and that the Division had not been able to identify a candidate qualified to take on the work. The Department continues to work with Opening Doors to find a suitable candidate. In the meantime other staff members are doing the work when time permits.

Recommendation

The Committee recommends that the division make every effort to fill the Licencing Auditor position and assign an existing employee to the position until a candidate is found to fill the position permanently.

A Committee member suggested that the fact that no audits had been performed for a year was a significant weakness in the oversight of the licensing process.

A departmental representative told the Committee that there had been very few complaints about the lottery operations and that they are fairly confident that most lotteries are well run.

On-site inspections not performed

The Division is not conducting on-site inspections because the position of the employee who performs this work is vacant. The inspections are a responsibility of an employee hired under the Opening Doors programme. As noted above the Department continues to seek a suitable candidate for this position.

Recommendation

The Committee recommends that the Division reinstate the practice of performing on-site inspections.

In response to a question about the staffing levels of the Division an official told the Committee that they must consider the cost-effectiveness of bringing in additional staff. The witness agreed that if the Division could fill the positions in which they place Opening Doors applicants they could free staff to perform other functions.

No audited statements required of licensees

A representative of the Department informed the Committee that officials make a decision, a judgment call, based on the nature of the lottery, about whether or not to require the organization to provide an audited financial statement to the Department. Officials consider the size of the lottery and the controls that are in place in deciding whether or not it is appropriate to require such statements. In response to a question from a Committee member an official told the Committee that none of the 55 licences which were in the sample reviewed by the Auditor General had submitted audited financial statements.

Lotteries operating without a licence

The Committee began the questioning by asking for an explanation of the instances the Auditor General had found of lotteries operating without a licence. Departmental officials told the Committee that they realized there were “issues with applications” but that they took into account the fact that the organizations operating the lotteries were run by volunteers engaged in an activity with a charitable purpose. An official explained that the Department’s practice is to ask organizations with an expired licence to cease and desist until the licence can be issued. Most organizations comply with the request. The Department did not believe there was any criminal intent in the instances found by the Auditor General and therefore did not turn the matters over to the police for investigation. The Department believed that the practice of back-dating the licence was appropriate in the circumstances. An official suggested that three instances of licensing irregularities out of approximately 3000 licences that are processed in the course of a year is not excessive. The Auditor General pointed out that the three instances reported were found in a random sample of 55 licences. The number of infractions, if distributed over the 3200 licences processed, would be in the order of 170 to 180.

An official, in answer to a question about backdating licences, stated that it is not the Division’s policy to backdate licences. Officials work with licencees to resolve such problems when they do not think that there is criminal intent. The Division does not believe that the practice can be eliminated however.

Recommendation

The Committee recommends that the Division discontinue the backdating of licences.

When asked about determining who is operating without a licence an official told the Committee that they have no way of knowing unless there is a complaint. A Member

suggested instituting an incentive, such as a reduced fee, to encourage compliance. The Division has not considered this idea.

In response to a question about unlicensed lotteries an official told the Committee that the Division does not track illegal activity but that if they become aware of such activity they refer it to the police for prosecution.

A Member enquired about the possibility of extending licence duration. An official informed the Committee that the Department does not think this would be feasible because of the turnover in volunteers in not-for-profit organizations and attendant risk that information might be lost.

Recommendation

The Committee recommends that the Division give consideration to extending the duration of lottery licences in order to reduce administration costs.

In response to a question about the possibility of moving to an electronic-based system an official stated that the Department might consider that suggestion at some point if it were cost-effective and feasible from the point of view of the target organizations.

Recommendation

The Committee recommends that the Division explore the possibility of moving to an electronic licence application system.

Performance measuring and monitoring

No Performance measures or reporting requirements

The Department advised that while there is no separate operating plan for the Lotteries Licensing Division of the Department there is a departmental plan which the Division follows.

Recommendation

The Committee recommends that the Department create an operating plan for the Lotteries Licencing Division separate from that of the Department of Service NL.

Information Management

In response to a question about the data management system used by the Division an official told the Committee that they use the AMANDA System, a licensing and report system. Each application when received is entered. The licencees are given an identifier number. Once a record is created the Division can identify the licencees and the expiry date of the licence. The Division contact licencees then to advise them of the impending expiry.

The Department has not considered moving to an electronic application process although they have not ruled it out; nor have they considered on-line auto-renewal although other divisions of the Department use online renewal.

A Member questioned the officials about the Auditor General's finding of incorrect statistical information on the website. An official stated that the Department had corrected the errors and explained that the information at the website is outdated because the Department does not post information until all the reports have been

submitted. There is usually a two-year lag in this process. Sometimes organizations have fiscal years different from that of the Government.

Recommendation

The Committee recommends that the Division make every effort to ensure that information on the website is accurate.

Other Findings

Policies and procedures not well defined

The Auditor General pointed out that the policies and procedures his report referenced are those that the internal staff should be following, as opposed to information for applicants, in order to ensure compliance, monitoring and the like.

It is the position of the Department that the staff has access to the information they need to ensure compliance with Regulations.

The Committee was told that the Department has no manual but that the requirements with regard to lottery licensing are set out in the rules and in the contracts entered into with licencees and that they are posted at their website.

The Auditor General stated that he and the Department have a difference of opinion on the matter. It is the Auditor General's position that the weaknesses they had found might be a result of employees' lack of familiarity with procedures.

Findings and Recommendations

The Committee finds that, as reported by the Auditor General, there were numerous weaknesses and irregularities relating to the operation of Lotteries overseen by the

Consumer Affairs Division of the Consumer and Commercial Affairs Branch of the Department of Service NL. The Committee understands that the organizations which use lotteries for fundraising are run by well-intentioned volunteers who make a valuable contribution to their communities. However it is important that these charitable activities be carried out according to the law and best accounting practices so that the stated purposes of the fundraising events are achieved and risk of loss or misappropriation is minimized. Regulations and guidelines are a benefit to the trustees of non-profit organization as they provide volunteers with a solid framework in which to operate so that they avoid falling afoul of the law and bringing the organization into disrepute.

It is clear that the Department of Service NL must adhere to the Regulations and strengthen its own procedures to address the weaknesses found by the Auditor General, in its approach to regulating charitable gaming. At the same time there has to be balance such that the clientele is not prevented by bureaucracy from carrying out legitimate charitable activities.

The Division's approach to oversight of the work of the Charitable Gaming section appears to be passive in that, as stated on several occasions at the hearing, officials assume all is well if there are no complaints. The Committee believes, on the other hand, that the Division should take a more pro-active approach to oversight.

It appears to the Committee that the Division has taken steps to address the following weaknesses, discussed at the hearing, which the Auditor General has commented on in his Report:

- Approval of licences by those not designated: the Director and Manager of Consumer Affairs now have signing authority for the approval of applications;

- Incomplete and outdated information on applications: the Division is striving to ensure all information is supplied before they issues licences should be mandatory.
- Licences approved with unapproved intended uses of proceeds: the Division will not approve licences if the applications indicate unapproved uses for the proceeds; the Division conducts reviews to ensure that proceeds are being used as intended;
- Business plans not received: this failure was an error on the part of an employee, which was corrected.

The Committee has determined that there are a number of matters discussed at the hearing which, in their opinion, the Division has not yet addressed or has not addressed adequately. In respect of these matters the Committee recommends as follows:

The Department should

- create a policy and procedures manual for the Division to ensure clarity and consistency officials in the Division's application of the rules and procedures governing charitable gaming activities;
- specify in the manual in particular
 - the category of application for which a business plan is required;
 - the approved uses for proceeds of lotteries;
 - the time-line for submitting financial reports and the penalties for failure to comply;

- the reporting requirements required to address the legislation;
 - the category of charitable gaming activity for which an audited statement is required;
 - that applicants must provide all necessary information before a licence is issued or renewed;
-
- discontinue the backdating of lottery licences;
 - report organizations which continue to operate lotteries without a licence, after they are requested by the Department to cease and desist, to the proper authorities;
 - give consideration to extending the duration of lottery licences in order to reduce administration costs to the Division;
 - explore the possibility of moving to an electronic licence application system;
 - create an operating plan for the Lotteries Licensing Division separate from that of the Department of Service NL;
 - make every effort to fill the vacant Enforcement Officer position;
 - make every effort to fill the Licensing Auditor position and assign an existing employee to the position until a candidate is found to fill the position permanently;

- reinstate the practice of performing on-site inspections;
- make every effort to ensure that information on the website is accurate.

Report of the Auditor General, Year Ended 31 March 2011

Paragraph 2.12 – Marble Mountain Development Corporation Department of Tourism, Culture and Recreation

Introduction

The Committee met on June 7, 2012 to review the Report of the Auditor General for the Year Ended 31 March 2011. Upon examination of the Report, the Committee selected Paragraph 2.12: Marble Mountain Development Corporation (Department of Tourism, Culture and Recreation), for further investigation. At its July 24th, 2012 meeting, the Committee agreed to hold a public hearing based upon the Report of the Auditor General and the Department's response to the Committees written questions. The following is a summary of the findings from the Report of the Auditor General, combined with a summary of the findings from the public hearing held on August 29th, 2012.

Auditor General's Findings

Reference Paragraph 2.12 – Marble Mountain Development Corporation, Department of Tourism, Culture and Recreation, Report of the Auditor General for the year ended 31 March 2011.

The Report stated:

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

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

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

Financial Position

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

The Corporation's bank indebtedness has resulted in interest expenses and bank charges totaling \$164,115 for the three years ended 30 April 2011. In addition to the interest charges related to the Corporation's bank indebtedness, the Corporation paid substantial finance charges related to other items as well. For example, the obligations under capital leases have been in excess of \$100,000 for the past number of years resulting in interest costs of \$75,484 for the three years ended 30 April 2011. In 2010-11, the Corporation financed the purchase of two snowmobiles costing \$22,469, with interest costs of \$10,236 over a three-year period. In addition, for the year ended 30 April 2011, the Corporation paid \$4,200 to finance payment of its \$100,000 insurance premiums and was re-assessed \$27,000 for failing to remit all of its Health and Post Secondary Tax to the Province for the period 2005 to 2009. As of April 2011, this amount totaled \$47,000 due to accumulated interest and penalties of \$20,000.

The Corporation's ski lift operations incurred a deficit in each the last three years, with a total deficit over the three years of \$1,359,224. A major expense related

to the ski lift and other outside operations has been a contract for the management of these services. Our review of this contract identified the following:

- The management contract was first awarded in September 2000, for a five-year period, based on a request for expressions of interest. Since the contract expired in 2005, it was replaced with a new three-year contract and then subsequently renewed for three two-year periods which will expire in September 2014. From September 2005 to October 2011, \$658,600 has been paid in management contract fees without any further request for proposals or public tender. As a result, the Corporation could not demonstrate whether this continues to be the most economical means of providing this service.
- No weekly invoices were submitted as required by the contract. The contract provides for weekly payments to the contractor based on a minimum of 16 weeks. In May 2005, the Board Chairperson stipulated that normal winter operations required operation management services for 32 weeks. However, for each of the last six years, the contractor was paid in excess of normal winter operations; in 2010-11 for 40 weeks and in 2009-10 for 39 weeks.
- In addition to the base contract fee, from May 2010 to October 2011 the Corporation also paid other expenses of the contractor including vehicle repairs (\$2,808), cell phone charges (\$2,481), automobile insurance (\$856), vehicle rental (\$7,232), ATV rental (\$3,164), snow gun rental (\$5,650), flood lights (12) purchased (\$3,390) and excavator rental (\$3,390). These expenses were not covered by the contract and there was no assessment to determine whether the Corporation was getting the best value for the funds being spent.

- From May 2010 to October 2011, the Corporation contravened the *Public Tender Act* when it paid two companies related to the contractor a total of \$36,829 for excavation and other maintenance services without any request for quotes or a call for a public tender as required under the *Public Tender Act*. As well, for the fiscal years ended 30 April 2006 and 2007, the Corporation rented a tube park lift from another company owned by the same contractor at a cost of \$40,000 plus HST, again without a call for a public tender.

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

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

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

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

Compensation Practices

For the year ended 30 April 2011, the Corporation incurred a total cost of approximately \$1,090,000 for salary and employee benefits related to its 6 management staff (4 full-time and 2 seasonal) and approximately 140 other full or part-time staff. Our review of the Corporation's Compensation Policies identified the following:

- The Corporation paid severance amounts to resigning employees during the period of our review; however, we found that the basis for severance was inconsistent and in some cases the amount paid was either calculated incorrectly or there was no requirement for the Corporation to make the payment. In addition, although in November 2007, the Board directed that a severance policy be developed, no policy was in place at the time of our review. It was noted that the amounts paid were inconsistent with Government's severance policy.
- Leave was not adequately monitored and controlled. As well, our review identified errors in the recording of leave and also in the payment of leave balances on retirement or resignation.
- The Corporation pays an amount to the employees for contribution to an RRSP; however, the amount paid was not always calculated correctly.

- A total of \$1, 135 was paid to four management employees for statutory holidays to which they were not entitled. The four employees had not worked the 20 days prior to the holiday as required by Corporation policy.
- In three instances, vacation pay was not calculated correctly resulting in underpayments, and in one instance, salary was not calculated correctly resulting in an overpayment.
- There was no "Certificate of Conduct" found in personnel files for seven of the eight management staff reviewed, and only one of the four employees working at the children's centre provided the required "Certificate of Conduct".

Tendering of Goods and Services

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

In addition, one sole source purchase for a touch screen costing \$18,744 did not have the required Form B completed. Therefore, the Government Purchasing Agency was not notified as required and consequently the House of Assembly was not informed of this instance.

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

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

issued. Approvals were not evidenced for 16 of the 17 purchase orders that were issued.

Travel, Cell Phones and Other Issues

Travel

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

- Claims submitted and paid were not always supported by official receipts and amounts claimed were not consistent with Government rates.
- The Corporation did not use journey authorizations or other forms of approval for travel outside the Province.
- Instances were noted where travel expenses were charged directly to a Corporation credit card with no travel claims or other support for why the expenses were incurred.
- The Corporation reimbursed staff for ineligible expenses, including instances where hotel charges were claimed and paid twice, and meals claimed and paid for travel within the headquarters area.
- Although the Corporation paid \$21,900 for relocation expenses for a new management employee, there was no return of service agreement signed which would be typical of Government relocation situations.

Cell phones

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

Other issues

Our review identified a number of other issues as follows:

- The Corporation spent \$1,200 on a staff function in April 2011; however, there was no Board approval for the expenditure.
- The Board minutes were not signed as approved and the terms of appointment for eight Board members had expired. These members continued to serve on the Board without the required approval of the Lieutenant-Governor in Council to extend their terms.

Control over Capital Assets

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

The Corporation did not maintain an accurate and up-to-date capital asset ledger. There were still assets listed that were no longer in use at the Corporation but were still recorded as assets on the financial statements. For example, disposed of

snowmobiles costing \$31,448 and obsolete/damaged ski rental equipment dating back to 2002 were not removed from the listing of capital assets. As well, the Corporation had recorded a tube park lift costing \$9,582 that it did not own.

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

Summary of Evidence

Financial Position

Mr. Robert Pike, the Chair of the Corporation, advised that the large increase in the Corporation's deficit from 2008 to 2011 related to the poor weather that was experienced for two winters in a row:

From 2008 to 2011, one big thing would have been the difference in the weather. You would have had a shorter season for the winter product, being skiing, which is the main product for Marble Mountain. You would have had a shorter season; you would have had an increase in cost because of snowmaking costs, which has a significant impact on the bottom line; 2011 would have been the second year of bad weather. Of course, the way it is in the ski business or even in the snowmobile business, I guess and all winter products, is that when you have a bad year, you do not really see the full impact on that until the following year.

The Chair also advised that the deficit was affected by the lower revenues from European visitors as a result, partly, of the termination of direct flights from London:

The other thing that would play a big part in those numbers is that back in 2008 you still had a lot of benefits from the European market, and it had a

significant benefit to Marble Mountain. Once the European market died off, because of the issue with direct flights and so on, it really had a significant impact on the bottom line of Marble Mountain.

Mr. Pike gave the Committee some background information about the long-term debt maintained by the Corporation. He informed the Committee that the debt is mostly related to the expenditures that were incurred around and following the Canada Winter Games. While the debt has since remained steady, owing to the light interest costs and limited revenues, the Corporation is not in a position to pay down the debt. Mr. Pike also advised the Committee that he has instructed the managers of the Marble Mountain operation to examine all costs in an effort to increase efficiencies.

Recommendation

The Committee recommends that the Marble Mountain Development Corporation address the question of debt servicing in their long-term financial planning.

Mr. Pike advised the Committee that the Corporation has embarked on a ten year infrastructure plan:

We have started on a ten-year infrastructure plan to rehabilitate, refurbish and try to extend the useful life of all of the equipment out there that is aging. Just last year alone, we have improved lift reliability on one of the lifts.

The Committee inquired whether the Corporation had discussed the potential sale of the condominiums as a means of accumulating additional revenues, addressing some of the shortfalls or debt issues, or improving the day to day operations of the Corporation. Mr. Pike responded that the condominium units were on the market for private sale but that there was no interest at that time. Putting the units on the

market at the present time may not be in the best interest of obtaining the best financial results. He advised that the units bring in more revenues than the interest on the line of credit. He also mentioned that the Corporation is examining the creation of a base development plan and strategy that would try to mirror the success of other ski hills which have villages around the hill.

In response to inquiries from the Committee about the marketing budget and whether funds could be saved by reducing the budget, Mr. Pike advised:

We have to re-engage the immediate local market. Then we have to focus on that two-hour drive market. We have to focus on the Avalon Peninsula where the bulk of the population is. We are taking it piece by piece because you cannot do everything and we have to balance the dollars we have with what we need to do. Then we have the Halifax market. Then we have other markets we can look at.

There may be a point in time that if we find we get successful, then you are not going to spend marketing dollars for the sake of spending marketing dollars. It is always an evolving strategy. Will we always spend \$200,000? Mr. Chair, \$200,000 is not very much money when it comes to a marketing strategy. In my own business I spend a lot more than that, probably on The Telegram alone or on NTV alone. We are really working with a very limited budget, but we are trying to maximize that.

Social media is one of the things that we are trying to grow and trying to grow because we know we can hit a certain demographic with social media. You are certainly not going to reach my age with social media.

Tendering of Goods and Services

In response to questions related to the large maintenance contract identified by the Auditor General, Mr. Pike informed the Committee that he believed that the Board at the time of the contract extension felt comfortable maintaining the contract with the individual based on past performance and knowledge of the operations. He stated:

The individual in question has a good understanding of the facility: what is on the ground, what is underground when it comes to the piping, where it is, and repairs and what is above ground, being the lifts and the electrical on those lifts. You have motors; you have a lot of different infrastructure. The board has been satisfied that in times of need that individual has really come to the table and has proven that he is very valuable to that operation.

Mr. Pike advised the Committee that at the expiration of the current contract Marble Mountain intends to go to market for the new contract. He assured the Committee that the corporation would follow the *Public Tender Act* going forward.

Recommendations

The Committee recommends that Board members representing Government Departments make every effort to ensure that proper financial management procedures are being followed by staff.

The Committee recommends that the Corporation, when tendering for maintenance, follow the *Public Tender Act* both for the original contract and for contract extensions.

Mr. Pike advised the Committee that in light of the findings from the Auditor General's report, the Corporation has begun to review and revise all policies and procedures. A review of the *Public Tender Act* and the following of proper

procedures in order to comply with the Act has been a part of the improvement process. He noted:

The staff now has been reviewing the *Public Tender Act* and the requirements. They have been instructed and they have been following the proper procedure since this report has been written.

Recommendations

The Committee recommends that the Corporation ensure that the new processes are well documented and put in place to make certain that financial management regulations such as the Public Tender Act are properly followed.

The Committee recommends that the Corporation provide employees with professional development to ensure that they understand the financial policies and procedures used by Government entities.

When asked by the Committee about the Corporation's failure to apply for HST rebates, Mr. Pike provided some insight into the steps taken by the Corporation to improve financial management:

So right now we have a new financial manager in place. One who at least I feel is competent, qualified. One who has gone through this audit process, has gone through this report, one has gone through this audit response. One who is very familiar with the issues, and very familiar with what needs to be done. First of all, the proper thing to do going forward – one, to do the right thing, and the other one, to be able to show we are doing the right thing, knowing that we have another audit not too far in our future that is going to be coming in expecting us to be able to prove that we are doing the right thing. Taking all that into account, yes, I feel very comfortable that this individual now knows that to do and is doing it. As far as documentation, it is just basic

accounting, basic finance, and if you have the right people in the job, it is going to happen.

The Committee advised Mr. Pike that the role of the Public Accounts Committee is to ensure that procedures are in place to save money for the Marble Mountain Corporation and in the long run save the government and taxpayers money. The Committee asked Mr. Pike if the Corporation's financial statements were reviewed by the Department of Tourism to ensure that Marble Mountain is following government procedures and that proper procedure is in place. Mr. Pike stated that the Corporation's financial statements are presented to the Department and that the Deputy Minister is very familiar with the financial statements present and past.

Travel, Cell Phones and Other Issues

The Committee questioned Mr. Pike about the higher per kilometre rate paid to employees than is stipulated in Government policy. Mr. Pike responded:

Well, our policies are currently under review. A number of things that are looked at for Marble are not necessarily looked at by looking at government. Government is one of the things that we look at. We are looking at wages or we are looking at other things. We compare ourselves to the industry. We will look to other positions within the industry. If we are looking at salaries, we just do not look at government rates because that is where our competition is and that is what we are competing for people and policy and so on.

Mr. Pike informed the Committee that there were cell phone and travel procedures in place prior to the Auditor General's report but they were just not adequately followed. He stated that all cell phone bills and travel claims are now reviewed monthly by the general manager. As well, all cell phones used by seasonal staff are turned in at the end of the season. He stated:

As I said, our policies are all under review, travel policy being one of them, but we did have a travel policy all along. It was clear by some of the detail that was brought out in the Auditor General's report that even our existing policies were not followed to the T. So, some of the easy fixes upfront was initially that staff were instructed and the general manager was instructed to ensure that these things happen, that as a minimum, until we got new policies, that we are doing what we say we should be doing. So, having receipts to substantiate payments of travel claims is in place today.

He also advised that:

It is not something that is used for normal communication because it is for emergency response, the condition of the hill, knowing where people are and communicating when they are doing their morning sweeps, their evenings sweeps, is the hill in good shape, if it is not, if we have a problem, where we have to send somebody to get it fixed before the runs actually open. Then, at the end of the day, making sure that there is nobody on the hill, and then between opening and closing if there is anybody hurt, injured or lost, you have immediate response.

Recommendation

The Committee recommends that the Corporation examine the need for 14 cell phones based on the number of full time core staff members.

Mr. Pike advised the Committee that a receipt paid by the Corporation for fuel used by a vehicle not owned by the Corporation was for fuel used by the maintenance contractor when driving into St. John's to have equipment repaired.

Mr. Pike informed the Committee that while proper documentation related to the approval of purchases on corporate credit cards was not in place, the staff approving the expenditures knew what they were for. Staff has since been directed that in order to pay travel claims they would have to have all proper forms and receipts.

In response to questions from the Committee about employee relocation expenses, Mr. Pike advised that relocation expenses would not be paid in the future unless the employee signed a return-to-service agreement.

Control over Capital Assets

Upon questions from the Committee related to the control of capital assets and fuel consumption, Mr. Pike advised that the Corporation would be putting tracking mechanisms in place to track fuel usage during the ski season.

Improvements in Marble Mountain

The Committee enquired about any progress that the Corporation had made since the audit by the Auditor General. Mr. Pike advised that:

Since the report, or around the same time, we have a new General Manager. Certainly since the report we have a new Manager of Finance and we have set a new course for ourselves. We have a new team in place and we are focused on safety, we are focused on reliability, and we are focused on the whole customer experience. In the last year alone, we have done a lot of things to improve Marble Mountain. We have made improvements to our snow-making capabilities, we have a newer, safer, customer-friendly Magic Carpet to replace the old T-bar because it had reliability issues, it had safety issues, and it had issues for the customer. It was a thing that often turned people away from the sport. We are getting some rave reviews on that. In the report, there are a lot of policy and procedure issues. I was not able to

respond positively as to what we have accomplished in my response to the Chair, but what we have done – we recognize there are a lot of policy issues. There are policies that had not been adhered to, there are policies that need to be tweaked, and there are new policies that need to be written. We have formed a subcommittee of our board to look at all those policies. Where we are to date, is that the subcommittee has come re with a first cut of these policies.

Recommendation

The Committee recommends that the Corporation continue with the plan to obtain a new financial system but place priority on procuring a basic system expanded to track overtime, severance, and leave, capital assets and purchase orders electronically.

Findings and Recommendations

Having reviewed of the Auditor General's Report and the Corporation's responses to questions during the public hearing, the Committee has determined that:

- The Marble Mountain Development Corporation should address the question of debt servicing in their long term financial planning;
- the Corporation should ensure that all board members are properly in place and properly approved by the Lieutenant-Governor in Council and that all documentation related to the approval and the terms of board members be maintained and readily available;
- the Corporation should ensure that the new processes are well documented and put in place to make certain that financial management regulations such as the *Public Tender Act* are properly followed;

- the Corporation should provide employees with professional development to ensure that they understand the financial policies and procedures used by Government entities.
- the Corporation should, when tendering for maintenance, follow the *Public Tender Act* both for the original contract and contract extensions;
- the Corporation should continue with the plan to obtain a new financial system but place greater priority on procuring a basic system expanded to track overtime, severance, and leave, capital assets, and purchase orders electronically;
- the Corporation should examine the need for 14 cell phones based on the number of full time core staff members;
- the Corporation's Board members representing Government Departments should make every effort to ensure that proper financial management procedures are being followed by staff;
- the Corporation should post the names of Board members and the entities they represent on its website and
- the Corporation should conduct a general review of the use of the asset.