

REPORT OF THE

# Auditor General of New Brunswick

Volume I  
Performance Audit

2019

AUDITOR GENERAL  
OF NEW BRUNSWICK



VÉRIFICATEUR GÉNÉRAL  
DU NOUVEAU-BRUNSWICK



Speaker of the Legislative Assembly  
Province of New Brunswick

Sir

As required under Section 15(1) of the *Auditor General Act* I am submitting Volume I of my 2019 Report to the Legislative Assembly.

Respectfully submitted,

A handwritten signature in black ink that reads "Kim MacPherson".

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

Fredericton, N. B.  
June 2019

---

# Table of Contents

## **Chapter 1 – Key Messages from the Auditor General**

Introduction.....	3
Findings in this Report have a Recurring Theme.....	3
Acknowledgements.....	8

## **Chapter 2 – Department of Health – Medicare Cards**

Chapter Summary.....	11
Key Findings and Observations Table.....	12
Recommendations and Responses.....	14
Audit Introduction.....	19
Conclusions.....	21
Initial Application Process.....	30
Security and Privacy of Information.....	34
Medicare System Risks.....	40
Other Observations.....	42
Appendix I – Audit Objective and Criteria.....	46
Appendix II – About the Audit.....	47

## **Chapter 3 – Department of Transportation and Infrastructure – Outsourcing of Highway Maintenance and Construction Work**

Chapter Summary.....	51
Key Findings and Observations Table.....	52
Recommendations and Responses.....	53
Audit Introduction.....	55
Conclusions.....	56
No Framework for Outsourcing Decisions.....	60
Programs Knowingly Outsourced at Higher Cost.....	64
Appendix I - About the Audit.....	73
Appendix II – Audit Objective and Criteria.....	74
Appendix III – Asphalt Procurement Follow-up .....	75

## **Chapter 4 – Department of Finance – Overdue Property Tax: Collections and Forgiveness**

Chapter Summary.....	81
Key Findings and Observations Table.....	82
Recommendations and Responses.....	83
Audit Introduction.....	85
Conclusions.....	86
Overdue Property Tax Collections.....	92

---

Property Tax Forgiveness.....	96
Appendix I – Audit Objectives and Criteria.....	102
Appendix II – About the Audit.....	103
Appendix III – Excerpts from <i>Real Property Tax Act</i> .....	104

**Chapter 5 – City of Saint John Funding Agreement – Special Review-Executive Council Office**

Chapter Summary.....	113
Key Findings and Observations Table.....	114
Recommendations and Responses.....	116
Introduction.....	120
Conclusions.....	120
Inadequate Decision Records and Documentation.....	125
Rushed Agreement Increased Taxpayer Risk.....	127
AG Concerns with Legislative Compliance.....	137
Appendix I – Excerpts from Former Premier’s Letter (December 2017).....	140

# Chapter 1

## Key Messages from the Auditor General

### **Contents**

Introduction.....	3
Findings in this Report have a Recurring Theme.....	3
Acknowledgements.....	8

# Key Messages from the Auditor General

## Introduction

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

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

1.2 In this volume of our 2019 Report, we include four chapters:

- Medicare Cards;
- Outsourcing of Highway Maintenance and Construction Work;
- Overdue Property Tax: Collections and Forgiveness; and
- City of Saint John Funding Agreement – Special Review.

## Findings in this Report have a Recurring Theme

1.3 Even though this volume examines a wide range of unrelated matters, it became evident to me that exposing New Brunswick taxpayers and the Province to risk is a recurring theme in all four chapters. Whether it be risk relating to:

- privacy breaches;
- outsourcing programs and services without a business case;
- lack of policies and internal controls; or
- removing contractual safeguards protecting the Province.

***Taxpayers and the Province exposed to unnecessary risk with no clear benefit***

**Medicare Cards**

***Insufficient procedures to identify cardholders who become ineligible***

***Automatic card renewal policy exposes the Province to risks***

***Having more than one third-party service provider increases the risk of privacy breaches***

**Outsourcing of Highway**

**1.4** I am concerned that decision makers are exposing New Brunswick taxpayers and the Province to unnecessary risk, sometimes excessively, with no clear benefit.

**1.5** Chapter 2 of this volume presents our findings and observations regarding the administration of Medicare cards eligibility, security and privacy. We found the Department of Health has processes and controls in place to ensure only eligible residents are issued a Medicare card. However, procedures to identify cardholders who subsequently become ineligible are insufficient.

**1.6** Privacy breaches occurred and continue to happen because of the automatic card renewal policy adopted by the Department in 2014 as a cost saving measure. While I continue to encourage government to operate as efficiently as possible and always look for cost-saving opportunities, I caution that risks and risk mitigation measures must be fully considered when pursuing such initiatives. These privacy breaches expose the Province to significant financial, legal and/or reputational consequences.

**1.7** The Department should re-examine the automated renewal decision, considering the risks involved, and take the appropriate mitigating actions or reverse the automatic renewal decision altogether. A secure and robust online card renewal process should be considered as a possible solution that would help mitigate the risks while minimizing administrative costs.

**1.8** Privacy breaches also occurred due to a human error at a sub-contracted company that produces and distributes Medicare cards for the Province. Although contract amendments were subsequently made as an attempt to prevent such a mishap in the future, the Department could not explain why it was necessary to involve two external companies to produce and distribute Medicare cards, instead of one.

**1.9** Reducing the number of external parties who have access to cardholders' personal information, together with more rigorous monitoring and reporting requirements, would mitigate privacy risks associated with third-party service providers.

**1.10** Chapter 3 presents the findings of our report on outsourcing of highway maintenance and construction

**Maintenance and Construction Work**

work. We found, in certain cases, the Department of Transportation and Infrastructure made outsourcing decisions that were not evidence-based.

**1.11** The Department spends significant dollars on capital maintenance and construction each year. Given the existing state of our provincial infrastructure, the challenges associated with an ageing highway network and severe weather conditions, it is essential the Department maximizes every dollar in the most efficient and effective manner.

***Outsourcing decisions not supported by objective evidence***

**1.12** Outsourcing can help the Province get greater value from infrastructure spending when work can be done faster, better, cheaper by the private sector. However, outsourcing decisions must be supported by a business case with objective analysis of costs, benefits and consequences. We believe the Department needs to take a long-term approach to outsourcing, supported by an evidence-based decision-making framework.

***DTI outsourcing decisions should not be based on “philosophical” reasons***

**1.13** We found the Department was guided by principles and objectives that included ‘philosophical’ reasons as the basis for business decisions. We also found the Department made some of its outsourcing decisions for economic development reasons to support the private sector. In certain cases, the Department knew it was choosing the more expensive option at the taxpayers’ expense.

**1.14** I expected government to pursue economic development through the agencies and entities specifically setup to serve this purpose. Other provincial entities should carry out their activities and make decisions that fulfil such mandates.

**Overdue Property Tax: Collections and Forgiveness**

**1.15** Chapter 4 contains the findings of our report on overdue property tax collections and forgiveness. We found the Department of Finance generally complies with legislation in relation to overdue property tax collections and forgiveness. However, the Department lacks policies to direct its discretionary property tax forgiveness as well as detailed criteria for prioritizing tax sales.

**1.16** Property tax is a significant source of revenue for the Province and municipalities. Forgiveness of overdue property taxes represents lost revenue to the Province and creates a perception of unfairness to taxpayers who remain current with their payments.



***No policies and procedures for discretionary property tax forgiveness***

**1.17** The Tax Commissioner assesses each case of discretionary property tax forgiveness on its own merits. Depending on the amount to be forgiven, the Tax Commissioner either makes a decision or a recommendation to Treasury Board. The Department has not developed detailed policies and procedures to guide the Tax Commissioner in making discretionary forgiveness decisions and recommendations.

***A lack of detailed policies and procedures may lead to unfairness and inconsistency in property tax forgiveness decisions***

**1.18** I am concerned a lack of detailed policies and procedures leaves substantial room for judgment and discretion, and may lead to unfairness and inconsistency in property tax forgiveness decisions. To ensure fairness, detailed policies and procedures need to be developed and consistently used and documented in decision making. This becomes very important when, for example, there is a new Tax Commissioner or when government changes.

***Property tax forgiveness decisions are not publicly reported***

**1.19** A lack of transparency around public communications of tax forgiveness decisions is another reason why I am concerned about fairness and consistency in property tax forgiveness decisions. Tax forgiveness decisions are not publicly reported (i.e. unlike grant payments, forgiveness decisions are not reported in the Province's Public Accounts Volume 2). This lack of transparency increases the importance of having detailed policies and procedures to consistently guide decision makers.

***Regular monitoring of internal controls required***

**1.20** Also, our testing revealed errors have occurred in processing bankruptcy transactions and that regular monitoring of property tax internal controls has not been carried out. I encourage the Department to work with the Office of the Comptroller to ensure internal controls are regularly reviewed and strengthened.

***City of Saint John Funding Agreement***

**1.21** Chapter 5 contains the findings of our special review of the City of Saint John funding agreement. In 2018 the Province entered into a funding agreement with the City to provide up to \$22.8 million over a three year period to address the city's anticipated budget deficit.

**1.22** We found the agreement created several risks and challenges for the Province. It has not only set a precedent for other municipalities to demand similar treatment, but to date, has also failed to address the City's long-term problems and provided an inappropriate incentive for the

City to report a deficit. Further, we believe the agreement effectively circumvented the *Local Governance Act*.

**1.23** I expected provincial funding decisions to follow due process. I also expected funding agreements and contracts to comply with legislation and contain adequate safeguards to protect taxpayers' interest. It is abnormal for the Province to provide financial assistance to address a municipal deficit, especially since municipalities are discouraged from operating with ongoing deficits.

***Agreement does very little to address City's strategic challenges***

**1.24** In my view, the agreement, although committing up to \$22.8 million in provincial funds, has done very little to address the fundamental local government strategic challenges previously raised by City officials and most recently outlined by the City of Saint John's White Paper<sup>1</sup>.

***Weak agreement represented excessive risks to taxpayers***

**1.25** Government has a stewardship duty with taxpayers' money. As such, the public expects government entities to protect taxpayers when entering into agreements and contracts. However, key safeguards such as accounting standards and appropriation clauses, designed to protect the Province, were removed from the agreement at the City's request. It is not clear why the Province agreed to remove these safeguards.

***AG repeats concern: Financial Administration Act long overdue for updating***

**1.26** In Chapter 4 of our June 2018 report, we raised concerns over government spending before obtaining approval from the Legislative Assembly. In this volume we have again recommended Treasury Board pursue legislative amendments to the *Financial Administration Act* (FAA) to align with current accounting practices. Treasury Board responded it will review the Act in 2019-2020.

**1.27** The FAA states in:

- Section 24 "... no payment is to be made out of the Consolidated Fund without the authority of the Legislature" and in
- Section 30(3) "no expenditure is to be made unless provided for in an appropriation."

---

<sup>1</sup> *Building a Sustainable Future for Saint John - 2018 Provincial Election White Paper*. Saint John. July 2018.

**1.28** These sections of the FAA originate in the 1970's when "cash accounting" was typically used by the Canadian public sector. The Act's intent was to ensure legislative spending authority was obtained before government legally committed and spent public funds. In order to achieve the same intent, the FAA must be updated to address both accrual accounting (current day Public Sector Accounting Standards) and multi-year legal commitments.

**1.29** We again saw evidence of government spending before obtaining approval from the Legislative Assembly. The Department of Environment and Local Government made the first payment under the City of Saint John funding agreement before any budget appropriation for the Department was approved by the Legislative Assembly.

**1.30** I remain concerned the legislation overseeing billions of dollars in government spending is not adequate for today's environment and this situation is creating unnecessary risk and uncertainty in government operations. The outdated FAA should not be used as means to avoid government transparency.

***Legislative  
transparency needed  
for major multi-year  
funding commitments***

**1.31** In my view, the FAA should clearly require transparency and legislative debate of all elected officials, at the point in time a government makes a major multi-year funding commitment, especially a legal commitment that can not be reasonably reversed by future governments. The FAA is long overdue to be updated.

**Acknowledgements**

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



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

# Chapter 2

## Department of Health – Medicare Cards

### Contents

Chapter Summary.....	11
Key Findings and Observations Table.....	12
Recommendations and Responses.....	14
Audit Introduction.....	19
Conclusions.....	21
Initial Application Process.....	30
Security and Privacy of Information.....	34
Medicare System Risks.....	40
Other Observations.....	42
Appendix I – Audit Objective and Criteria.....	46
Appendix II – About the Audit.....	47



# Department of Health - Medicare Cards

Report of the Auditor General – Volume I, Chapter 2 – June 2019

One-Page Chapter Summary

## Why Is This Important?

- Medicare costs over \$650 million per year, nearly 25% of all healthcare spending in New Brunswick.
- Ineligible use of Medicare cards can be costly to New Brunswick taxpayers.
- Two private companies, contracted by the Department of Health, possess sensitive personal information on virtually every New Brunswicker.

## Overall Conclusions

- While the Department of Health has processes and controls in place to ensure only eligible residents are issued a Medicare card, procedures to identify cardholders who subsequently become ineligible (for example upon leaving the Province) are insufficient. Therefore, these individuals may continue to hold and potentially use a New Brunswick Medicare card.
- Steps could be taken to enhance the security features of Medicare cards (E.g.: Photo identification).
- Privacy breaches are occurring due to changes to the Medicare card renewal policy.

## What We Found

### **Risks linked to outsourced and automatic Medicare card renewal process**

- 2014 automatic renewal process weakened controls over Medicare cards
- Cost savings from the automatic renewal process could not be verified
- Medicare contracted card production and delivery to Medavie, who then subcontracted this work to another company
  - As a result, two private companies possess confidential card holder information
- Mailing addresses are not verified before sending out cards, leading to nearly 5,800 cards returned as undeliverable since 2015
- Error by subcontractor resulted in privacy breach in 2016
- Over 150 privacy breaches since 2017
- Contracts with third party service providers have no performance targets and need enhancement

### **Continued eligibility not well monitored**

- In 2016, there were 10,700 more active Medicare cards than residents in New Brunswick
- Medicare does not have sufficient procedures to identify ineligible cardholders (e.g. moved out of Province) and cancel their card on a timely basis
  - Ineligible cardholders can inappropriately incur costs for NB taxpayers while residing in another province

### **Inefficiencies in Medicare system**

- Lack of photo identification is a key security weakness
- Many manual procedures and separate spreadsheets maintained by Medicare staff
- Coordination of reciprocal billing with Quebec is inefficient and needs improvement

## Key Findings and Observations Table

### Department of Health - Medicare Cards

Paragraph	Key Findings and Observations
	<b>Initial Application Process</b>
2.35	<i>Initial application process is adequate</i>
2.36	<i>Medicare card application process could be improved (e.g. online application)</i>
2.39	<i>Insufficient monitoring for continued eligibility for NB Medicare cards</i>
2.40	<i>Insufficient procedures to identify and cancel ineligible card holders</i>
2.41	<i>10,700 more Medicare cards than residents in 2016</i>
2.42	<i>Excess cards represent a risk of ineligible payment</i>
	<b>Security and Privacy of Information</b>
2.47	<i>Security and privacy of information risks exist</i>
2.48	<i>Privacy breaches occurred in the past</i>
2.49	<i>Automatic renewal process weakened controls over Medicare cards</i>
2.51	<i>Mailing addresses not verified before cards are sent out</i>
2.52	<i>In New Brunswick most card holders are never again evaluated for eligibility, once initially approved</i>
2.53	<i>5,800 automatic renewal cards returned as undeliverable between 2015-2019</i>
2.55	<i>No evidence to support anticipated cost savings from automatic renewal process</i>
2.56	<i>Additional financial and security risks created by automatic renewal process</i>
2.61	<i>Risks associated with contracting out service to Medavie Blue Cross</i>
2.63	<i>Error by subcontractor resulted in privacy breach in 2016</i>
2.65	<i>No independent assurance on third party controls</i>
2.68	<i>Risks associated with Medicare card usage</i>
2.71	<i>Lack of photo identification is a key security weakness</i>
2.73	<i>There is no direct Medicare tip line through which people can report the inappropriate use of NB Medicare cards.</i>

Key Findings and Observations Table (Continued)

Paragraph	Key Findings and Observations
	<b>Medicare System Risks</b>
2.79	<i>Manual procedures and use of spreadsheets are indicators that Medicare registration system may need updating</i>
2.80	<i>No electronic transfer between SNB over-the-counter services and Medicare is leading to inefficiency</i>
	<b>Other Observations</b>
2.84	<i>Coordination of reciprocal billing for insured health services between New Brunswick and the Province of Quebec is inefficient and needs improvement</i>
2.85	<i>Quebec doctors bill NB Medicare directly resulting in high administrative burden for NB</i>
2.89	<i>Contracts with third party service providers need enhancement</i>
2.92	<i>Current Medicare staffing levels may not allow needed improvements to be made while maintaining ongoing operations at an acceptable level</i>

Exhibit 2.1 – Example of New Brunswick Medicare Card



Source: Department of Health

## Recommendations and Responses

Recommendation	Department's response	Target date for implementation
<p><b>2.37 We recommend Medicare develop an online application process similar to other provinces to allow individuals to apply directly to Medicare for a Medicare card.</b></p>	<p><i>The Department agrees with this recommendation. As this requires operational changes, IT enhancements and related funding an analysis will be completed and project consideration will be given according to priorities as part of the budget process.</i></p>	<p><i>To be determined based on priorities and the budget cycle.</i></p>
<p><b>2.38 We recommend Medicare work with the Government of Canada to expedite the receipt of documentation required to process applications for a Medicare card for new immigrants residing in New Brunswick.</b></p>	<p><i>The Department agrees with this recommendation. Attempts in the past have not been successful but the Department will attempt to address this issue with the Government of Canada.</i></p>	<p><i>December 3, 2019</i></p>
<p><b>2.45 We recommend Medicare analyze whether it would achieve a positive payback by investing additional resources in identifying individuals with a NB Medicare card who have become ineligible. If Medicare determines there are benefits to doing more in this area, it should enhance its processes for monitoring the continued eligibility of cardholders.</b></p>	<p><i>The Department will complete an analysis of potential mechanisms and payback.</i></p>	<p><i>June 2020</i></p>



*Recommendations and Responses (continued)*

<b>Recommendation</b>	<b>Department's response</b>	<b>Target date for implementation</b>
<b>2.58</b> We recommend Medicare determine if the anticipated cost savings from moving to an automatic Medicare card renewal process were achieved, and whether those cost savings are sufficient to offset the additional risk associated with adopting that process.	<i>The Department agrees with this recommendation</i>	<i>January 2020</i>
<b>2.59</b> We further recommend if the savings achieved by the change were not sufficient to offset the additional risks it has taken on, Medicare reverse the automatic renewal process.	<i>The Department agrees with this recommendation.</i>	<i>Timing would be based upon operational and contractual implications which will be determined as part of 2.58 considerations.</i>
<b>2.60</b> Regardless of the renewal process it employs, we recommend Medicare develop procedures to verify mailing addresses before sending out renewal documents in the future.	<i>The Department agrees with the spirit of the recommendation. An analysis will be completed to determine how best this would be achieved.</i>	<i>January 2020</i>
<b>2.66</b> We recommend Medicare evaluate associated risks as well the necessity of having two private organizations contracted to produce and distribute Medicare Cards instead of one.	<i>The Department agrees with this recommendation.</i>	<i>June 2020, to align with procurement of a new contract.</i>

*Recommendations and Responses (continued)*

<b>Recommendation</b>	<b>Department's response</b>	<b>Target date for implementation</b>
<b>2.67 We recommend Medicare obtain a CSAE 3416 report on controls annually from Medavie/CPI in connection with the card production and distribution services provided by the two third party providers.</b>	<i>The Department agrees with this recommendation.</i>	<i>By June 2020, upon signing of a new contract.</i>
<b>2.75 We recommend Medicare, as a minimum, add photo identification to NB Medicare cards to enhance card security.</b>	<i>The Department agrees with the intent of the recommendation. A cost-benefit analysis will be undertaken with consideration given to other government initiatives such as digit ID.</i>	<i>Decision regarding timing by June 2020.</i>
<b>2.76 We recommend Medicare provide information on its website as to the circumstances in which the public should report suspected cases of inappropriate use of Medicare cards, and how that reporting should be done. Fully addressing this area would likely require Medicare to develop and promote a direct tip line.</b>	<i>The Department agrees with this recommendation.</i>	<i>June 2020.</i>
<b>2.77 We further recommend Medicare assign responsibility for following up on any tips received.</b>	<i>The Department agrees with this recommendation subject to a cost-benefit analysis.</i>	<i>June 2020 subject to the results of a cost-benefit analysis.</i>

*Recommendations and Responses (continued)*

<b>Recommendation</b>	<b>Department's response</b>	<b>Target date for implementation</b>
<b>2.82 We recommend that Medicare upgrade their registration system to reduce the number of manual procedures required to administer the registration process.</b>	<i>The Department agrees with the intent of this recommendation. As the recommendation has implications relative to IT, operational and budget requirements, the system will require a comprehensive review, needs assessment, and costing.</i>	<i>Timing will be determined by the outcome of the review, specifically costing and privatization along with other departmental initiatives.</i>
<b>2.88 We recommend Medicare negotiate a reciprocal billing arrangement with the Province of Quebec, based upon the arrangements now in place between New Brunswick and other provinces.</b>	<i>The Department agrees with this recommendation in principle. However, the Province of Quebec operates under their own parameters in regards to their out-of-province billings. The Department will review and consider the potential of this and approach the Province of Quebec if it is deemed to be a net benefit to New Brunswick to negotiate a reciprocal arrangement.</i>	<i>To be determined. More analysis is required to determine the value and potential of a negotiated agreement.</i>
<b>2.91 We recommend Medicare's contracts with Service New Brunswick and Medavie Blue Cross be amended to include performance metrics and related reporting requirements.</b>	<i>The Department agrees with the recommendation. The parties will be approached and performance metrics determined.</i>	<i>June 2020</i>
<b>2.96 We recommend that Medicare prepare a staffing plan to help it develop the capacity to implement necessary changes to the Medicare card program while maintaining current operations at an acceptable level.</b>	<i>The Department agrees. A project plan will be developed and resources allocated.</i>	<i>June 2020</i>

*Recommendations and Responses (continued)*

Recommendation	Department's response	Target date for implementation
<p><b>2.99 We recommend Medicare:</b></p> <ul style="list-style-type: none"> <li>• <b>develop key performance indicators to allow assessment of Medicare performance;</b></li> <li>• <b>set performance targets and measure actual results against those targets; and</b></li> <li>• <b>publicly report the results on an annual basis.</b></li> </ul>	<p><i>The Department agrees with this recommendation.</i></p>	<p><i>June 2020</i></p>

## **Audit Introduction**

**2.1** Access to health care is an essential service for residents of New Brunswick. Showing a valid Medicare card allows eligible New Brunswickers to obtain insured health services from doctors. It also allows them access to hospital services. Since these insured health services are paid for by New Brunswick taxpayers, it is critical that government controls access to Medicare cards and their use. Further, Medicare is obligated by provincial privacy legislation to ensure personal information collected to determine eligibility for a Medicare card is only used as intended, and kept secure and confidential.

### ***Why we chose this topic***

**2.2** We chose to audit the administration of New Brunswick Medicare cards by the Department of Health – Medicare Branch for several reasons:

- Health care represents one of government’s most significant programs. It accounted for approximately \$2.7 billion of approximately \$9.4 billion in total annual government spending in 2017/2018. Further, Medicare costs associated with payments to doctors made up nearly 25% of overall healthcare spending, at \$653 million. Hospital services through the Regional Health Authorities cost \$1.57 billion, or an additional 59% of overall healthcare spending. In total, the two programs accessed using provincial Medicare cards represented 84% of total Department of Health expenditures for 2017/18;
- There are significant risks associated with weak controls over Medicare cards and related personal information. These include the risk of government paying for ineligible claims, and the risk of security breaches over personal information that could lead to financial and/or reputational damage for the Department and government.
- Medicare cards, or their equivalent, have been reviewed by other Auditor General offices in Canada and various other countries. These reviews have noted significant deficiencies in the administration of the cards, and in relation to card security features.

- Audit Objective**
- 2.3** The objective of this audit was to determine if the Department of Health has processes and controls to ensure:
- Only eligible residents are issued a Medicare Card; and
  - The security and privacy of cardholder’s information is protected.
- Audit Scope**
- 2.4** This audit focused on the Medicare card eligibility process. Security and privacy of cardholder information was also examined. We also examined how cardholder information is shared with third parties, such as Medavie Blue Cross and Service New Brunswick.
- 2.5** Our audit was conducted at the Department of Health – Medicare Branch, and covered the fiscal years 2016/17 and 2017/18. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded this audit period.
- Audit Approach**
- 2.6** Our audit work included documentation review, document and data analysis, and interviews. Observations, findings and conclusions were formed based on:
- examination of legislation, policy, reports and other documentation relevant to our work;
  - interviews with senior executives and personnel at the Department of Health;
  - interviews with relevant individuals and organizations external to Medicare;
  - analysis of data extracted from the Medicare registration database and sample testing of registration files as applicable to our work;
  - comparison with processes in other Canadian jurisdictions.
- 2.7** Our audit was performed in accordance with Canadian Standard for Assurance Engagements (CSAE) 3001 established by the Chartered Professional Accountants of Canada, and accordingly, we carried out such tests and other procedures as we considered necessary in the circumstances. Other information about the audit can be found in Appendix II.

## Conclusions

### 2.8 We concluded:

- While the Department of Health has processes and controls in place to ensure only eligible residents are issued a Medicare card, procedures to identify cardholders who subsequently become ineligible (for example upon leaving the Province) are insufficient. Therefore, these individuals may continue to hold and potentially use a New Brunswick Medicare card; and
- A number of steps could be taken to enhance the security features of Medicare cards. Further, we found that privacy breaches occurred in the past and continue to occur due to changes to the Medicare card automatic renewal policy adopted by the Department in 2014.

## Background Information

### 2.9 Medicare costs represent a significant proportion of the total expenditures of the Department of Health. Exhibit 2.2 shows a four-year comparison of those expenditures.

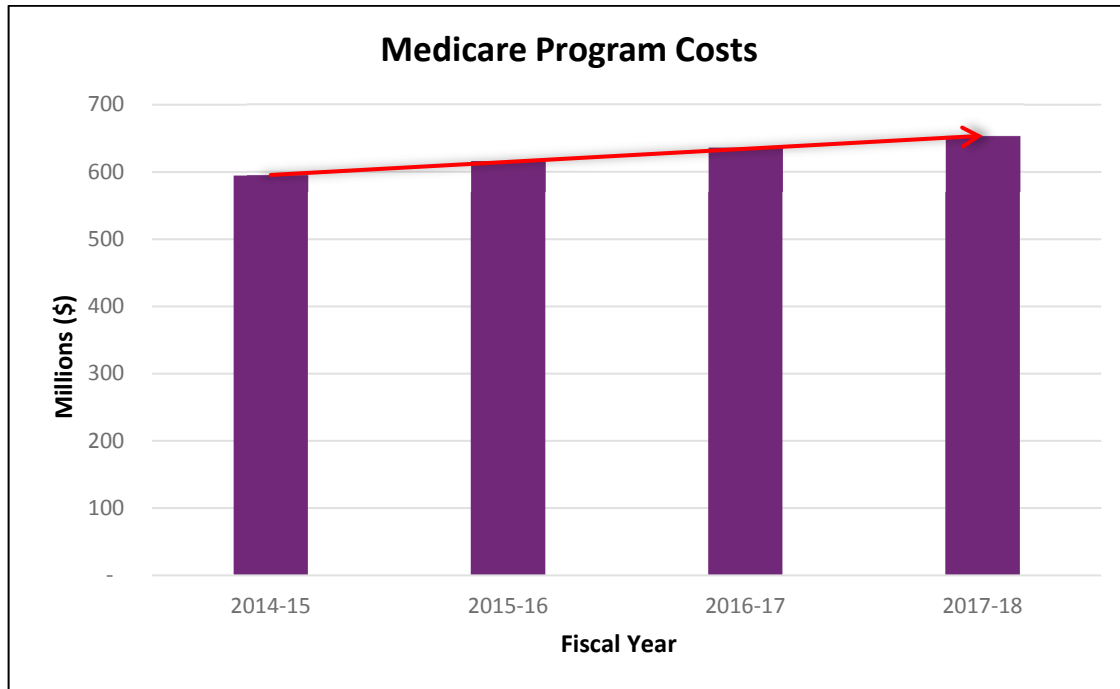
*Exhibit 2.2 – Department of Health Expenditures by Year*

<b>Department of Health Expenditures (Billions \$)</b>					
<b>Programs</b>	<b>Fiscal Year</b>				<b>Cost Increase Since 2014-15</b>
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	
Medicare	0.59	0.62	0.64	0.65	10%
Other *	1.96	2.00	1.97	2.02	4%
<b>Grand Total</b>	<b>\$2.55</b>	<b>\$2.62</b>	<b>\$2.61</b>	<b>\$2.67</b>	5%

*Source: created by AGNB based on information provided by Department of Health*

*\*Includes Regional Health Authorities, Drug Programs, and Corporate and Other Health Services.*

Exhibit 2.3 - Medicare program costs



Source: created by AGNB based on information provided by Department of Health

**2.10** As shown in Exhibit 2.3 Medicare costs have risen ten percent in the last four years.

**2.11** Given the total of \$652.8 million in Medicare costs, and the average of 765,000 Medicare cards outstanding during the year, the Province paid an average of \$850 in insured health costs to doctors for every NB Medicare card outstanding in fiscal 2017/18. It also paid roughly \$2,050 per card for hospital services during that year.

**2.12** Medicare also indicated that approximately 660,000 of the 765,000 outstanding cards were used during 2017/18.<sup>1</sup>

<sup>1</sup> Note that the reported number of cards used does not include any cardholders whose only interaction with doctors during the year occurred on a sessional basis (i.e. services received from a salaried doctor rather than one billing Medicare under the traditional fee-for-service model.)



**Key legislation**

**2.13** Legislation that significantly impacts on the administration of Medicare cards by the Department includes:

- *The Medical Services Payment Act and Regulation;*
- *The Personal Health Information Privacy and Access Act (PHIPAA);*
- *The Canada Health Act (federal); and*
- *The Canada Citizenship and Immigration Act (federal).*

There are also interprovincial agreements in place between Canadian provinces to ensure people continue to have access to insured health services while moving from one province to another.

**Responsible Department**

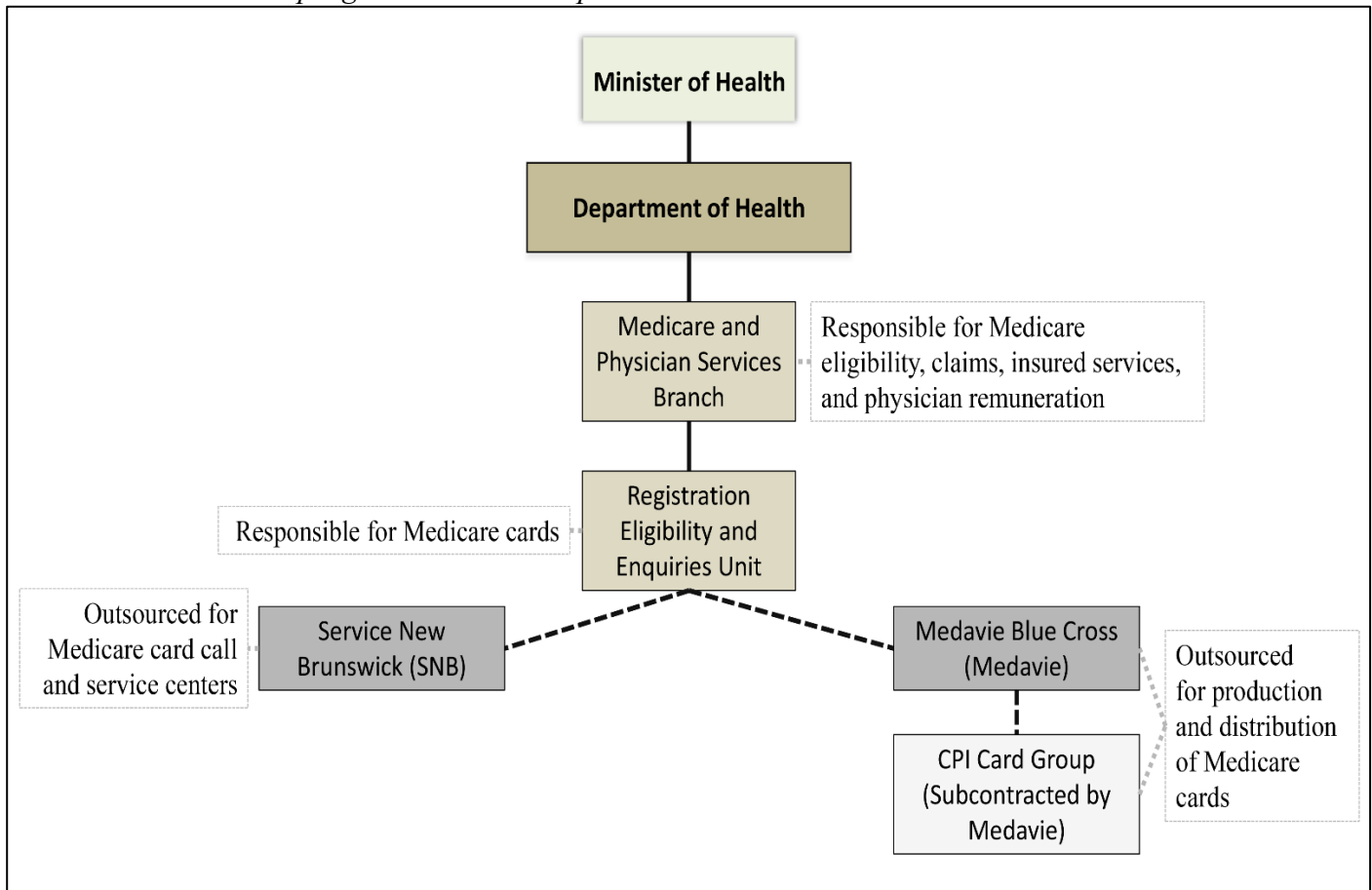
**2.14** According to the 2017/18 annual report of the Department of Health, the Medicare and Physician Services Branch within the Department of Health (i.e. Medicare) is responsible for planning, developing, implementing and overseeing activities related to Medicare eligibility and claims, Medicare insured services and physician remuneration.

**2.15** With regards to providing service to provincial residents, departmental responsibilities include:

1. Administering provincial Medicare cards;
2. Ensuring that personal information obtained by Medicare is kept secure; and
3. Coordinating with other Canadian jurisdictions to ensure that Medicare coverage is as seamless as possible.

Specific responsibility for Medicare cards has been assigned to the Registration Eligibility and Enquiries Unit within the Medicare branch.

Exhibit 2.4 – Medicare program roles and responsibilities



Source: created by AGNB based on information provided by Department of Health

**Other involved organizations**

**2.16** Medicare also has service level agreements with Service New Brunswick (SNB) and Medavie Blue Cross (Medavie) to handle important roles and responsibilities in ensuring that eligible New Brunswick residents have up-to-date Medicare cards, and therefore access to insured healthcare services. As shown in Exhibit 2.4, the Registration Eligibility and Enquiries Unit is responsible for overseeing the contracted roles and responsibilities of these two organizations.

**2.17** Pursuant to a service agreement signed in 2016, SNB assists in program delivery by operating:

- A call center for cardholder inquiries; and
- Service centers where an individual can obtain services, such as applying for a Medicare card or submitting a change of address form.

SNB handles 4,000 to 7,000 transactions per month for Medicare.

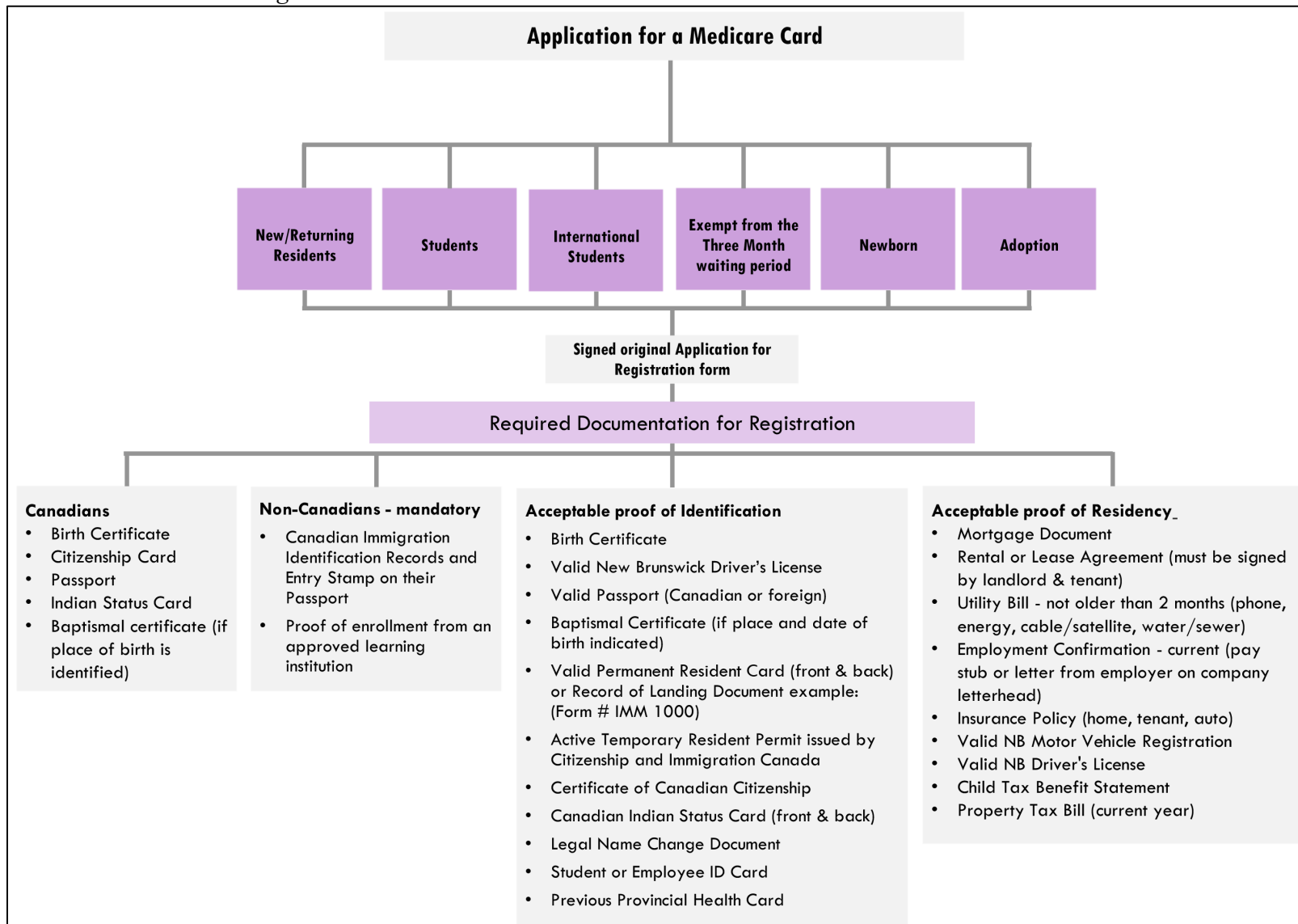
**2.18** In December 2013, the Minister of Health and Medavie signed a purchase of service agreement under which Medavie was assigned responsibility for arranging the production and distribution of new and replacement cards as the need arises. They have in turn subcontracted production of the cards to a private company, the CPI Card Group. Medavie distributes in the range of 14,000 to 17,000 cards each month through Canada Post.

***When is someone eligible for NB Medicare card***

**2.19** To be eligible for an NB Medicare card, a person must be a resident of the province and meet one of the following three conditions:

- Was born in the Province;
- Has been living in the Province for at least two months after having moved to the Province from another part of Canada; or
- Has arrived in the Province from another country and has appropriate documentation (i.e. work permit, study permit, visitor permit, or confirmation of permanent residence, dependent on their immigration status upon arrival.)

Exhibit 2.5 – Medicare Registration



Source: created by AGNB based on information provided by Department of Health

***Applying for a Medicare card***

**2.20** A person may apply for a Medicare card at any Service New Brunswick service centre or by sending a completed form and necessary documents directly to Medicare. Individuals need to provide documents showing proof of identification and proof of residency in the Province for their application to be approved. Exhibit 2.5 provides more information on this process.

**2.21** Upon approval, the applicant is mailed a Medicare card containing their name, a unique card number, and an expiry date which is usually five years after the date of issuance. Medicare cards for minor children are sent to a parent or guardian.

***Renewing an NB Medicare card upon expiry***

**2.22** Under the new automatic renewal process introduced by Medicare in 2014, cardholders are no longer required to reapply when their current card expires. Three months prior to expiry, a new card is simply mailed to the address Medicare has on file for them. The new card becomes valid when received. Prior to the 2014 change, cardholders were required to reapply for a renewed card every three years.

***Rules for accessing insured health services in New Brunswick***

**2.23** Some key rules associated with accessing insured health services in New Brunswick include:

- The person must present their signed NB Medicare card to the physician and/or hospital each time they access services;
- A physician who provides a service to an individual who does not have a valid NB Medicare card has the right to bill the individual or their parent or legal guardian; and
- It is an offence to use another person's Medicare card or to knowingly allow your Medicare number to be used by another person.

***When does someone cease to be eligible for a NB Medicare card?***

**2.24** There are three circumstances under which a person ceases to be eligible for an NB Medicare card including:

- Upon death;
- Upon leaving the country permanently or temporarily for a period of more than six months (unless granted special permission by the Minister); or

- At the beginning of the third month following a permanent move to another part of Canada.

**2.25** The Vital Statistics Branch of SNB notifies Medicare when a New Brunswick resident has died through their vital statistics death list, and their Medicare card is revoked.

**2.26** In the case of a resident departing for another part of Canada or leaving the country, it is the resident's responsibility to inform Medicare of their move if it is for more than one month.

**2.27** Medicare receives monthly Inter-Province Exchange (IPX) reports from other Canadian provinces identifying current NB Medicare cardholders who have applied for a health card in another province. The Medicare cards of former residents listed on these reports are cancelled.

**2.28** Medicare also prepares a similar monthly report which it distributes to other provinces showing a listing of persons who are new or returning residents from other provinces and are registered and eligible for an NB Medicare card.

**2.29** No-one should have active coverage in two provinces at the same time.

**2.30** Medicare also sometimes receives and investigates tips from residents, leading in some cases to the cancellation of New Brunswick Medicare cards for ineligible individuals.

***Temporary absences  
from New Brunswick***

**2.31** A resident of New Brunswick who is leaving the Province temporarily may continue to be eligible for an NB Medicare card if their absence is no longer than 182 days for business, or 212 days for a vacation in a twelve-month period. If they exceed the limits without special permission from the Minister, they must reapply for a Medicare card upon their return.

**2.32** Mobile workers (e.g. pilots, truck drivers, etc.), contract workers working out of the province, and missionaries usually retain their eligibility for an NB Medicare card. However, they typically need to provide additional documentation to Medicare to support the necessity for them to be out of the Province for significant periods of time.

**Detailed Findings**

**2.33** This section of the report details our findings and recommendations associated with the administration of NB Medicare cards. Our findings and recommendations are reported under the following headings:

- Eligibility of cardholders;
- Security and privacy of cardholder information; and
- Other issues of concern that came to our attention during our audit.

**Eligibility of Cardholders**

**2.34** As part of our work, we did a comparative review of the processes for issuing, renewing, and cancelling health cards in various Canadian provinces. We also looked at the processes those jurisdictions use to mitigate against fraud and other risks. The results of that review are shown in Exhibit 2.6.

*Exhibit 2.6 - Jurisdictional Comparison of Medicare Card Renewal Process and Fraud Prevention*

Province	Required to Apply for Renewal of Medicare Card?	Card Includes a Photo of the Cardholder?	Jurisdictional Medicare Fraud Tip Line Established?
Newfoundland and Labrador	Yes	No	No
Prince Edward Island	Yes	No	No
Nova Scotia	Yes	No	No
<b>New Brunswick</b>	<b>No*</b>	<b>No</b>	<b>No</b>
Quebec	Yes	Yes	No
Ontario	Yes	Yes	Yes
Manitoba	N/A **	No	Yes
Saskatchewan	Yes	No	Yes
Alberta	N/A**	No	Yes
British Columbia	Yes	Yes	Yes

\*Renewal card automatically sent to most recent address on file.  
 \*\* Medicare cards do not expire in these jurisdictions. (Note: In a 2015 report, the Alberta Auditor General expressed concerns about the risks associated with the fact that Alberta Medicare cards have no expiry date.)

*Source: created by AGNB based on information provided by Department of Health*

## Initial Application Process

### *Initial application process is adequate*

**2.35** Based upon our audit work, we have concluded that in general the process for initial registration and approval of individuals for a Medicare card is adequate to ensure that only eligible residents of New Brunswick receive a card. New Brunswick's initial registration process is similar to that in other provinces. Further, the documents accepted in New Brunswick for registration purposes are the same as those accepted in other provinces.

### *Medicare card application process could be improved (e.g. online application)*

**2.36** Applications are usually approved or rejected on a timely basis. However, we identified two areas where improvements could be made:

1. Unlike New Brunswick, online registration processes exist in other Canadian jurisdictions. Providing a facility for online application for NB Medicare cards would expedite the application and approval process. Transferring the task of data entry to the applicant may reduce the administrative time needed in Medicare to process applications, along with the number of posting errors.
2. Immigrants to Canada receive health care under the Federal Interim Health Program for up to one year after they arrive in the country. However, they are sometimes delayed in obtaining the appropriate Government of Canada paperwork required to be eligible for an NB Medicare card (i.e. work or study permit). Therefore, they may be without health coverage for a period while waiting for that documentation. Also, a Medicare card is used as a qualifying document for gaining access to other social programs provided by the Province, meaning these new arrivals will not have access to those programs either. Note that some provinces provide temporary health coverage under Refugee Claimant Documents after the one year of federal government coverage has expired, but New Brunswick does not. There is also an issue associated with the minor children of new immigrants. Because they are not provided with a work or study permit by the Federal Government, they do not have access to appropriate



documentation to be approved for a NB Medicare card.

***Recommendations***

**2.37 We recommend Medicare develop an online application process similar to other provinces to allow individuals to apply directly to Medicare for a Medicare card.**

**2.38 We recommend Medicare work with the Government of Canada to expedite the receipt of documentation required to process applications for a Medicare card for new immigrants residing in New Brunswick.**

***Insufficient monitoring for continued eligibility for NB Medicare cards***

**2.39** Medicare cards grant access to insured services in New Brunswick and out-of-province. One of the risks associated with the Medicare system is that individuals who become ineligible for an NB Medicare card will continue to hold and use their card, and therefore insured health services they receive will be inappropriately paid for by New Brunswick. It is important that Medicare ensure the cards of individuals who become ineligible are cancelled on a timely basis.

***Insufficient procedures to identify and cancel ineligible card holders***

**2.40** In our audit, we found that Medicare does not have sufficient procedures in place to ensure that cardholders no longer eligible for a NB Medicare card are identified on a timely basis, and have their card cancelled.

***10,700 more medicare cards than residents in 2016***

**2.41** We found there were 10,700 more active Medicare cards than New Brunswick residents in 2016. There were a total of 757,800 active NB Medicare cards as of May 10, 2016, however the 2016 Canadian census indicated there were only 747,101 New Brunswick residents at that time.

***Excess cards represent a risk of ineligible payment***

**2.42** This difference may, in part, relate to deceased card holders whose deaths had not yet been reported to Medicare and former residents who recently left the Province. However, in 2016 there were only about 7,000 deaths in New Brunswick<sup>2</sup>. Further, new cards from the 6,500 births

<sup>2</sup> <http://www.snb.ca/e/1000/1000-01/pdf/2016/Table1-2016-E.pdf>

of that year along with immigration should have helped offset the number of excess Medicare cards. The difference appears to be too large to be fully explained by these factors.

**2.43** It is of concern that all 10,700 excess cards represent a risk of ineligible payments by the Province for insured health services. The potential exists for significant ineligible payments given:

- The average annual cost of insured services per Medicare card in circulation for 2017/18 was approximately \$850, and \$2,900 if hospital services are included, and;
- Between 2016-2018, about \$100 million per year was billed to New Brunswick for out-of-province health services, including hospital services, for individuals who presented an active NB Medicare card.

**2.44** The key challenge is identifying individuals who have become ineligible. Most people become ineligible because they have left the Province. There are several sources of information available to Medicare to help them identify people who have moved from the Province. Medicare uses the first three sources of information, but not the last two.

1. *Cardholders leaving the Province and/or the country are supposed to notify Medicare of their move.* However, many people leaving the Province do not do so. If the move is within Canada, they are supposed to apply for a health card in their new Province within three months of their arrival. However, an individual typically only cares that they are receiving service, not which government is paying for it, so there is no incentive to apply for a new health card if their old one gets them access to health services in their new Province;
2. *A renewal card is returned to Medicare as undeliverable upon automatic renewal.* In such a case the individual may have moved within the Province, so Medicare holds the card for six months before cancelling it. This allows individuals who continue to reside in New Brunswick an opportunity to follow up with Medicare. However, given

renewals only occur every five years, this control is of limited value;

3. *Medicare receives Inter Province Exchange (IPX) reports from other Canadian provinces identifying current NB Medicare cardholders who have applied for a health card in another province.* However, this is only an effective indicator when and if the individual applies for a health card in their new jurisdiction. Further, no such reporting is received from the Province of British Columbia or for cardholders moving out of the country;
4. *Medicare receives billings from other Provinces that have provided medical and hospital services to NB card holders in their jurisdictions (see Exhibit 2.7).* The billings include Medicare card numbers. Analyzing this information may allow Medicare to identify individuals who have moved to other provinces but continue to use an NB Medicare card to access insured health services. However, at present *Medicare does not thoroughly review the status of cardholders that receive health services outside the Province to ascertain whether they are still residents of the Province; and*
5. *Medicare has access to card usage data within New Brunswick.* Certain usage patterns (e.g. lack of usage of a particular card number over a significant period of time) may indicate an ineligible cardholder. This may be the only means of identifying individuals who have left the country without notifying Medicare.

However, it would take significant time and resources to analyze these sources of information to determine if cards are being held and used by ineligible individuals. Therefore, further analysis would be necessary to determine whether a positive financial payback could be achieved by taking on additional work in this area.

### ***Recommendation***

- 2.45 We recommend Medicare analyze whether it would achieve a positive payback by investing additional resources in identifying individuals with an NB Medicare card who have become ineligible. If Medicare determines there are benefits to doing more in this area, it should enhance its processes for monitoring the continued eligibility of cardholders.**

## Security and Privacy of Information

### **Security and Privacy of Information**

**2.46** Medicare has been entrusted with personal information from every resident of the Province who holds an NB Medicare card. It is very important that Medicare safeguard that information and ensure it is only used for its intended purposes. Failure to do so subjects NB residents to the potential of identity theft, and the Province to financial and reputational risks. Medicare must also ensure that each card can only be used by the NB resident whose name is on that card.

### ***Security and privacy of information risks exist***

**2.47** We identified four areas of security and privacy of information risk in our work:

- Risks associated with the automatic Medicare card renewal process adopted in 2014;
- Risks associated with contracting out certain aspects of the administration of NB Medicare cards;
- Risks associated with the use of NB Medicare cards; and
- Risks associated with the Medicare registration system.

### ***Privacy breaches occurred in the past***

**2.48** We noted there were a total of 61 recorded Medicare privacy breaches in 2017, 65 in 2018, and 31 in 2019 up to the date we completed our field work. A Medicare representative indicated these breaches primarily relate to incorrect mailing addresses being used during the automatic card renewal process, some of which related to data capture errors at SNB. There have also been cases where Medicare cards were left at hospitals during the intake process, and one case where a security breach in another Canadian jurisdiction led to some NB patient information being compromised.

### ***Automatic renewal process weakened controls over Medicare cards***

**2.49** In June 2014, the government made the following announcement with regards to the Medicare card renewal process, pursuant to its Medicare Notice of Expiry Lean Six Sigma Project.

**2.50 Medicare card renewal changes announced<sup>3</sup>***02 June 2014*

*FREDERICTON (GNB) – Changes have been made to the way Medicare cards are renewed. Effective Aug. 1, New Brunswickers will no longer receive a notice of expiry in the mail to complete and return a form to Medicare. Instead, cards will be automatically renewed and mailed providing Medicare has current addresses. In addition, cards will be renewed for five years instead of three years. “These changes will make the renewal of Medicare cards more efficient,” said Health Minister ... “The automatic renewal of cards ... will result in a more streamlined process and savings of about \$218,000 annually.” ...*

***Mailing addresses not verified before cards are sent out***

**2.51** Under this new process, a few months before the card expiry date (i.e. each 5 years) a replacement card is mailed to the last address on file for the individual. This is done automatically by Medavie, without Medicare or Medavie confirming the address is correct.

***In New Brunswick most card holders are never again evaluated for eligibility, once initially approved***

**2.52** As shown in Exhibit 2.6, New Brunswick is the only province with Medicare card expiry dates that does not require cardholders to reapply to renew their Medicare card. Other provinces require cardholders to re-apply for a replacement card before receiving one, which allows a government employee to assess whether they continue to be eligible. In New Brunswick, cards continue to be sent out to existing cardholders every five years unless and until a mailing is returned to Medicare as undeliverable. Therefore, most cardholders, once initially approved, may never again be evaluated for eligibility.

***5,800 automatic renewal cards returned as undeliverable between 2015-2019***

**2.53** Medicare representatives have indicated that significant numbers of cards sent out under the automatic card renewal process adopted in 2014 are being returned to their office as undeliverable. In some instances, the envelope has been opened, meaning that the individual’s personal information was accessible to the person who opened the envelope. This

<sup>3</sup> Province of New Brunswick news release dated 02 June 2014

is considered a privacy breach by Medicare. Breaches of this type are included in the numbers reported above.

**2.54** An analysis of cardholder data completed by staff of the Auditor General has found that 5,800 cards were returned as undeliverable between 2015 and the completion of our audit work in early 2019. Note that these returned cards are held by Medicare for six months and then cancelled if there has been no contact from individuals named on them.

*No evidence to support anticipated cost savings from automatic renewal process*

**2.55** When the automatic card renewal process was introduced in 2014, it was anticipated that it would save the province \$218,000 annually. However, the Department provided no evidence as to how the anticipated cost savings were calculated, nor whether these anticipated cost savings were ever achieved. Therefore, we have no evidence to support the initial claim that the change to an automatic renewal process for expiring Medicare cards provided net savings.

*Additional financial and security risks created by automatic renewal process*

**2.56** However, the change to automatic renewal has created additional financial and security risks for the Medicare program. The automatic renewal process has significantly weakened Medicare's control over Medicare cards, thereby increasing the risk that an ineligible individual will receive insured health services paid for by the Province.

**2.57** We note the pre-2014 process of mailing out renewal forms to cardholders may also have resulted in security breaches in cases where cardholders' addresses recorded by Medicare were incorrect. However, the risk of a usable Medicare card getting into the wrong person's hands has increased under the automatic renewal process.

*Recommendations*

**2.58** We recommend Medicare determine if the anticipated cost savings from moving to an automatic Medicare card renewal process were achieved, and whether those cost savings are sufficient to offset the additional risk associated with adopting that process.

**2.59** We further recommend if the savings achieved by the change were not sufficient to offset the additional risks it has taken on, Medicare reverse the automatic renewal process.

**2.60 Regardless of the renewal process it employs, we recommend Medicare develop procedures to verify mailing addresses before sending out renewal documents in the future.**

***Risks associated with contracting out of service to Medavie Blue Cross***

**2.61** As previously discussed, starting in 2013, Medicare contracted out the production and distribution of Medicare cards to Medavie Blue Cross (Medavie). This placed a key process outside of government. Medavie has further subcontracted this work to the CPI Card Group (CPI). The Department could not provide a clear explanation as to why it was necessary to involve two third-party providers in this area.

**2.62** Medicare data is transferred from Medicare to Medavie by means of a virtual private network (VPN). As a result, Medavie and CPI possess confidential card holder information and need to ensure it is properly protected. It is therefore very important that Medicare have ongoing assurance that appropriate controls are in place and functioning properly at Medavie and CPI.

***Error by subcontractor resulted in privacy breach in 2016***

**2.63** In 2016 the privacy of some cardholders was breached due to human error at CPI. A total of 23 renewed Medicare cards were mailed to incorrect recipients due to a collation issue in stuffing the envelopes.

**2.64** In November 2018, to address this privacy breach, Medicare's contract with Medavie was amended. The changes to the contract included new wording in Section 9.2:

*... The Contractor shall not subcontract any of its obligations under this contract without the prior written consent of the Minister, ...*

*Upon retention of the subcontractor, the Contractor shall continue to verify and monitor the ability of the subcontractor to protect the privacy of the affected information...*

The 2018 amendment goes on to say:

*The Contractor shall:*

- 1. Provide services in accordance with Request for Proposal ...*

2. *Process Medicare cards for eligible New Brunswick residents ...*
3. *Maintain the privacy and security of the Personal Health Information collected, used, retained, or disclosed under this Agreement ...*

*c. Administrative measures including but not limited to ...*

*ii. Ensuring that its employees, agents and subcontractors are aware of and understand the requirements of the PHIPAA [Personal Health Information Privacy and Access Act] as it relates to this Agreement... Training must include an appreciation for the potential consequences of a breach and what to do if they suspect a breach; ...*

*v. Providing process documentation including balancing procedures and sample control reports and to ensure integrity of the data and the cards.*

***No independent assurance on third party controls***

**2.65** This amendment to section 9.2 of the contract would contribute to addressing Medicare's security concerns relating to the 2016 incident. However, we would have also expected that Medicare would require Medavie to provide an annual report on controls at both Medavie and CPI (in accordance with the Canadian Standard on Assurance Engagements - CSAE 3416: *Reporting on Controls at a Service Organization*). Obtaining a CSAE 3416 report from Medavie and ensuring that it includes reference to Medavie having received such a report from CPI would provide assurance to Medicare that controls at Medavie and CPI are suitably designed and operated effectively. In general, such controls need to be sufficient to mitigate the risk of breaches of security and privacy of information at those organizations relating to work being done for Medicare. Medicare receives no such reporting from Medavie.

***Recommendations***

**2.66** We recommend Medicare evaluate associated risks as well the necessity of having two private organizations contracted to produce and distribute Medicare Cards instead of one.

**2.67** We recommend Medicare obtain a CSAE 3416 report on controls annually from Medavie/CPI in connection with the card production and distribution services provided by the two third party providers.



***Risks associated with Medicare card usage***

**2.68** Individual Medicare cards provided to New Brunswick residents provide the gateway to insured health services delivered by hospitals and physicians in the Province.

**2.69** New Brunswick's Medicare cards contain many of the security features found in the cards that are issued by other provinces including:

- an expiry date;
- the cardholder's (or their parent's or guardian's) signature;
- the cardholder's name and birthdate; and
- a magnetic barcode with cardholder data embedded.

**2.70** However, based upon our review of card features in other provincial jurisdictions, there are additional security features that could be added to better ensure that each card may only be used by the individual who it was assigned to.

***Lack of photo identification is a key security weakness***

**2.71** Card technology has changed in recent years, with the introduction of enhanced security features such as chip technology, holographic imaging, and photo identification. As seen in Exhibit 2.6, three provinces include photo identification on their health cards. However, New Brunswick cards do not have this security feature. Having photo identification on NB Medicare cards would contribute to mitigating the risk of the card being used fraudulently by another individual.

**2.72** A further security enhancement for health cards has been adopted in British Columbia. In that Province, Medicare cards have been merged with other cards, such as driver's license to reduce the number of provincial identification cards issued. Combined cards offer the potential for cost savings to governments. They also may provide stronger control over who has a card, and help Medicare more quickly identify individuals who have moved out of the province. This may be an option for the Province to look at in the future.

*There is no direct Medicare tip line through which people can report the inappropriate use of NB Medicare cards*

**2.73** As shown in Exhibit 2.6, five provinces have a dedicated tip line to allow residents to report suspected cases of inappropriate use of Medicare cards. Their websites provide details on what to consider reporting, and identify a direct line to call if abuse is suspected. The Province of Quebec provides a particularly good example of what should be reported on its website.

**2.74** NB Medicare does not promote public reporting of potential inappropriate Medicare card use on its website, but does provide a general toll-free inquiry line through SNB. Information on what constitutes the inappropriate use of a NB Medicare card, and how to report it could be added to Medicare's website to assist the public. Better public input would help Medicare in detecting and deterring abuse and fraud, and also in identifying cards that should be cancelled.

*Recommendations*

**2.75** We recommend Medicare, as a minimum, add photo identification to NB Medicare cards to enhance card security.

**2.76** We recommend Medicare provide information on its website as to the circumstances in which the public should report suspected cases of inappropriate use of Medicare cards, and how that reporting should be done. Fully addressing this area would likely require Medicare to develop and promote a direct tip line.

**2.77** We further recommend Medicare assign responsibility for following up on any tips received.

## Medicare System Risks

*Medicare System Risks*

**2.78** Cyber security has become a preoccupation of all governments, given the number of security breaches that have happened recently. In our review of public health insurance systems in other jurisdictions, we noted widespread concern about the security of databases and information systems specifically relating to the protection of private information. In one jurisdiction in Australia there was a data breach in 2017 in which client information was

stolen. In other cases, hospitals have had their systems hacked and their data held for ransom.

***Manual procedures and use of spreadsheets are indicators that Medicare registration system may need updating***

**2.79** The New Brunswick Medicare registration system has been in place for many years, and was last updated in 2009. In our work, we noted there are many manual procedures and separate spreadsheets maintained by Medicare staff to allow administrative duties and required reporting to be completed. These are typical indicators of a system that may need to be updated, and may be leading to increased administrative costs, risks of error, and a higher risk of security breaches.

***No electronic transfer between SNB over-the-counter services and Medicare is leading to inefficiency***

**2.80** For example, the transfer of data between Service New Brunswick (SNB) and Medicare is of concern. SNB gathers information over-the-counter from Medicare cardholders and applicants. This information is entered electronically at SNB, but then printed out for signature by the cardholder or applicant and forwarded to Medicare in paper form. It must subsequently be manually re-entered into the registration system by Medicare because there is no electronic transfer of this information between SNB and Medicare.

**2.81** Also, SNB has indicated the data fields are not precise enough to allow consistency in capturing data and may need to be revised. This has led to data capture issues, particularly around documenting cardholder and applicant addresses. Medicare regularly needs to contact individuals to clarify information received from SNB prior to approving applicants and/or making changes to the information in their database. A Medicare representative indicated that this rework is time consuming, and takes away from regular staff duties. Medicare currently has a project underway to analyze these errors and provide targeted training to SNB staff to improve accuracy rates.

***Recommendation***

**2.82** **We recommend that Medicare upgrade their registration system to reduce the number of manual procedures required to administer the registration process.**

## Other Observations

**2.83** During our work, we made several other observations that we believe are significant. They include:

- Coordination of reciprocal billing for insured health services between New Brunswick and the Province of Quebec is inefficient and needs improvement;
- Contracts with third-party service providers need enhancement;
- Medicare staffing levels and turnover are creating risks for the program; and
- The Department of Health does not report on the performance of the Medicare branch in its annual report.

*Coordination of reciprocal billing for insured health services between New Brunswick and the Province of Quebec is inefficient and needs improvement*

**2.84** New Brunswick Medicare is responsible for paying for insured health services provided to provincial Medicare cardholders who receive service in other Canadian provinces. In most provinces, doctors and hospitals bill their own Medicare branch for services provided to out-of-province residents. Their Medicare branch then accumulates the charges and bills New Brunswick monthly. New Brunswick Medicare follows the same process for services provided to residents of other provinces by New Brunswick doctors and hospitals. This reciprocal billing process was agreed to by all provinces, except Quebec, under an interprovincial agreement. In the case of Quebec, there is a reciprocal billing process in place only for hospital services.

*Quebec doctors bill NB Medicare directly resulting in high administrative burden for NB*

**2.85** The process for paying for insured health services received from doctors within the Province of Quebec is different. Quebec doctors bill New Brunswick Medicare directly for services provided to New Brunswick patients. This is apparent when looking at the number of claims from Quebec in fiscal 2017/18 as shown in the third column of Exhibit 2.7 below. Over 96% of direct billings to NB Medicare from within other Canadian jurisdictions are from Quebec, a total of 27,503 claims in 2017/18. Administering these claims requires much more administrative effort on the part of NB Medicare. It also means that billings from Quebec doctors are not subjected to the same controls as

those in other provinces that are scrutinized by a Medicare branch, increasing the risk that they will be incorrect or fraudulent.

**2.86** We also note the Auditor General of Quebec expressed concerns about the control systems over doctor billings at the Régie de l'assurance maladie (RAMQ) in Quebec. In a November 2018 follow-up report relating to her original 2015 report on the administration and control of physician compensation, she stated, *“the controls that have been put in place to date do not yet provide a reasonable assurance that the payments are in accordance with the agreements and reflect the actual work performance.”* There had been significant overpayments made to doctors in the past by RAMQ due to errors and overbilling by Quebec doctors.

**2.87** Negotiating a reciprocal billing arrangement for insured health services provided by Quebec doctors, similar to the arrangements currently in place with all other Canadian provinces, would:

- Reduce the amount of administrative effort required to pay Quebec doctors for services delivered to New Brunswick patients; and
- Reduce the risk of overbilling by Quebec doctors by having their claims first scrutinized by the Régie de l'assurance maladie (i.e. Quebec Medicare).

*Exhibit 2.7 - Insured Health Services Received Out-Of-Province by NB Medicare Cardholders - 2017/18*

<b>Insured Health Services Received in Other Canadian Provinces by NB Medicare Cardholders in 2017-18</b>			
<b>Jurisdiction</b>	<b>Direct-billed claims from physicians</b>	<b>Claims billed from Jurisdictions</b>	<b>Amount (in millions \$)</b>
Quebec	27,503	-	4.7
Other Provinces	970	151,928	20.5
<b>Total</b>	<b>28,473</b>	<b>151,928</b>	<b>\$ 25.2</b>

*Source: created by AGNB based on information provided by Department of Health*

***Recommendation***

**2.88 We recommend Medicare negotiate a reciprocal billing arrangement with the Province of Quebec, based upon the arrangements now in place between New Brunswick and other provinces.**

***Contracts with third party service providers need enhancement***

**2.89** Agreements with SNB and Medavie Blue Cross have no performance metrics that would allow Medicare to evaluate their performance to determine if Department goals for the contracts have been achieved.

**2.90** Performance metrics that could be added in an amendment should include:

- performance indicators and targets (e.g. average turnaround time on issuance of Medicare cards by Medavie/CPI);
- required reporting from each service provider to Medicare;
- an evaluation methodology including a clear definition of what constitutes acceptable performance; and
- a description of the actions to be taken to improve performance when it is below acceptable levels.

***Recommendation***

**2.91 We recommend Medicare's contracts with Service New Brunswick and Medavie Blue Cross be amended to include performance metrics and related reporting requirements.**

***Current Medicare staffing levels may not allow needed improvements to be made while maintaining ongoing operations at an acceptable level***

**2.92** In completing this audit, we became aware of a staffing issue at Medicare. There were approximately 31 people working in the Medicare branch at the end of our conducting work, of which only 8 worked in Eligibility and Registration. In recent years, turnover has been high, and it has been difficult to find appropriate replacement staff. Medicare representatives also indicated that current staffing levels may not be sufficient to allow them to address special initiatives and training within the branch, and at SNB, while maintaining day-to-day operations at an acceptable level.

**2.93** This report includes recommendations we believe will improve control over access to Medicare cards, and the security of the personal information Medicare needs to

administer its registration system. However, if these recommendations are to be implemented, it will primarily be done by Medicare staff.

**2.94** Given government is in a period of restraint, we believe Medicare will need to develop a staffing plan to ensure it has the capacity to complete necessary work. Failure to adequately staff the program could have significant negative implications for the overall success of the Medicare program, as well as negative cost implications for government.

**2.95** Some of our recommendations (for example on-line registration and establishing a reciprocal billing arrangement with the Province of Quebec) may alleviate some staffing pressures in Medicare.

*Recommendation*

**2.96** We recommend that Medicare prepare a staffing plan to help it develop the capacity to implement necessary changes to the Medicare card program while maintaining current operations at an acceptable level.

**2.97** The performance indicators presented in the 2017/18 annual report of the Department of Health do not allow readers to assess the performance of the Medicare branch, or other branches within the Department.

**2.98** We believe that such performance indicators should be developed and presented for the Medicare branch. Developing key performance indicators with specific targets and publicly reporting actual performance results would allow the evaluation of the performance of the branch. A description of actions to be taken to improve substandard performance should be provided.

*Recommendation*

**2.99** We recommend Medicare:

- **develop key performance indicators to allow assessment of Medicare performance;**
- **set performance targets and measure actual results against those targets; and**
- **publicly report the results on an annual basis.**

---

## Appendix I – Audit Objective and Criteria

---

The objective and criteria for our audit of Medicare Cards is presented below. The senior management of Medicare reviewed and agreed with the objective and associated criteria.

Objective	To determine if the Department of Health has processes and controls to ensure that: <ul style="list-style-type: none"><li>• Only eligible residents are issued a Medicare Card; and</li><li>• The security and privacy of cardholder’s information is protected.</li></ul>
Criterion 1	The Department’s processes and controls should be aligned with policies and legislation for Medicare card eligibility.
Criterion 2	The Department should issue Medicare cards to eligible residents in accordance with processes and controls.
Criterion 3	The Department should monitor ongoing eligibility of cardholders.
Criterion 4	The Department should safeguard and monitor security and privacy of cardholder information in accordance with legislation and policy.

---

Source of criteria: Sources of criteria include legislation, policies, guidelines and good practices in other jurisdictions.

---



## Appendix II – About the Audit

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on Medicare Cards. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of processes and controls over Medicare Cards.

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

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

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

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

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

Period covered by the audit:

The audit covered the period between April 1, 2016 and March 31, 2018. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of the report:

We obtained sufficient and appropriate audit evidence on which we based our conclusions on May 31, 2019.

# Chapter 3

## Department of Transportation and Infrastructure – Outsourcing of Highway Maintenance and Construction Work

### Contents

Chapter Summary.....	51
Key Findings and Observations Table.....	52
Recommendations and Responses.....	53
Audit Introduction.....	55
Conclusions.....	56
No Framework for Outsourcing Decisions.....	60
Programs Knowingly Outsourced at Higher Cost.....	64
Appendix I - About the Audit.....	73
Appendix II – Audit Objective and Criteria.....	74
Appendix III – Asphalt Procurement Follow-up .....	75



# Department of Transportation and Infrastructure - Outsourcing of Highway Maintenance and Construction Work

Report of the Auditor General – Volume I, Chapter 3 – June 2019  
One-Page Chapter Summary

---

## Why Is This Important?

- In recent years, over \$300 million a year was spent to maintain infrastructure (roads and bridges).
- Around \$200 million a year spent in public construction tenders (outsourced maintenance and construction work).
- Inconsistencies found in how road repair work was done (in-house vs outsourced) throughout the Province.

## Overall Conclusions

- In certain cases, decisions to outsource road and bridge maintenance, construction work and related equipment were not based on evidence nor supported by an objective analysis of costs and consequences.
- Instead, the Department relied on subjective judgement when making outsourcing decisions.
- The Department outsourced work at the taxpayer's expense to support the private sector and encourage economic growth.

## What We Found

### No Framework for Outsourcing Decisions

- Outsourcing is at times necessary and beneficial. For example, when the private sector can do the work faster, better and cheaper.
- Some outsourcing decisions were based on something the Department referred to as “philosophical” decisions in place of evidence-based analysis
- Department's objective included increasing economic development opportunities
- No consistent framework to guide which programs or construction projects to outsource

### Programs Knowingly Outsourced at Higher Cost

- Chipseal outsourced at higher cost to taxpayer (estimated \$1.7 million over two years)
- Plough truck build outsourced at 10% premium (\$1 million additional cost to outsource 40 pre-built trucks)
- Government responded to private sector request for additional work which cost taxpayers more

## Key Findings and Observations Table

### Department of Transportation and Infrastructure - Outsourcing of Highway Maintenance and Construction Work

Paragraph	Key Findings and Observations
	<b>No Framework for Outsourcing Decisions</b>
3.25	<i>No outsourcing policy or decision-making framework</i>
3.26	<i>Opportunity for greater transparency and objectivity</i>
3.28	<i>Department's objective included increasing economic development opportunities</i>
3.30	<i>Some outsourcing decisions were based on what the Department referred to as "philosophical decisions" in place of objective analysis</i>
3.32	<i>Consultant estimated outsourcing savings but not supported by evidence</i>
3.35	<i>Risk of over-dependence on suppliers not assessed when outsourcing</i>
3.40	<i>Data collection and reporting on outsourced work is weak</i>
3.42	<i>Department's listing of awarded contracts is inaccurate</i>
3.43	<i>Poor tracking of construction tender information</i>
	<b>Programs Knowingly Outsourced at Higher Cost</b>
3.48	<i>Chipseal outsourced at higher cost to the taxpayer</i>
3.49	<i>Experts found outsourcing more expensive</i>
3.51	<i>Minister announced intention to outsource although Department knew it was more expensive</i>
3.54	<i>Department did not act immediately to reverse districts doing more expensive outsourced chipseal work</i>
3.59	<i>Initially the Department failed to reinvest in critical equipment</i>
3.63	<i>Plough truck procurement continued to be outsourced despite known higher cost</i>
3.65	<i>Additional cost of \$1 million from outsourcing plough truck builds - equivalent to 4 more plough trucks</i>
3.67	<i>Other indirect savings from building plough trucks in-house</i>
3.70	<i>Government responded to private sector request for additional work which cost the government more</i>
3.71	<i>Department did not follow consultant's advice to bring expensive outsourced work back in-house</i>
3.75	<i>In-house bridge and culvert work allows for faster emergency response</i>

## Recommendations and Responses

Recommendation	Department's response	Target date for implementation
<b>We recommend the Department of Transportation and Infrastructure:</b>		
<b>3.34 Develop an evidence based outsourcing policy and a decision-making framework to guide which programs and activities to outsource.</b>	<i>The Department will develop an outsourcing policy and adopt a decision-making framework to demonstrate how decisions respecting outsourcing of programs are reached</i>	November 2019
<b>3.39 Assess the risk of over dependence on a single supplier when making outsourcing decisions.</b>	<i>The Department will ensure that its outsourcing policy and decision-making framework includes a process for managing risk of over dependence on a single supplier.</i>	N/A
<b>3.47 Record, track and regularly report on the extent and composition of outsourced maintenance and construction work.</b>	<i>The Department will review its reporting practices and investigate opportunities to reconfigure financial and management systems to report on outsourcing at the Department level.</i>	November 2019
<b>3.55 Evaluate how road work such as chipsealing is sourced and delivered in all districts following an objective and evidence-based cost benefit analysis.</b>	<i>The Department will ensure that its outsourcing policy and decision-making framework considers jurisdictional factors, including value for money options and allows for program delivery unique to each of its 6 districts.</i>	N/A

Recommendations and Responses (continued)

Recommendation	Department’s response	Target date for implementation
<b>We recommend the Department of Transportation and Infrastructure:</b>		
<b>3.62 Include capital investment in critical equipment when planning the most cost-effective manner to deliver road repairs.</b>	<i>Vehicle Management Agency will continue to support the Department’s operational and planning needs through effective fleet management practices.</i>	<i>Immediate</i>
<b>3.68 Source capital equipment through the most cost-effective means as demonstrated by a business case analysis.</b>	<i>In 2019-2020, the Department will fabricate plow trucks and replacement parts at its central repair shop to ensure standardization of the fleet and savings.</i>	<i>Immediate</i>
<b>3.78 Source bridge and culvert replacement work in an evidenced-based, cost-effective and timely manner.</b>	<i>The Department will ensure that its outsourcing policy and decision-making framework applies to delivery of the bridge and culvert capital programs.</i>	<i>N/A</i>

## Audit Introduction

**3.1** Our provincial highway infrastructure plays a significant role in terms of connecting communities and enabling commerce. Maintained and serviceable roads and bridges are vital.

**3.2** The task of maintaining roads and bridges will get harder as our existing network ages and as the prevalence of severe storms and weather events puts added strain on our infrastructure. Considering these challenges, the Department of Transportation and Infrastructure, (the Department or DTI) must operate as efficiently as possible to maximize the effectiveness of every dollar spent.

### *Why we did this audit*

**3.3** Over recent years the Department spent over \$300 million per year on capital construction and maintenance. This is done through a combination of an in-house work force and by outsourcing to private contractors. Exhibit 3.1 shows the capital spending on infrastructure for the fiscal years 2013-14 to 2017-18.

*Exhibit 3.1 - Capital Spending on Infrastructure*

<b>Capital Spending on Infrastructure (\$ millions)</b>					
	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
Bridges	\$33.9	\$48.7	\$64.0	\$63.2	\$57.1
Highways	147.7	172.3	227.1	226.2	221.4
<b>Total<sup>1</sup></b>	<b>\$ 181.6</b>	<b>\$ 221.0</b>	<b>\$ 291.1</b>	<b>\$ 289.4</b>	<b>\$ 278.5</b>
1. Does not include Municipal designated highway or Federal-Provincial Cost-Share Programs					

*Source: Prepared by AGNB from DTI Annual Reports*

**3.4** In 2018 we completed follow up work on our 2013 Pre-Mixed Asphalt Procurement report. During that process we found risks related to how certain capital maintenance programs in the Department had been outsourced. An analysis of the asphalt commodity bought by the Department over time showed a significant decrease in recent years. We also noted inconsistencies in who (i.e. outsourced vs. in-house) did road repair work throughout the province. This led us to question why work had been outsourced in some areas and not others and how these decisions were made. More details on our follow-up on asphalt procurement can be found in Appendix III.

**3.5** Our office also received a public concern over the processes followed by the Department in deciding what work is tendered (outsourced).

## **Objective**

**3.6** The objective of our audit was:

*To determine if the decision-making process followed by the Department of Transportation and Infrastructure to outsource capital rehabilitation, maintenance work and related equipment procurement is evidence based.*

## **Scope and Approach**

**3.7** We examined capital maintenance, construction and related activities on existing road and bridge infrastructure. We also included construction of heavy equipment for winter maintenance.

**3.8** Our audit approach encompassed interviews with Department staff and stakeholders external to government. We reviewed Department documentation and reports and conducted analytical procedures on financial reports and tendering information provided by the Department.

**3.9** For more information about the scope, approach and period of our audit see Appendix I. The criteria we used can be found in Appendix II.

## **Conclusions**

**3.10** We concluded:

- In certain cases, decisions to outsource road and bridge maintenance, construction work and related equipment were not based on evidence nor supported by an objective analysis of costs and consequences. Instead, the Department has focused on economic development and relied on subjective judgement when making outsourcing decisions; and
- The Department outsourced work at the taxpayer's expense to support the private sector and encourage economic growth.



**Background Information**

- 3.11** “There is an ongoing, world wide trend towards outsourcing<sup>1</sup> highway management and maintenance activities”.<sup>2</sup>
- 3.12** Events in other jurisdictions (countries and provinces) have highlighted the risks in outsourcing critical construction and maintenance work. When a company goes bankrupt or does not deliver contracted services on time or to appropriate quality, it is the government and residents who suffer.
- 3.13** This risk was highlighted with the recent bankruptcy of Carillion Group of Companies. Carillion was a British multinational company that provided facilities management and construction services in the UK, Canada and the Middle East. It declared itself insolvent on January 15, 2018, which put into question millions of dollars of government contracts for vital services. This included road maintenance (ploughing) in Ontario and Alberta. “Vital public services cannot be outsourced to private contractors, without Government underwriting the risks of collapse”.<sup>3</sup>
- 3.14** In a separate case, the Ontario Auditor General issued a special report in 2015 on the Ministry of Transportation’s winter highway maintenance. They found a change to how winter maintenance was outsourced in Ontario negatively impacted service levels. “This created significant safety concerns both among the general public and for those delivering emergency services such as the Ontario Provincial Police (OPP)<sup>4</sup>.”
- 3.15** Common reasons cited for outsourcing include inadequate staffing, lack of expertise and the need for specialized equipment. However, reducing costs has often been the overriding objective of outsourcing.

---

<sup>1</sup> In the context of this report, outsourcing is used to refer to the use of resources not under Department’s direct ownership or management to construct and maintain transportation system facilities or equipment.

<sup>2</sup> *Procurement Models for Road Maintenance*, Tony M Porter BE (Hons), FIPENZ Opus International Consultants Limited, 2005

<sup>3</sup> “The Collapse of P3 Giant Carillion and Its Implications”, John Loxley, Canadian Centre for Policy Alternatives-Manitoba, January 2018.

<sup>4</sup> “Special Report Winter Highway Maintenance” Office of the Auditor General of Ontario, April 2015.

**Jurisdictional Comparison**

**3.16** Exhibit 3.2 shows how winter highway maintenance is performed in selected Canadian jurisdictions.

*Exhibit 3.2 - Winter Highway Maintenance in Some Canadian Provinces in 2015*

<i>Winter Highway Maintenance in Some Canadian Provinces in 2015</i>	
<b>Province</b>	<b>Delivery Model</b>
Ontario	100% Outsourced
British Columbia	100% Outsourced
Alberta	100% Outsourced
Quebec	80% Outsourced 20% In-house
New Brunswick	8% Outsourced 92% In-house
Manitoba	100% In-house
Saskatchewan	100% In-house

*Source: Prepared by Office of the Auditor General of Ontario (adapted by AGNB)*

**3.17** Ontario, British Columbia, and Alberta also outsource tasks such as:

- bridge maintenance;
- signage; and
- lighting and striping work.

**Outsourcing in New Brunswick**

**3.18** In New Brunswick, the Department outsources around \$200 million annually on highway construction work to the private sector. The majority of winter and summer road maintenance activities are done in-house. However, the Province has three long-term Public-Private Partnership (P3) highway contracts where the maintenance has been outsourced to the P3 partners.

**3.19** Exhibits 3.3 & 3.4 show the value and number of tenders awarded by or on behalf of the Department for the fiscal years 2014-15 to 2017-18.

Exhibit 3.3 - Department of Transportation and Infrastructure - Awarded Tenders

<b>Department of Transportation and Infrastructure Awarded Tenders (in millions)</b>				
Fiscal Year	2014-15	2015-16	2016-17	2017-18
Total highway construction tenders awarded by DTI	N/A <sup>1</sup>	\$219	\$172	\$223
Goods and Services tendered on behalf of DTI	\$77	\$252 <sup>2</sup>	\$130	\$170
<b>Total tendered</b>	<b>N/A</b>	<b>\$471</b>	<b>\$302</b>	<b>\$393</b>
1 Department data source started in 2015-16.				
2 Includes \$141 million service contract for provincial radio communications system				

Exhibit 3.4 - Number of Tenders Awarded

<b>Number of Tenders Awarded</b>				
Fiscal Year	2014-15	2015-16	2016-17	2017-18
Total highway construction tenders awarded by DTI	N/A <sup>1</sup>	161	142	140
Goods and Services tendered for DTI	699	827	1,102	1,166
<b>Total number of tenders</b>	<b>N/A</b>	<b>988</b>	<b>1,244</b>	<b>1,206</b>
1 Department data source started in 2015-16.				

Source: Tables prepared by AGNB from data obtained from SNB and DTI

- 3.20** Outsourcing and procurement by the Department of Transportation and Infrastructure are done through two different processes and under two separate Acts.
- 3.21** Construction tenders for certain work such as bridge replacement and resurfacing of roads fall under the *Crown Construction Contracts Act*. The Department of Transportation and Infrastructure manages the public tendering processes under this Act.
- 3.22** Tenders for the procurement of goods and services such as asphalt and snow removal are done under the *Procurement Act*. Service New Brunswick issues these tenders on behalf of the Department, through the New Brunswick Opportunities Network.
- 3.23** The majority of highway maintenance (summer and winter) is done by in-house crews. This includes ploughing, patching potholes and road signage.

**3.24** Examples of activities that have been outsourced include:

- Paving;
- Grading;
- Striping (line painting); and,
- Brush cutting.

## No Framework for Outsourcing Decisions

*No outsourcing policy or decision-making framework*

**3.25** The Department does not have a policy or a decision-making framework to determine which programs and construction tasks it will outsource.

*Opportunity for greater transparency and objectivity*

**3.26** A clear and consistent framework would provide transparency and objectivity to the decision-making process.

**3.27** Lack of an outsourcing policy and a decision-making framework could lead to decisions being influenced or perceived to be influenced by other factors such as assisting certain industry groups or regions at the taxpayer's expense.

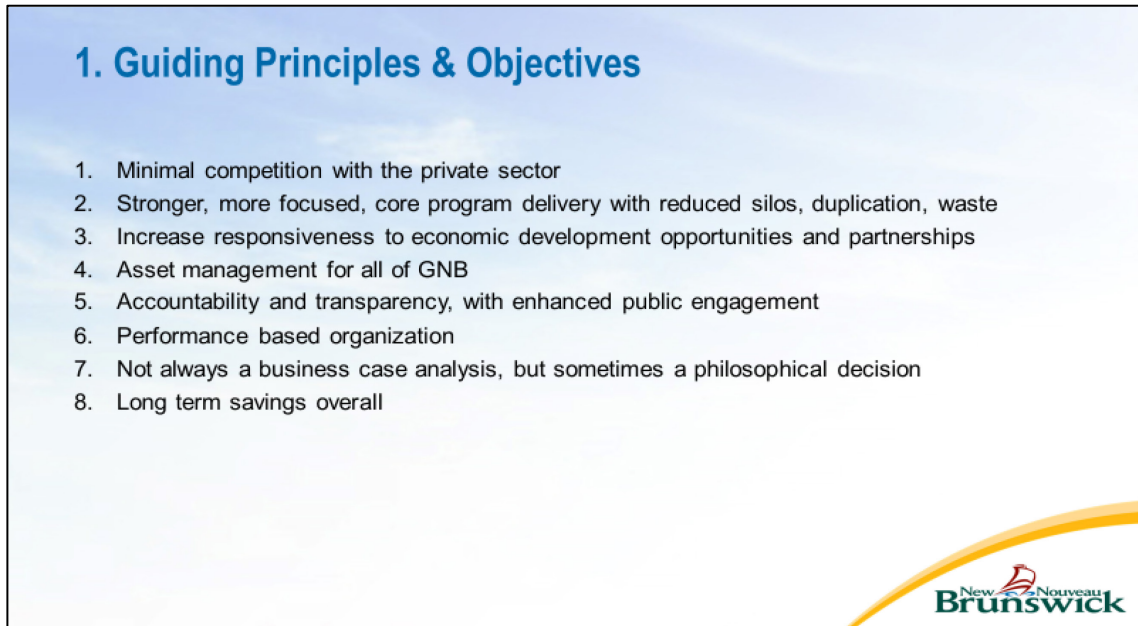
*Department's objective included increasing economic development opportunities*

**3.28** We found the Department made decisions based on fostering economic development and growth of the private sector.

**3.29** The Department's 2016-2018 reorganization and improvement initiative, had a list of objectives and guiding principles for the project as shown in Exhibit 3.5 that included:

- “minimal competition with the private sector”;
- “increase responsiveness to economic development opportunities and partnerships”; and
- “not always a business case analysis, but sometimes a philosophical decision”.

Exhibit 3.5 - Guiding Principles and Objectives for DTI reorganization



Source: Department of Transportation and Infrastructure

***Some outsourcing decisions were based on what the Department referred to as “philosophical decisions” in place of objective analysis***

**3.30** We found these principles are not consistent with our expectations of the Department’s approach to efficient, effective and safe infrastructure management. “Philosophical decision making” may not be a suitable criterion for effective asset management as it is loosely defined and subjective. We expected outsourcing decisions to be based on objective analysis of risks and benefits to be achieved such as:

- Overall cost;
- Quality and reliability of service delivery;
- Time to completion;
- Mitigating risk; and,
- Need for specialized equipment.

**3.31** Over the past nine years the Department has taken part in several improvement and cost cutting initiatives. They included two business process reviews with the help of external consultants; internal continuous improvement (Six Sigma black belt) initiatives and Department level transformation with guidance and direction from a third party outside consultant. According to the Department these combined initiatives helped the Department reduce over \$40 million in costs from 2011 to 2015 and improved the Department’s overall operating efficiency.

***Consultant estimated outsourcing savings but not supported by evidence***

**3.32** The most recent initiative was a product of the strategic program review conducted across government in 2015-16. One of the options supported by an external consultant's report recommended the Department outsource all routine maintenance activities. The report was prepared with limited contact with the Department. It estimated potential savings of \$11 to \$22 million annually.

**3.33** However, this option and the estimated savings were based on experiences reported in other provinces and States. It did not consider efficiency gains already realized by the Department. There was limited evidence specific to the Province to support the estimated savings.

***Recommendation***

**3.34** **We recommend the Department develop an evidence based outsourcing policy and a decision-making framework to guide which programs and activities to outsource.**

***Risk of over-dependence on suppliers not assessed when outsourcing***

**3.35** The Department does not assess the risk of over-dependence on suppliers when making outsourcing decisions.

**3.36** Supplier availability can affect the competitiveness and ultimately the cost of outsourcing work.

**3.37** We analyzed four years of the Department's construction tender information. Although there was an average of three bids received per tender, some tenders had as many as 12 bids where others had only one. 55 tenders valued at \$46 million in total were awarded where only one bid was received. \$27 million of this went to two companies.

**3.38** Supplier availability is a crucial factor for deciding whether to outsource work and where. Outsourcing when there is a low number of suppliers risks conferring natural monopoly powers to the private firms doing the work. It also exposes the Department to a greater risk in the event a single supplier becomes bankrupt or leaves the area.

***Recommendation***

**3.39** **We recommend the Department assess the risk of over dependence on a single supplier when making outsourcing decisions.**

***Data collection and reporting on outsourced work is weak***

**3.40** The data collection, reporting and analysis done by the Department on outsourced construction and maintenance work is weak.

**3.41** We requested information on the amount and type of work outsourced by the Department over the last five years. We were informed that such reports are not readily available as the systems are not configured to report on the data in this way.

***Department's listing of awarded contracts is inaccurate***

**3.42** The Department started manually compiling a list of awarded construction contracts in 2016 for reporting to the Minister on total awarded contracts. However, we found the breakdown of the type of work being contracted out was not correct or consistent. While outsourcing data is recorded in the Department's project management and financial accounting systems, they have not been configured to report on Department level outsourcing activities.

***Poor tracking of construction tender information***

**3.43** Construction tender information was not tracked in the same manner as tenders for goods and services.

**3.44** Data on public tendering is split between the Department and Service New Brunswick (SNB). SNB only manages the information on the Department's procurement of goods and services but not construction related services.

**3.45** Data collection and reporting by SNB is done through the New Brunswick Opportunity Network system. Regular reports are produced on total government spending on goods and services.

**3.46** However, these reports do not include the tenders awarded directly by the Department which, as shown in Exhibit 3.3, represent the majority of capital spending.

***Recommendation***

**3.47** **We recommend the Department record, track and regularly report on the extent and composition of outsourced maintenance and construction work.**

## Programs Knowingly Outsourced at Higher Cost

Exhibit 3.6 - DTI Chipseal Spreader



Source: Department of Transportation and Infrastructure

***Chipseal outsourced at higher cost to the taxpayer***

**3.48** The Department decided in 2016 to outsource the entire chipseal program despite earlier analysis that it would cost more to outsource. The Minister of Transportation and Infrastructure at the time believed that doing the chipseal through the private sector was the right thing to do<sup>5</sup>.

***Experts found outsourcing more expensive***

**3.49** However, analysis done by the Department before the 2016 decision showed it was more expensive to outsource. This analysis found it was up to 18% cheaper to do the chipseal work in-house.

**3.50** In addition, prior to the 2016 decision, an external consultant hired by the Province to assess cost saving opportunities from outsourcing the chipseal program found achieving material savings from outsourcing was questionable. As part of their work, the consultant also validated the analysis done by the Department and confirmed their earlier findings.

---

<sup>5</sup> Transcript Standing Committee on Estimates and Fiscal Policy, February 23, 2016.

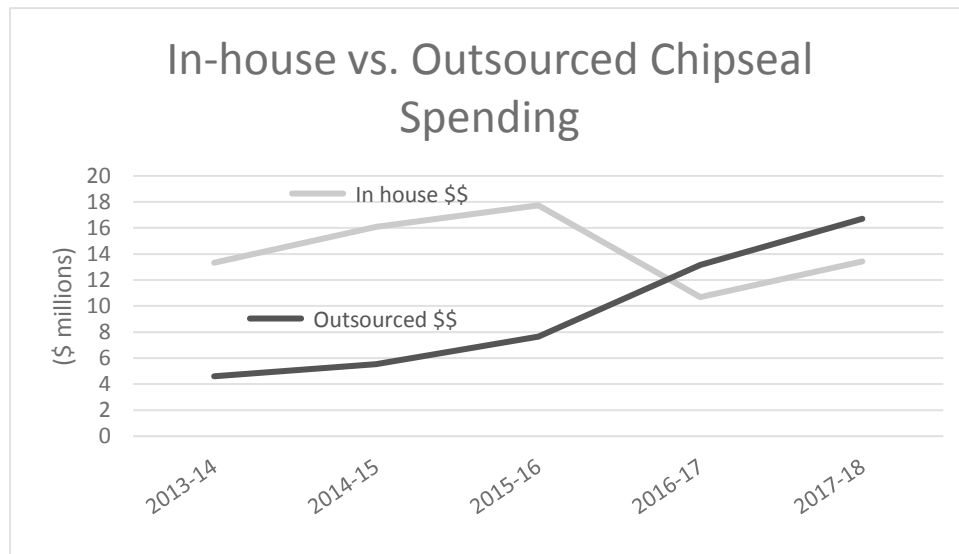


***Minister announced intention to outsource although Department knew it was more expensive***

**3.51** Subsequently, as part of the 2016/17 capital budget, the Minister announced the intention that the chipseal program in all districts would be outsourced. This was contrary to the results of the Department's analysis. The process was to be phased in over a two-year period. Prior to this only 20-25% of chipseal work had been typically outsourced.

**3.52** Exhibit 3.7 shows a steady increase in the amount of chipseal work outsourced to the private sector over a five-year period from 2013 to 2018. In that period the relative share of work outsourced doubled. It went from 26% (\$4.6 million) in 2013-14 to 55% (\$16.7 million) in 2017-18.

*Exhibit 3.7 - Chipseal Spend In-house and Outsourced*



*Source: Chart created by AGNB with information from DTI*

**3.53** From the Department's cost comparison analysis, we estimated the incremental increase in chipseal work outsourced in the last two fiscal years (2016-17 and 2017-18) has cost the Province an extra \$1.7 million.

***Department did not act immediately to reverse districts doing more expensive outsourced chipseal work***

**3.54** In 2017 the Department suspended implementation of the plan to outsource the chipseal work in all areas of the Province. However, in districts that had already transitioned to outsourcing, chipseal work was not brought back in-house, as the necessary resources and equipment were no longer available.

***Recommendation***

**3.55** We recommend the Department evaluate how road work such as chipsealing is sourced and delivered in all districts following an objective and evidence-based cost benefit analysis.

*Exhibit 3.8 - Older chipseal spreader paired with newer DTI truck*



*Source: Department of Transportation and Infrastructure*

**3.56** Prior to the decision to outsource the chipseal program, the Department faced an issue with critical equipment in need of replacement. Reinvestment in capital equipment was needed to be able to continue to do the work in-house. For example, the Department's three spreaders and equipment used to lay down the chips needed to be replaced.

**3.57** As shown in Exhibit 3.9 the Department presented four options for continuing the chipseal program. Of the options, keeping the status quo, where most of the work was done in-house using old, end of life equipment, was not a viable option.

Exhibit 3.9 - Capital Equipment Options/Chipseal Program

2015-16 Capital Equipment Options/Chipseal Program
Option
Status quo- continue with in-house work with no reinvestment in equipment (not a viable option)
Purchase/lease equipment and continue doing work in-house
Downsize in-house capability and outsource more work
Outsource all

Source: Department of Transportation and Infrastructure

**3.58** The analysis done by the Department showed that purchasing or leasing replacement equipment and continuing to do most of the work in-house was the least expensive viable option, but would require a plan to replace the capital equipment over 3 years. The downsizing option involved outsourcing more of the work to reduce in-house crews and free up equipment to use as salvage parts for the remaining two spreaders which would still need to be replaced within a couple of years.

***Initially the Department failed to reinvest in critical equipment***

**3.59** With the government's independent announcement in 2016 to outsource the entire program over two years, no decision was made related to the equipment. In the interim, the Department secured parts and resources freed up from the increase in outsourcing to keep the remaining in-house crews operational.

**3.60** However, when the plan to outsource the program was suspended in 2017, the Department began work on tendering for replacement chipseal equipment. The Department took delivery of two new spreaders in the fall of 2018.

**3.61** Failure to plan for repair and replacement of critical assets means the Department may not be able to continue to provide programs like chipseal in-house. The Department may have no choice but to outsource regardless of what the evidence may suggest.

***Recommendation***

**3.62** We recommend the Department include capital investment in critical equipment when planning the most cost-effective manner to deliver road repairs.

***Plough truck procurement outsourced despite known higher cost***

**3.63** The Department continued to outsource plough truck procurement after analysis showed it costs more to outsource than build the trucks in-house.

*Exhibit 3.10 - VMA heavy equipment shop- trucks assembled*



*Source: AGNB*

**3.64** The Department's Vehicle Management Agency (VMA) added 20 new plough trucks in 2016. 10 trucks were purchased already assembled while 10 were built in-house to the same specifications and standards. The Department then compared the costs and benefits of outsourcing against building the trucks in-house. They found buying pre-assembled plough trucks cost roughly 10% or roughly \$25,000 more per truck than building them in-house.

***Additional cost of \$1 million from outsourcing plough truck builds - equivalent to 4 more plough trucks***

**3.65** Despite this analysis, the Department went on to outsource another 30 trucks (see Exhibit 3.12). The total added cost over the three years up to and including fiscal year 2019 was \$1 million, equivalent to the cost of building four more trucks.

Exhibit 3.11 - Plough blade mount fabrication



Source: AGNB

Exhibit 3.12 - Plough Trucks Outsourced

Plough Trucks Outsourced		
Fiscal Year	# trucks outsourced	Cost (\$Millions)
2016/17	10 (1 <sup>st</sup> order)	\$2.48
2017/18	10	\$2.47
2018/19	20	\$4.87
<b>Total</b>	<b>40</b>	<b>\$9.82</b>
<i>Source: DTI</i>		
<i>Average cost/truck purchased</i>		\$246,000
<i>Average cost/in-house build</i>		\$221,000

Source: AGNB, with data from DTI

**3.66** We were informed by VMA management that in the upcoming fiscal year (2019-20) all 37 trucks will be assembled in-house.

***Other indirect savings from building plough trucks in-house***

**3.67** Other benefits associated with building the trucks in-house were identified and include retaining the ability to repair and refurbish the equipment in-house and improved lifecycle management. The Department’s analysis indicated that in-house repairs may be done quicker and cheaper and result in trucks being put back into service sooner. VMA can refurbish truck components such as hydraulic cylinders in-

house, keeping the equipment in service longer at a lower cost.

*Exhibit 3.13 - Department shop modifies/ cuts down stock frame. DTI also fabricates and stock piles hydraulic cylinders and other components in-house.*



*Source: AGNB*

***Recommendation***

**3.68** We recommend the Department source capital equipment through the most cost-effective means as demonstrated by a business case analysis.

**3.69** The Department was directed to outsource more work to the private sector, particularly large culvert replacement. In certain cases, costs to design and tender the work were significant compared to the cost of the actual work to replace the culvert. This in turn meant outsourcing was more expensive than doing the work in house.

**Government responded to private sector request for additional work which cost the government more**

**Department did not follow consultant’s advice to bring expensive outsourced work back in-house**

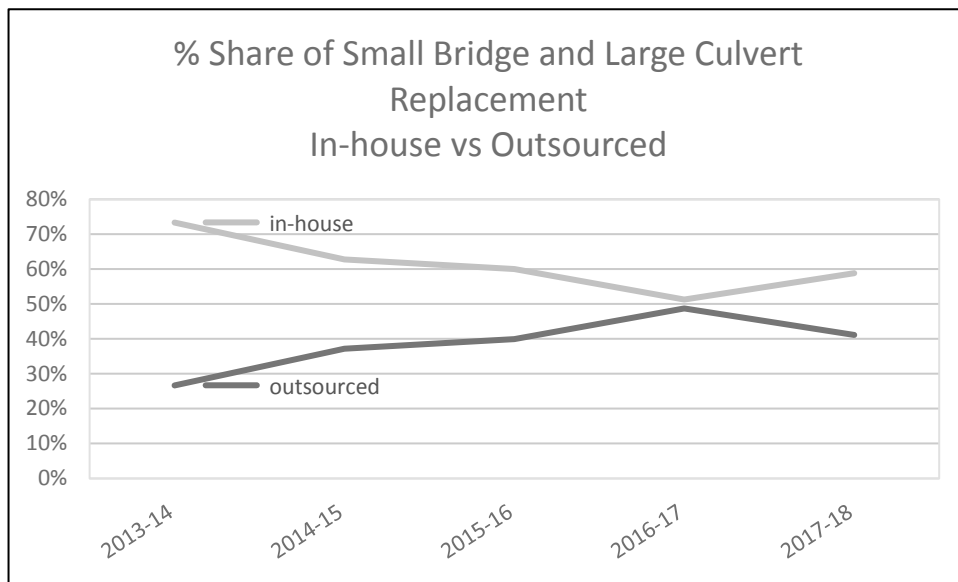
**3.70** As shown in Exhibit 3.14, the share of work that went out to contract increased over a four-year period. Internal Department documents indicated the private sector had asked that more work be given to them.

**3.71** Consultants hired by the Department advised bringing more small bridge work in-house but we were informed by the Department this was not immediately pursued because of the government’s viewpoint to support outsourcing.

**3.72** Large culvert and small bridge work has been outsourced in the past to help balance in-house capacity. More work would be outsourced in years where in-house crews were already at capacity doing other road repair work or in situations where structures needed to be replaced because of flooding or other emergencies.

**3.73** In the normal course of business, the decision to outsource is typically done on a project by project basis as part of the annual capital planning and budgeting cycle. The factors impacting the decision are availability of in-house crews to do the work and the complexity and estimated cost of the job.

Exhibit 3.14 - % Share of Small Bridge and Large Culvert Replacement In-house vs Outsourced



Source: Chart prepared by AGNB from Oracle financial data

**3.74** Exhibit 3.15 shows capital spending on replacing large culverts and small bridges more than doubled since 2013. This is encouraging given the poor condition of the Province's bridges and large number of older bridges in need of capital maintenance shown in our 2013 report on provincial bridges.

*Exhibit 3.15 - Capital spending on small bridges and large culverts*

<b>Capital spend on small bridges and large culverts (\$ millions)</b>					
	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
<b>Bridge</b>	\$ 5.6	\$ 5.0	\$ 7.8	\$ 13	\$ 13
<b>Culvert</b>	1.6	1.6	1.8	3.5	4.4
<b>Grand Total</b>	<b>\$ 7.2</b>	<b>\$ 6.6</b>	<b>\$ 9.6</b>	<b>\$ 16.5</b>	<b>\$ 17.6</b>

*Source: Table prepared by AGNB from information supplied by the Department*

***In-house bridge and culvert work allows for faster emergency response***

**3.75** It is critical to keep the capability to do some small bridge and large culvert replacement work in-house. This way the Department can respond quickly to emergency situations to repair or replace a bridge or culvert. It will also help ensure bid competitiveness for projects that are outsourced.

**3.76** There have been occasions when a tender was cancelled due to lack of competitiveness of the bids received. In-house crews then did the work. There have also been instances where tendered work ended up being done in-house to expedite completion of the task.

**3.77** Outsourcing work is at times necessary and beneficial. For instance, when many structures require repairs at the same time or when a project requires specialized expertise and planning. Outsourcing can help get greater value from infrastructure spending when work can be done faster, better, cheaper by the private sector. However, it is important for the Department to follow an objective, transparent and evidence-based approach to balancing in-house and outsourced highway maintenance and construction work.

***Recommendation***

**3.78** We recommend the Department source bridge and culvert replacement work in an evidenced-based, cost effective and timely manner.



## Appendix I - About the Audit

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on the Department of Transportation and Infrastructure's outsourcing of capital rehabilitation, maintenance work and related equipment procurement. Our responsibility was to provide objective information, advice, and assurance to assist the Legislature in its scrutiny of the government's management of resources and programs, and to conclude on whether the Department's outsourcing of construction and maintenance work complies in all significant respects with the applicable criteria.

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

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

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

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

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

### **Period covered by the audit:**

The audit covered the period between April 1, 2013 and December 31, 2018. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

### **Date of the report:**

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 31, 2019, in Fredericton, New Brunswick.

## Appendix II – Audit Objective and Criteria

### Objective

*To determine if the decision-making process followed by the Department of Transportation and Infrastructure to outsource capital rehabilitation, maintenance work and related equipment procurement is evidence-based.*

### We used the following criteria:

---

- |                    |   |
|--------------------|---|
| <b>Criterion 1</b> | The Department should have a strategy, framework or policy in place for outsourcing.  |
| <b>Criterion 2</b> | The Department should decide what tasks to outsource following an analysis of risk, cost, level of service required.  |
| <b>Criterion 3</b> | The Department should monitor results of decisions to outsource to ensure continued best value to taxpayer, mitigation of risks to service delivery and quality of service. |

## Appendix III – Asphalt Procurement Follow-up

### Introduction

**3.79** The 2013 Auditor General’s Report included a report on the Department of Transportation and Infrastructure’s procurement of pre-mixed asphalt.

**3.80** The objective of our work was to determine if the Department’s exempt purchases of pre-mixed asphalt are being made with due regard for economy and transparency.

**3.81** We originally chose to audit asphalt procurement because it was done under an exemption in the *Procurement Act*. This means the Department was not required to follow the Act when buying asphalt. It was the single largest category of exempt purchases made under the Department’s procurement exemption in 2012 at \$10.5 million. Because of this and concerns raised by the public and private sector we believed there was a risk for non-transparent business practices.

**3.82** However, we decided to defer completion of our work to allow the Department the opportunity to complete a process improvement project and make other procedural changes to the asphalt procurement process.

### *Asphalt Procurement no Longer Exempt*

**3.83** In 2018, we honoured our commitment to follow up and found asphalt is no longer procured under the exemption in the *Procurement Act*. Starting in 2017, tenders for asphalt are issued each year through the New Brunswick Opportunities Network (NBON), the government’s procurement portal for purchasing goods and services.

**3.84** Eliminating the use of the exemption was done to keep New Brunswick compliant with trade agreement obligations, specifically: the Canadian Free Trade Agreement (CFTA) and the Canada-European Union Comprehensive Economic Trade Agreement (CETA).

## Conclusion

**3.85** We concluded given changes to the asphalt procurement processes the risks are now in line with typical government procurement of goods and services. Consequently, we decided not to pursue this work any further.

## Process improvement

**3.86** We followed up on the status of the process improvement project for asphalt leveling. This was an initiative looking at all the component costs in doing this type of road repair work, the biggest of which was asphalt procurement. The aim of the project was to *“Gain an understanding of the factors that have the greatest impact on production cost and quality variation, then implement standard leveling practices, eliminate/minimize the impact of constraints, reduce production cost, and improve quality”*<sup>6</sup>.

**3.87** According to the Department, completion of the project resulted in productivity improvements and a better understanding of the cost variations found in leveling work across the province. This led to more efficient use of resources and better decision making.

## *Revised asphalt procurement process description since 2017*

**3.88** Starting in 2017 an open tender was published on NBON. A letter was also sent by the Department to all known suppliers in the province notifying them of the new process and the need to formally submit a bid through NBON prior to the tender close.

**3.89** At the close of the tender period all bids are publicly opened by procurement staff at Service New Brunswick. The bids received after the close are not accepted.

**3.90** Procurement staff summarize the bid results and send them to the Department. The Department reviews the results to determine if there are any areas in the province not represented by a supplier. The Department then approves the bids received and SNB awards contracts of supply to all successful bidders, which provides a list of purchase orders for suppliers and an initial unit price. The list is provided to

---

<sup>6</sup> “Department of Transportation and Infrastructure Pre-mixed Asphalt Procurement”, Auditor General of New Brunswick, Chapter 7, 2013

the Department who distribute it to each district office to buy asphalt as needed during the year.

**3.91** The unit price is adjusted throughout the season depending on changes to asphalt binder price index. This allows for changes in the price of the binder which comes from crude oil.

# Chapter 4

## Department of Finance – Overdue Property Tax: Collections and Forgiveness

### Contents

Chapter Summary.....	81
Key Findings and Observations Table.....	82
Recommendations and Responses.....	83
Audit Introduction.....	85
Conclusions.....	86
Overdue Property Tax Collections.....	92
Property Tax Forgiveness.....	96
Appendix I – Audit Objectives and Criteria.....	102
Appendix II – About the Audit.....	103
Appendix III – Excerpts from <i>Real Property Tax Act</i> .....	104



# Department of Finance

## Overdue Property Tax: Collections and Forgiveness

Report of the Auditor General – Volume I, Chapter 4 – June 2019  
One-Page Chapter Summary

---

### Why Is This Important?

- Property Tax represents over \$1 billion per year in revenue for the Province and municipalities
- Forgiveness of overdue property tax represents lost tax revenue and creates a perception of unfairness to taxpayers who remain current with their tax payments
- Over \$30 million in property tax and penalties forgiven during the six-year period covered by our audit

### Overall Conclusions

The Department of Finance:

- lacks policies to direct its use of discretionary property tax forgiveness;
- does not actively manage the property tax collections services contracted to Service New Brunswick; and
- lacks detailed criteria and prioritization of properties to be sold for non-payment of property tax.

## What We Found

### Collections

- Overdue property tax and penalties grew by 16% or \$15 million in five years
- The Department of Finance has not provided sufficient direction to Service New Brunswick to guide the identification of property tax sale accounts
- The Department does not have documented policies related to the use of *Provincial Offences Procedure Act* in the collection of property tax
- The Province has a 99.1% collections rate on property tax

### Forgiveness

- The Department does not have documented policies and procedures for the use of discretionary forgiveness
- We found instances where forgiveness transactions were processed twice in error
- The Department has not received recurring internal audits to ensure system controls are functioning
- The Department did not respond to a 2014 Government directive to review the *Real Property Tax Act*

## Key Findings and Observations Table

### Department of Finance – Overdue Property Tax: Collections and Forgiveness

Paragraph	Key Findings and Observations
4.15	<i>Overdue property tax and penalties grew by 16% or \$15 million in five years</i>
4.16	<i>\$109 million in overdue property tax and penalties in 2017/18</i>
	<b>Overdue Property Tax Collections</b>
4.18	<i>CRA Set-off program not implemented</i>
4.22	<i>The Department does not have documented policies related to the use of Provincial Offenses Procedure Act in collection of property tax</i>
4.25	<i>The Department has a 99.1% collections rate</i>
4.26	<i>The Department does not track the impact of forgiven municipal property tax</i>
4.27	<i>The Department is unable to resolve overdue property tax in a timely manner by selling properties for non-payment of property tax</i>
4.29	<i>The Department has not provided sufficient direction to SNB to guide the identification of property sale accounts</i>
4.31	<i>The Department does not actively manage the performance of SNB collections</i>
4.32	<i>SNB does not report back to the Department with Key Performance Indicators</i>
	<b>Property Tax Forgiveness</b>
4.38	<i>Over \$30 million in property tax and penalties forgiven in six years</i>
4.40	<i>On average, \$5.4 million per year of overdue property tax and penalties have been forgiven since 2012/13</i>
4.43	<i>The Department of Finance does not have documented policies and procedures for the use of discretionary forgiveness</i>
4.44	<i>We noted six instances where forgiveness transactions were processed twice in error</i>
4.45	<i>The Department did not have control mechanisms to detect errors</i>
4.45	<i>The Department had not received recurring internal audits to ensure system controls are functioning</i>
4.46	<i>Non-profit organizations accounted for \$12.6 million, 39% of government approved forgiveness</i>
4.47	<i>Property tax and penalties forgiven in response to proposals from taxpayers due to financial hardship</i>
4.49	<i>The Department did not respond to 2014 Treasury Board directive to review the Real Property Tax Act</i>



## Recommendations and Responses

Recommendation	Department's response	Target date for implementation
<b>We recommend the Department of Finance:</b>		
<p><b>4.34</b> develop a policy for its use of section 25 of the <i>Real Property Tax Act</i> to improve collections of overdue property tax. This section states that a person in whose name real property is assessed, who fails to pay the taxes on that real property, commits an offence punishable under part II of the <i>Provincial Offences Procedure Act</i>.</p>	<p><i>Finance and Treasury Board agrees with this recommendation and will develop a policy regarding the use of section 25 of the Real Property Tax Act. Results on previous research and analysis regarding the use of similar fines levied under Part II of the Provincial Offences Procedure Act have shown that this type of measure is ineffective in improving tax compliance and would result in increased costs to the Province.</i></p>	<p><i>End of fiscal year 2019-20</i></p>
<p><b>4.35</b> calculate and track the impact of forgiven municipal property tax on the Province's expenses.</p>	<p><i>Finance and Treasury Board agrees with this recommendation and will perform analysis on the portion of municipal taxes forgiven.</i></p>	<p><i>End of each fiscal year starting with 2019-20</i></p>
<p><b>4.36</b> We recommend the Department of Finance:</p> <ul style="list-style-type: none"> <li>• clarify performance expectations of Service New Brunswick in collecting overdue property tax; and</li> <li>• monitor Service New Brunswick's performance against pre-defined performance indicators and targets.</li> </ul>	<p><i>Finance and Treasury Board agrees with these recommendations and will work collaboratively with SNB to clarify performance expectations and implement a monitoring process.</i></p>	<p><i>End of fiscal year 2019-20</i></p>

*Recommendations and Responses (continued)*

Recommendation	Department's response	Target date for implementation
<b>We recommend the Department of Finance:</b>		
<b>4.51 set detailed eligibility criteria for property tax forgiveness to ensure consistency of forgiveness decisions.</b>	<i>Finance and Treasury Board agrees with this recommendation. A policy will be developed to define the intent of the legislated forgiveness criteria to ensure they are applied with consistency while not being too restrictive to exclude exceptional circumstances.</i>	<i>End of fiscal year 2019-20</i>
<b>4.52 request the Office of the Comptroller internal audit group perform periodic reviews of system controls.</b>	<i>Finance and Treasury Board agrees with this recommendation. Consultation will be undertaken with the Office of the Comptroller to identify the best plan for periodic system reviews.</i>	<i>End of fiscal year 2019-20</i>
<b>4.53 consult with Treasury Board to determine whether the 2014 directive to review the <i>Real Property Tax Act</i> is still appropriate.</b>	<i>The Department will continue to review each situation on a case-by-case basis, prepare options to maximize the recovery of unpaid property taxes and, where appropriate, make recommendations to Treasury Board.</i>	<i>On-Going</i>

## Audit Introduction

**4.1** Property tax in New Brunswick represents over \$1 billion per year in revenue for the provincial and municipal governments. The Province is responsible for billing property tax in its entirety on behalf of municipalities. Under this arrangement, the Province retains the collections risk. The Province guarantees the municipal tax regardless of its rate of collection or changes in assessed valuation due to appeals. If property owners fall behind on their property tax payments, the Province stands to lose both its own revenue as well as the municipalities' revenue.

**4.2** Provincial property tax receivable includes both provincial and municipal taxes receivable and the Province bears the cost of forgiveness in its entirety. Property tax forgiveness refers to overdue property tax that the Province removes from its receivables and ceases to pursue payment on. Property tax is forgiven where the property owner has filed for bankruptcy, ownership of the property has transferred to the Province or at the discretion of the Tax Commissioner or Treasury Board. Discretionary forgiveness is used to resolve instances where hardship or injustice has occurred or is likely to occur if property tax were to be paid, such as homelessness, or where it is assessed as being in the public interest, such as to facilitate the purchase and sale of abandoned commercial property and bring it back into productive use.

## Why we chose this topic

- 4.3** We chose to examine property tax forgiveness for the following reasons:
- property tax represents over \$1 billion per year in revenue for the Province and municipalities;
  - forgiveness of overdue property tax represents lost tax revenue and creates a perception of unfairness to taxpayers who remain current;
  - the Department of Finance is expected to comply with the *Real Property Tax Act* and *Financial Administration Act*;
  - over \$30 million in property tax and penalties forgiven during the six year period covered by our audit; and
  - we received public concerns in relation to fairness of tax forgiveness decisions.

**Audit Objective**

4.4 The objectives of this audit were to determine if the Department of Finance:

- collects overdue property tax in accordance with the *Real Property Tax Act*; and
- makes property tax forgiveness decisions or recommendations in accordance with applicable policies and legislation.

4.5 The criteria we used in completing our audit can be found in Appendix I.

**Conclusions**

4.6 We have concluded that, while generally complying with legislation applicable to property tax collections and forgiveness, the Department of Finance:

- lacks policies to direct its use of discretionary property tax forgiveness;
- does not actively manage the property tax collections efforts of Service New Brunswick; and
- lacks detailed criteria and prioritization of properties to be sold for non-payment of property tax.

**Audit Scope**

4.7 The scope of this chapter includes the Department of Finance's activity in meeting its responsibilities and utilizing its authority granted under the *Real Property Tax Act* and *Financial Administration Act* in collecting overdue property tax and in forgiving property tax debt. We examined property tax forgiveness transactions for the six fiscal years 2012/13 through 2017/18.

**4.8** It should be noted we did not audit property tax exemption, deferral or relief programs. Deferral and relief programs include the Farm Land Identification Program, Residential Property Tax Credit, Low Income Property Tax Allowance and the Property Tax Deferral Program for Seniors. The *Assessment Act* specifies which properties are exempt from property tax such as:

- church property;
- property owned by historical and literary societies;
- property owned by an agricultural society or agricultural fair association;
- property owned by rural voluntary fire associations;
- property that is an arena used for such sports as hockey and figure skating; and
- property that is a public library.

### **Audit Approach**

**4.9** Our audit approach involved interviews, documentation review and analysis. Our audit procedures included:

- interviews with selected staff from the Departments and SNB;
- examination of legislation and other documentation relevant to our work; and
- analysis and sample testing of property account transactions as applicable to our work.

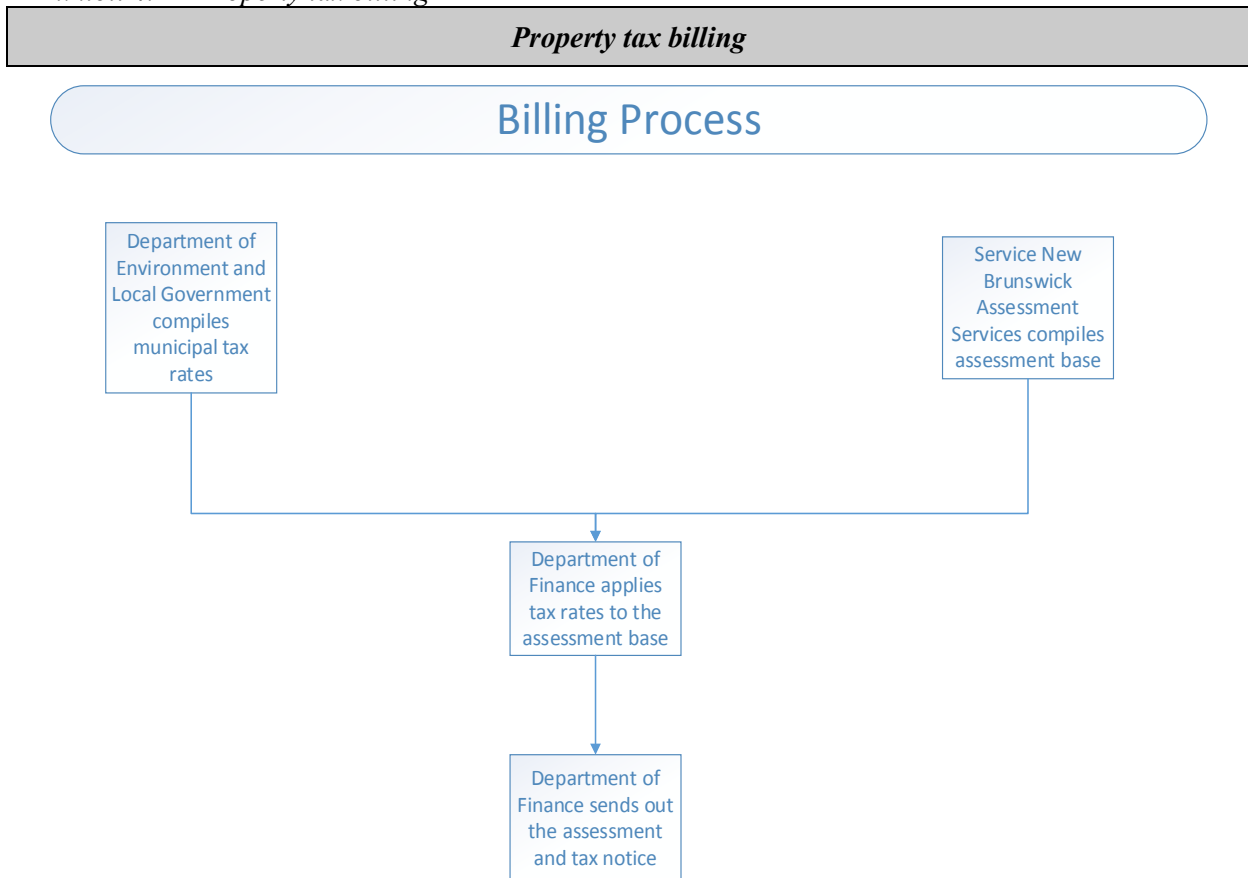
**4.10** Our audit was performed in accordance with Canadian Standard for Assurance Engagements (CSAE) 3001 established by the Chartered Professional Accountants of Canada, and accordingly, we carried out such tests and other procedures as we considered necessary in the circumstances. Other information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

### **Background Information**

**4.11** Through the *Assessment Act*, the *Real Property Tax Act* and Regulations, the Province has a centralized assessment and collection system for real property taxation.

**4.12** Under this centralized system, the Department of Finance (the Department) is responsible for billing and collecting real property taxes levied, including those levied by local government bodies. In January, 2014, collections of property tax overdue for payment transitioned to the collections branch formerly under New Brunswick Internal Services Agency, which later amalgamated with Service New Brunswick (SNB).

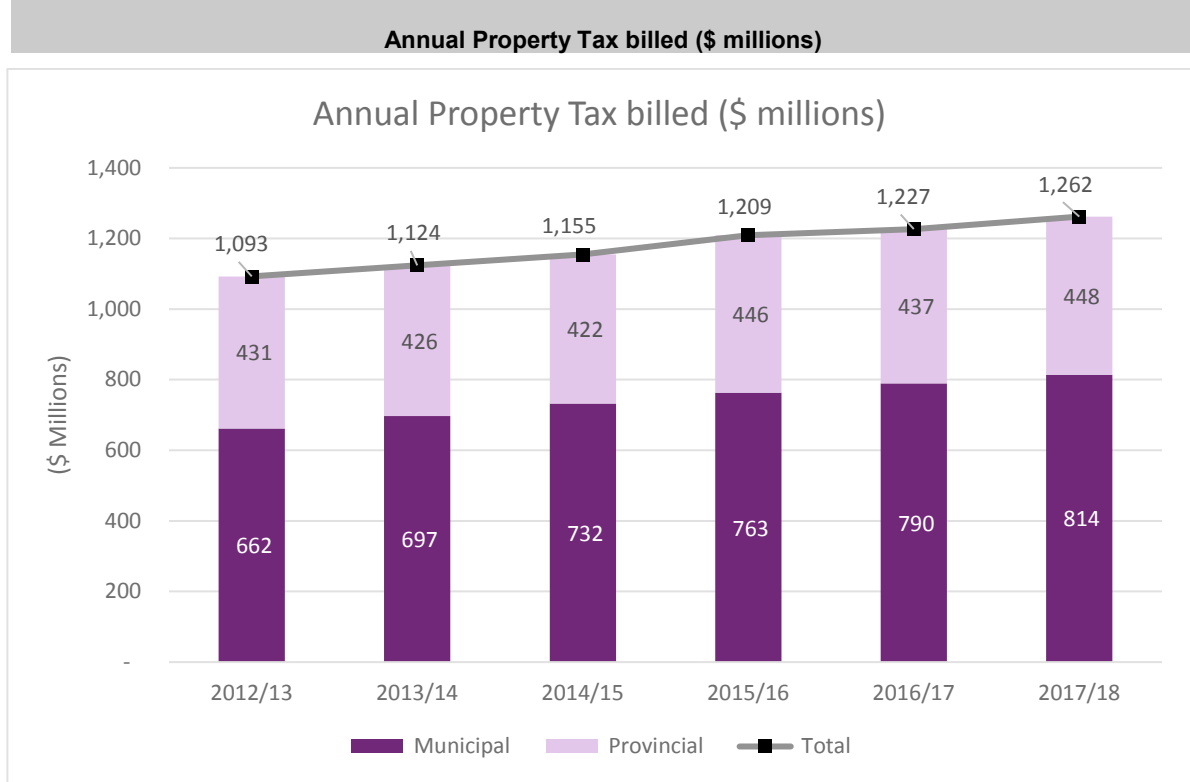
*Exhibit 4.1 - Property tax billing*



*Source: Prepared by Office of the Auditor General*

**4.13** Exhibit 4.1 shows the Department of Environment and Local Government annually supplies the Department of Finance with the list of municipal, local service district and rural community rates, which are used to calculate the amount of annual tax to be levied. SNB Assessment Services provides the property assessment values to serve as the tax base. The Department of Finance then notifies taxpayers by way of an Assessment and Tax Notice. This usually happens the first working day of March each year.

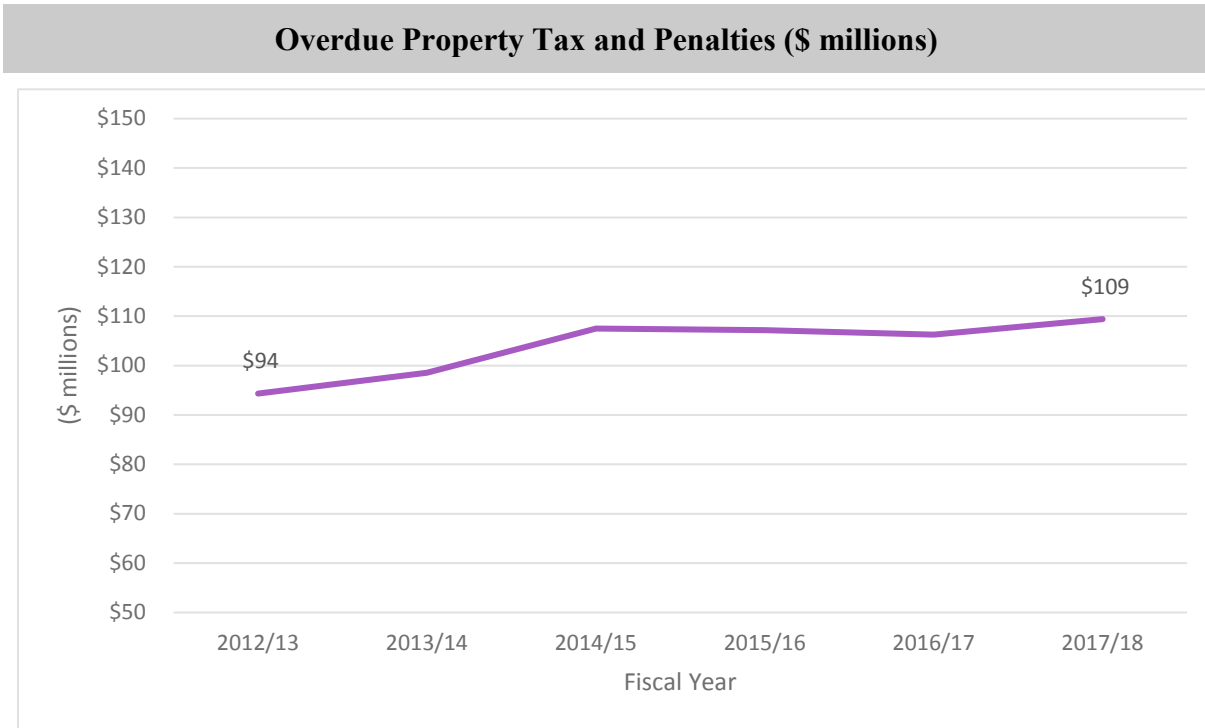
Exhibit 4.2 - Annual Property Tax billed (\$ millions)



Source: Chart prepared by AGNB with information provided by Department of Finance

**4.14** Exhibit 4.2 shows the trend of property tax billed in New Brunswick from fiscal years 2012/13 through 2017/18. Property taxes billed grew from \$1.09 billion to \$1.26 billion during this time, a 15% increase. This represents tax revenue for the benefit of the Province as well as municipalities. The provincial portion of the tax bill grew from \$431 million to \$448 million during this time while the municipal portion grew from \$662 million to \$814 million, a 4% and 23% increase, respectively.

Exhibit 4.3 – Overdue Property Tax and Penalties (\$ millions)



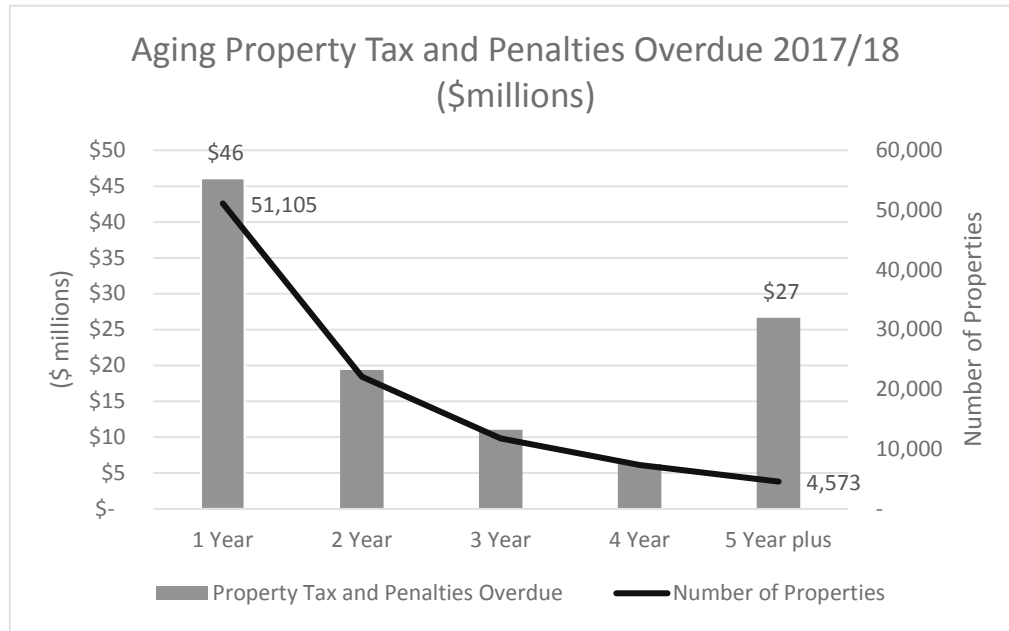
Source: Chart prepared by AGNB with information provided by Department of Finance

**Overdue property tax and penalties grew by 16% or \$15 million in five years**

**4.15** Exhibit 4.3 identifies the amounts that were at least one year overdue in each of the respective years. Those amounts were due and unpaid from prior tax years. The chart shows that amounts overdue from prior years have gone from \$94 million in 2012/13 to \$109 million in 2017/18, a 16% or \$15 million increase.



Exhibit 4.4 – Aging of Property Tax and Penalties Overdue 2017/18 (\$ millions)



Source: Prepared by AGNB with information provided by the Department of Finance

**\$109 million in overdue property tax and penalties in 2017/18**

**4.16** Exhibit 4.4 shows the composition of the \$109 million in overdue property tax and penalties at the end of fiscal 2017/18. \$46 million of property tax and penalties were one year overdue related to 51,105 properties. \$27 million of property tax and penalties were overdue for five years or more related to 4,573 properties. Of those 4,573 properties, 43 had over \$100,000 in tax and penalties overdue for five years or more and these 43 properties combined totalled \$12 million of the \$27 million, or 44%.

## Overdue Property Tax Collections

### *CRA set-off program not implemented*

**4.17** When a property tax account is not paid by the penalty date, the property owner is sent a statement as a reminder of amounts owed. The property account is forwarded to SNB for follow up. SNB is delegated partial responsibility for collecting overdue property tax accounts through a service agreement with the Department of Finance. Under the agreement, SNB attempts to contact property owners and arrange a suitable payment arrangement.

**4.18** In the Report of the Auditor General of New Brunswick 2013, Volume II, we recommended the Department of Finance complete its work to routinely register overdue property tax receivable accounts with the Canada Revenue Agency (CRA) Refund Set-off Program. Treasury Board approved the use of this program in 2012. At the time of this report, however, the set-off program is not being utilized to collect on overdue property tax. Although we posed a number of questions to the Department and SNB, we did not receive a satisfactory answer as to why this initiative was not complete after seven years.

**4.19** Under the *Real Property Tax Act*, the Department of Finance has authority and responsibility to ensure that all property owners in New Brunswick remain current with their property tax accounts.

**4.20** Where amounts owed are due and unpaid on the first day of January following the imposition of taxes, the *Real Property Tax Act* requires that notice be given stating that the property will be sold. The *Real Property Tax Act* provides authority for the Department to proceed with the sale of the property at any time after proper notice has been given. Appendix III contains an excerpt from the *Real Property Tax Act* detailing the requirements for notifications. According to the Department, properties are generally considered for property tax sale after the account has had tax overdue for four years or more and if the account balance exceeds \$500.

**4.21** Further, according to section 8 of the *Real Property Tax Act*, each person in whose name real property is assessed shall pay the taxes and any penalties on that property. Per section 25, a person who violates or fails to comply commits a category E offence punishable under the *Provincial Offences Procedure Act*. Legal consequences

under the *Provincial Offenses Procedure Act* include the imposition of fines and potential incarceration.

***The Department does not have documented policies related to the use of Provincial Offenses Procedure Act in collection of property tax***

**4.22** The Department does not have documented policies related to the use of section 25 of the *Real Property Tax Act*. As such, it is unclear under what circumstances it would bring charges or levy a fine under the *Provincial Offenses Procedure Act* against an individual. The Department indicated, in its view, the penalty rate applied to overdue tax is sufficiently punitive. As such, the Department has not used its authority under this section of the Act in recent history.

**4.23** *New Brunswick Regulation 84-210* under the *Real Property Tax Act* determines the penalty rate and how it is applied. Under the Regulation, penalties will be payable beginning in the month after 85 days has passed from the date the assessment and tax notice was mailed. This means that, starting June 1, penalties will be charged at a rate of 0.7591% per month compounded monthly or 9.5% per year. Prior to March 31, 2013, the annual rate was 13.5%.

**4.24** Finally, unpaid taxes and penalties constitute a lien on the real property in respect of which taxes are imposed. The lien is held by the Province and does not require registration or filing and has priority over any other claim against the property. If the property is sold, the sum of liens imposed under the *Real Property Tax Act* constitute a first charge on the proceeds of sale.

***The Department has a 99.1% collections rate***

**4.25** We calculated that the Province had an average net collections rate of 99.1% for the six-year period from fiscal 2012/13 through 2017/18. This means that a significant majority of New Brunswick property tax is paid within one year. This also means that, during the same six-year period, \$53 million was either forgiven or contributed to the increase in overdue taxes. We attempted to compare this result with other jurisdictions, however, this was difficult as New Brunswick's approach is unique. In most other provinces, municipalities typically are responsible for billing and collection of property tax.

***The Department does not track the impact of forgiven municipal property tax***

**4.26** We noted that the Department does not track the impact of forgiven municipal property tax. Municipal tax revenue is paid to municipalities by the Province in monthly payments and is not recovered from municipalities if the property owner does not pay.

***The Department is unable to resolve overdue property tax in a timely manner by selling properties for non-payment of property tax***

**4.27** At March 31, 2018, approximately 6,000 properties were eligible to be sold for non-payment of property tax, based on the eligibility criteria of four years overdue and amounts greater than \$500. The Department processes approximately 830 properties through property tax sales each year. Given it could take over seven years to process, and that more properties would meet eligibility criteria each year, the Department is unable to resolve overdue property tax in a timely manner using property tax sales, meaning potential revenue will remain uncollected. According to the Tax Commissioner, the Department lacks capacity to process more property tax sales.

**4.28** The property tax sale process requires several steps to complete. The Department indicated that it takes approximately 14 months for an individual property to proceed to property tax sale. As shown in Appendix III the *Real Property Tax Act* is prescriptive in this regard and outlines all communications and notifications that are required before proceeding with a sale. Initiating property tax sale often elicits a response from property owners and results in a payment plan to bring accounts current, which involves negotiation.

***The Department has not provided sufficient direction to SNB to guide the identification of property sale accounts***

**4.29** SNB informed us that the Department has not provided direction for identifying properties appropriate for property tax sale beyond the criteria of four years and \$500. However, it identifies properties that have property tax outstanding for the longest period and which have been deemed uncollectible. Given the Department's limited ability to process properties for tax sale, the selection process is critical for ensuring that it proceeds with the properties that will make the most impact while ensuring fairness. Also, consideration needs to be given to the circumstances of the property owner. Property tax sale is not appropriate where it is likely to cause undue harm or injustice, as in the case of causing homelessness. Further, in some instances property tax sale may not be practical, such as a property with diminished value due to environmental contamination.

**4.30** Property tax sale is the most powerful tool being utilized to resolve outstanding property tax accounts, however, its use as a collections tool should be viewed as a last resort. As such, it is imperative that the Department work with SNB to develop comprehensive criteria to prioritize which properties will proceed with tax sale. In this way, the Department can better ensure property tax sale is utilized where it is the most appropriate solution. The Department indicated it feels the emphasis should be placed on other initiatives to resolve outstanding property tax, such as the CRA set-off program.

*The Department does not actively manage the performance of SNB collections*

**4.31** We expected the Department would have metrics reflecting SNB's performance in terms of progress contacting taxpayers with overdue property tax, how many accounts are identified as uncollectable as well as progress on initiatives to improve the overall effectiveness of collections. We found no such metrics were in place.

*SNB does not report back to the Department with Key Performance Indicators*

**4.32** We noted the service agreement between the Department and SNB states that SNB is committed to establishing Key Performance Indicators (KPIs) and encouraging a culture of continuous improvement. However, SNB is not reporting back to the Department with KPIs to demonstrate the effectiveness of its collections efforts.

**4.33** The current service agreement has been in place since April 2016. However, in the Report of the Auditor General of New Brunswick 2018, Volume III, we noted that collections of overdue property tax transitioned to the collections branch formerly under New Brunswick Internal Services Agency in January 2014. We also highlighted issues related to centralizing the collections of accounts receivable under SNB, including a lack of clear direction or mandate, inconsistent processes and resource challenges. We pointed out that, after a seven-year effort, the project to centralize accounts receivable collections is still incomplete. A lack of clear direction of roles and responsibilities of SNB has contributed to decreasing the effectiveness of collections.

*Recommendations*

**4.34** We recommend the Department of Finance develop a policy for its use of section 25 of the *Real Property Tax Act* to improve collections of overdue property tax. This section states that a person in whose name real property is assessed, who fails to pay the taxes on that real

**property, commits an offence punishable under part II of the *Provincial Offences Procedure Act*.**

**4.35 We recommend the Department of Finance calculate and track the impact of forgiven municipal property tax on the Province's expenses.**

**4.36 We recommend the Department of Finance:**

- **clarify performance expectations of Service New Brunswick in collecting overdue property tax; and**
- **monitor Service New Brunswick's performance against pre-defined performance indicators and targets.**

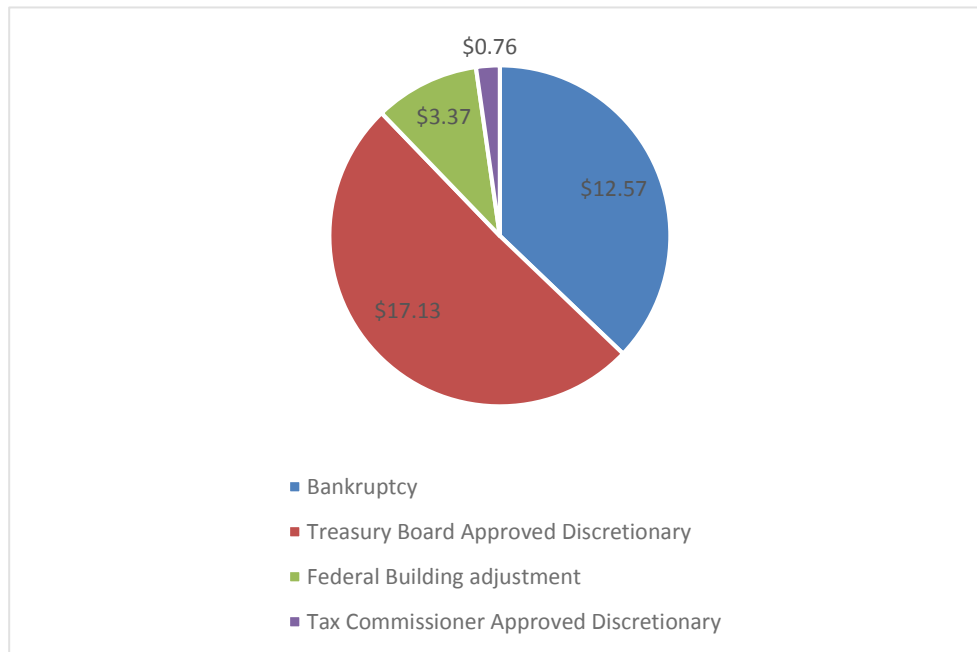
## Property Tax Forgiveness

**4.37** The *Financial Administration Act* provides authority to the Department of Finance for the forgiveness of taxes outstanding. The Act provides authority to the Minister of Finance, and the Minister has delegated that authority to the Provincial Tax Commissioner. As such, the Provincial Tax Commissioner may forgive property tax debt under the following circumstances:

- bankruptcy of the taxpayer [provincial portion];
- property account number is terminated;
- Minister of Finance purchases the property at a tax sale;
- property is assessed in the name of the Province; or
- the total amount to be forgiven does not exceed \$25,000 and the Provincial Tax Commissioner considers it in the public interest to do so or considers that hardship or injustice has resulted or is likely to result.

Exhibit 4.5 - Property tax and penalty forgiveness 2012/13 through 2017/18 (\$ millions)

## Property tax and penalty forgiveness 2012/13 through 2017/18 (\$ millions)



Source: Chart prepared by AGNB from information provided by Department of Finance

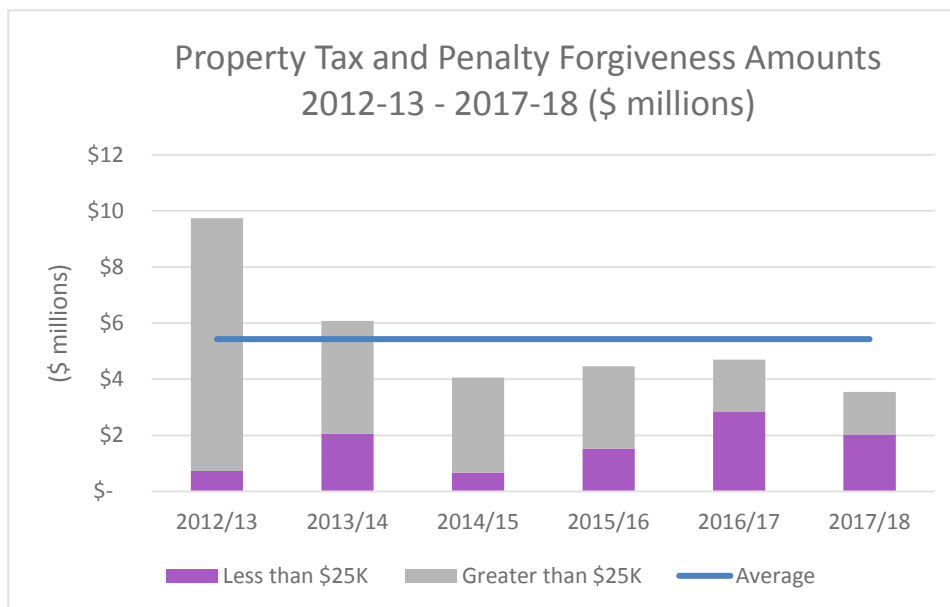
**Over \$30 million in property tax and penalties forgiven in six years**

**4.38** Any forgiveness of property tax and penalties which does not satisfy the conditions outlined in paragraph 4.37 needs to be approved by Treasury Board. Exhibit 4.5 shows total debt forgiveness during fiscal years 2012/13 through 2017/18. In total, over \$30 million in property taxes and penalties were forgiven during the six-year period. This total includes discretionary forgiveness as well as non-discretionary. Discretionary forgiveness included \$17.13 million in forgiveness approved by Treasury Board. As well, \$760,000 forgiveness was at the discretion of the Tax Commissioner, including small balances adjustments and error corrections. Non-discretionary forgiveness included \$12.57 million related to property owners who filed for bankruptcy.

**4.39** \$3.37 million from Exhibit 4.5 is a change in estimate related to a reconciliation of taxes levied against Federal properties in the Province and transfers received in lieu of tax from the Government of Canada. Under Section 125 of the *Constitution Act*, the Government of Canada is exempt from paying any taxes levied by local and provincial levels of government. The Government of Canada does, however, submit payment in lieu of property tax to the Province. Each year, the Province adjusts the difference between

what is billed in the property tax system and what the Government of Canada pays.

Exhibit 4.6 – Property Tax and Penalty Forgiveness Amounts 2012-13 – 2017-18 (\$ millions)



Source: Chart prepared by AGNB from information provided by Department of Finance

***On average, \$5.4 million per year of overdue property tax and penalties have been forgiven since 2012/13***

**4.40** Exhibit 4.6 shows property tax and penalty forgiveness averaged \$5.4 million per year during the audit period. We separated forgiveness amounts by the threshold of \$25,000 because any discretionary adjustments above this threshold would require Treasury Board approval. In fiscal years 2012/13 and 2013/14 forgiveness totals were above average.

**4.41** In 2012, one property account had a \$ 7 million reduction in taxes and penalties payable. This stemmed from a unique circumstance involving an agreement between the City of Fredericton and a not for profit organization dating back to the 1960's. The agreement exempted the property owners in question from paying property tax and, when the Province assumed responsibility for property tax billing, it was unclear whether the agreement should be upheld. Under current tax rules, however, the property is not subject to provincial property tax. The dispute was resolved by Treasury Board decision in 2012, resulting in forgiveness of decades worth of previously accumulated tax and penalties.

**4.42** In December 2013, the Department initiated the Account Reconciliation Program (ARP). Under ARP, property owners could apply for forgiveness of penalties on



their property accounts on the condition that they pay taxes owing. According to the Department, this one-time initiative resulted in payment arrangements worth \$15 million in overdue property tax and resulted in the forgiveness of \$1.6 million.

***The Department of Finance does not have documented policies and procedures for the use of discretionary forgiveness***

**4.43** We expected the Department of Finance to have documented policies and procedures to describe under what circumstances forgiveness of property tax is appropriate. We found no such policies and procedures are in place to guide the Tax Commissioner in exercising his authority. Without such policies and procedures, eligibility for debt forgiveness is not explicit and forgiveness may be awarded in an inconsistent and inequitable manner.

***We noted six instances where forgiveness transactions were processed twice in error***

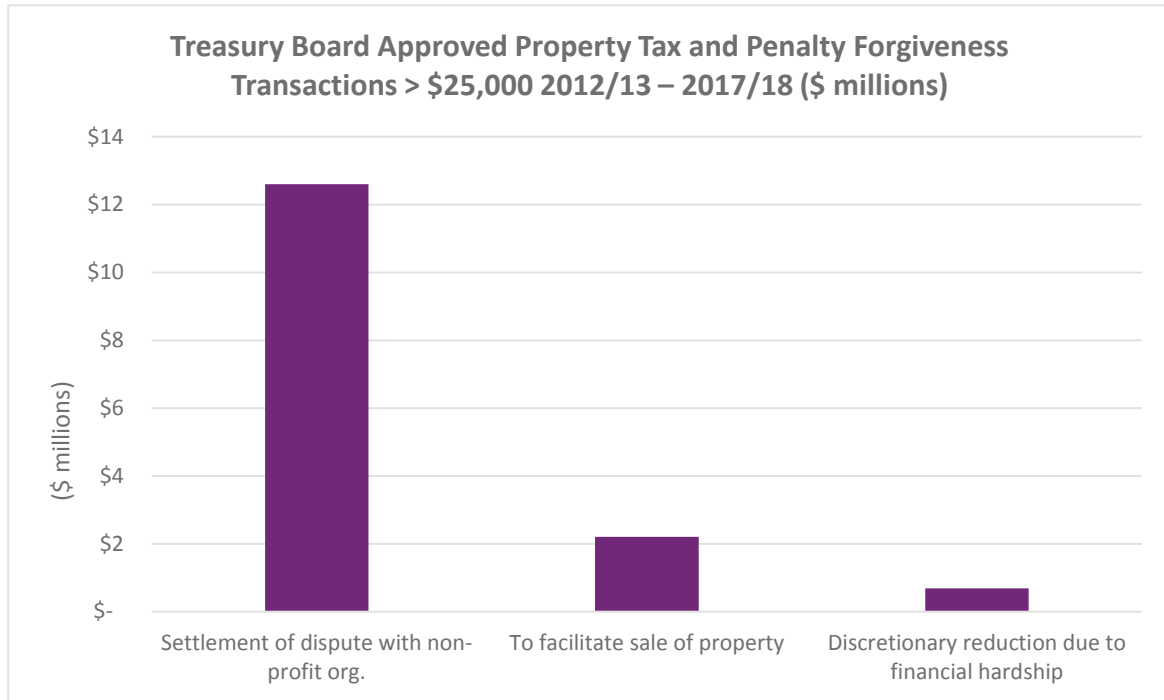
**4.44** We tested a sample of property accounts where the transaction value was less than \$25,000. Of the 30 accounts tested, we found six for which the Department had processed bankruptcy claims twice in error. The total of duplicate entries was approximately \$2,500. While the total dollar value of these transactions was low, processing these claims twice allowed double the benefit intended to these particular property tax accounts.

***The Department did not have control mechanisms to detect errors***

**4.45** We found the Department did not have control mechanisms in place to detect such errors. Further, the Office of the Comptroller had not performed recurring internal audits to ensure system controls are functioning within the Department. As such, the Department was not aware of the duplication issue. The Department provided an explanation that the duplication was in part due to a backlog of bankruptcy transactions related to a migration to new software, stating: “During the course of entering the backlog there were a couple of cases of duplication of write offs that weren’t noticed.” The Department indicated that recent changes to their processes will prevent similar duplication in the future. We provided the Department with our analysis which identified the duplication issue and it intends to investigate whether any further duplicate transactions exist.

***The Department had not received recurring internal audits to ensure system controls are functioning***

Exhibit 4.7 - Treasury Board Approved Property Tax and Penalty Forgiveness Transactions > \$25,000 2012/13 – 2017/18 (\$ millions)



Source: Information provided by the Department

***Non-profit organizations accounted for \$12.6 million, 39% of government approved forgiveness***

**4.46** We reviewed a sample of Treasury Board approved forgiveness. Of the 13 approvals we reviewed four involved settlement of tax disputes with non-profit organizations. Totalling \$12.6 million, these four settlements alone represent 39% of the total value of property tax and penalty forgiveness during the period audited. Seven of the 13 approvals were to facilitate the sale of commercial property, totalling \$2.21 million. This involved commercial property no longer in use and prospective buyers submitted a plan for redeveloping and utilizing the parcels of land. In these cases, the proceeds of sale would reduce the taxes owing and any remaining taxes and penalties were forgiven.

***Property tax and penalties forgiven in response to proposals from taxpayers due to financial hardship***

**4.47** In two cases, Treasury Board approved forgiveness in response to proposals received from commercial taxpayers totalling \$680,000. In these cases, consideration was given to significant financial hardship, economic conditions and in recognition of efforts to pay down tax owing. Without policies and procedures in place for the use of discretionary forgiveness, such transactions are considered based on their individual merit. These cases highlight the need for defined criteria of eligibility for property tax forgiveness.

**4.48** Currently, proposals are received by the Department and are evaluated by the Tax Commissioner. Based on the facts of each individual case, the Tax Commissioner either rejects the proposal or prepares options with a recommendation to Treasury Board for approval. The Tax Commissioner has authority to approve forgiveness transactions of \$25,000 or less without Treasury Board approval.

***The Department did not respond to 2014 Treasury Board directive to review the Real Property Tax Act***

**4.49** As part of our review of properties with forgiveness transactions greater than \$25,000, we obtained records of Treasury Board approvals of property tax and penalty forgiveness. We noted that, on February 11, 2014, Treasury Board directed the Department to “review the *Real Property Tax Act* to explore potential options in order to recover unpaid property taxes in similar situations in the future”<sup>1</sup>. We asked the Department for its response to this directive and found it had not prepared one.

**4.50** The Department indicated it did not respond to the directive because responsibility for collections had shifted to SNB and various centralized collection models were being reviewed and considered at that time. The *Real Property Tax Act*, however, clearly states that the Minister of Finance is responsible for collections of property tax. In our view, delegating the collections process does not absolve the Department of its responsibility.

***Recommendations***

**4.51** We recommend the Department of Finance set detailed eligibility criteria for property tax forgiveness to ensure consistency of forgiveness decisions.

**4.52** We recommend the Department of Finance request the Office of the Comptroller internal audit group perform periodic reviews of system controls.

**4.53** We recommend the Department of Finance consult with Treasury Board to determine whether the 2014 directive to review the *Real Property Tax Act* is still appropriate.

---

<sup>1</sup> BOM minute 14.0013 dated February 11, 2014

## Appendix I – Audit Objectives and Criteria

---

The objective and criteria for our audit of the Department of Finance property tax forgiveness are presented below. The Department of Finance Tax Commissioner and senior management reviewed and agreed with the objective and associated criteria.

<b>Objective 1</b>	To determine if the Department of Finance collects overdue property tax in accordance with the <i>Real Property Tax Act</i>
Criterion 1	Property Tax Collections processes should align with the <i>Real Property Tax Act</i>
Criterion 2	The Department of Finance should monitor collections of overdue property tax by Service New Brunswick, in accordance with predetermined performance expectations
<b>Objective 2</b>	To determine if the Department of Finance makes property tax forgiveness decisions or recommendations in accordance with applicable policies and legislation
Criterion 1	The Department of Finance should have documented policies and procedures for property tax forgiveness which align with the <i>Financial Administration Act</i>
Criterion 2	The Department of Finance should document the rationale for each discretionary property tax forgiveness decision
Criterion 3	The Department of Finance should evaluate all collections options before overdue property tax is considered for forgiveness

---

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

---

## **Appendix II – About the Audit**

---

This independent assurance report was prepared by the Office of the Auditor General of New Brunswick on the Department of Finance on property tax collections and forgiveness practices. Our responsibility was to provide objective information, advice, and assurance to assist the Legislative Assembly in its scrutiny of the Department of Finance on property tax collections and forgiveness practices.

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

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

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

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

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

### **Period covered by the audit:**

The audit covered the period between April 1, 2012 and March 31, 2018. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

### **Date of the report:**

We obtained sufficient and appropriate audit evidence on which to base our conclusion on May 31, 2019, in Fredericton, New Brunswick.

### **Subsequent Event:**

At the time of our work, the Department was known as the Department of Finance. Subsequently, the New Brunswick government announced its intent to merge the Department of Finance and the Treasury Board into one combined department.

### Appendix III – Excerpts from *Real Property Tax Act*

The following excerpt was taken from the *Real Property Tax Act*. Section 12 of the *Real Property Tax Act* details the requirements for communications and notifications before proceeding with a property tax sale.

12(1) Repealed: 2010, c.2, s.8

12(1.001) Repealed: 2010, c.2, s.8

12(1.01) Repealed: 2010, c.2, s.8

12(1.02) The Minister shall not send a notice under subsection (2) unless penalties have been added to the taxes imposed in the last assessment and tax notice sent under subsection 7(2).

12(1.03) Repealed: 2010, c.2, s.8

12(1.04) Repealed: 2010, c.2, s.8

12(1.05) Repealed: 2010, c.2, s.8

12(1.06) Repealed: 2010, c.2, s.8

12(1.1) Where taxes or penalties on real property registered under the farm land identification program are due and unpaid two months after the sending of the notice under subsection (2), the Minister may at any time after that date, after consultation with the Minister of Agriculture, Aquaculture and Fisheries and in accordance with the regulations, cause the deregistration of the real property under the program.

12(1.2) Subsection 5(7) applies, with the necessary modifications, in respect of real property that ceases to be registered under the farm land identification program in accordance with subsection (1.1).

12(2) Subject to subsection (20), where taxes or penalties on real property are due and unpaid on the first day of January in the year following the year in which the taxes were imposed, the Minister shall, on or after that date, mail a notice to the following persons stating that the real property will be sold in accordance with the regulations:

- (a) the person in whose name the real property is assessed; and
- (b) the owner of the real property, if the real property was assessed under subsection 14(7.3) of the *Assessment Act*.

12(2.1) A notice mailed to a person under subsection (2) shall be deemed to have been received by the person to whom it was addressed not later than the fifth day after the day of mailing.

12(2.2) Proof of the mailing of a notice under subsection (2) may be made by a certificate purporting to be signed by the Minister naming the person to whom the notice was mailed and specifying the time, place and manner of the mailing of the notice.

12(2.3) A document that purports to be a certificate of the Minister under subsection (2.2) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated in the notice without proof of the appointment, signature or authority of the Minister.

12(3) Subject to subsection (5), where taxes or penalties on real property are due and unpaid one month after the mailing of the notice under paragraph (2)(a) or (b), whichever is the later, the Minister shall, on or after the expiration of that month, serve

- (a) the person in whose name the real property is assessed, and
- (b) the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*,

with a notice stating that the real property will be sold and may at any time after the service of the notice or notices or after the posting and publication of an Expression of Interest Notice, as the case may be, institute proceedings to sell the real property in accordance with this Act and the regulations.

**12(3.1)** Service of a notice under subsection (3) shall be effected by

(a) personal service in accordance with the Rules of Court if the mailing address of the person in whose name the real property is assessed is in New Brunswick, or

(b) registered mail if the mailing address of the person in whose name the real property is assessed is outside New Brunswick.

**12(3.2)** A notice served on a person under subsection (3) by registered mail shall be deemed to have been received by the person to whom it was addressed not later than the fifth day after the day of mailing.

**12(3.3)** Proof of the serving of a notice under subsection (3) by registered mail may be made by a certificate purporting to be signed by the Minister naming the person on whom the notice was served and specifying the time, place and manner of the serving of the notice.

**12(3.4)** A document that purports to be a certificate of the Minister under subsection (3.3) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated therein without proof of the appointment, signature or authority of the Minister.

**12(3.5)** If the Minister is not able to serve the notice referred to in subsection (3) by personal service under paragraph (3.1)(a) because the person in whose name the real property is assessed or the owner of the real property cannot be found or dies intestate or if the Minister determines that all reasonable efforts to personally serve the notice under subsection (3) have been exhausted, the Minister shall post an Expression of Interest Notice on the real property for six consecutive weeks and publish it in accordance with subsection (3.7).

**12(3.6)** An Expression of Interest Notice shall contain the following information:

- (a) a statement indicating that the Minister is interested in locating any of the following persons:
  - (i) the person in whose name the real property was last assessed;
  - (ii) the owner of the real property, if the real property was assessed under subsection 14(7.3) of the *Assessment Act*;
  - (iii) the executor or administrator of the owner of the real property; or
  - (iv) the attorney appointed by a power of attorney of the owner of the real property;
- (b) the name of the person in whose name the real property was last assessed;
- (c) the location and description of the real property as set out in the assessment and tax roll;
  - (d) the property account number by which the real property is identified on the assessment and taxation roll; and
- (e) the property identification number.

**12(3.7)** An Expression of Interest Notice shall be published

- (a) at least once in each of two consecutive weeks in a newspaper having general circulation in the area where the real property is located,
- (b) in one regular issue of *The Royal Gazette*, and
- (c) for six consecutive weeks on the website of the Department of Finance.

**12(3.8)** Proof of the posting and publication of an Expression of Interest Notice under subsection (3.5) may be made by a certificate purporting to be signed by the Minister specifying the location and description of the real property on which the notice was posted, the date of posting and the particulars of the publication of the notice.

**12(3.9)** A document that purports to be a certificate of the Minister under subsection (3.8) may be adduced in evidence in any court and when so adduced is, in the absence of evidence to the contrary, proof of the facts stated in it without proof of the appointment, signature or authority of the Minister.

**12(4)** No sale of real property is to be held under this Act unless notice thereof containing

- (a) the time, date and place of sale,
- (b) the name of the person in whose name the real property was last assessed,
- (b.1) the name of the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*,
- (c) the location and description of the real property as set out in the assessment and tax roll, and
- (d) Repealed: 2014, c.17, s.3
- (e) the property account number by which the real property is identified on the assessment and tax roll

has been published

- (f) at least once in each of two consecutive weeks in a newspaper having general circulation in the area where the real property is located, and
- (g) in one regular issue of *The Royal Gazette*.

**12(4.001)** The Minister may publish on the website of the Department of Finance a notice of the sale of real property.

**12(4.01)** Where a notice in respect of real property has been served under subsection (3), whether before or after the commencement of this subsection, but no sale of the real property as a result of that notice has been held, and where the taxes and penalties referred to in any notice mailed under subsection (2), whether mailed before or after that notice served under subsection (3), or any portion of them, remain due and unpaid, the Minister may at any time, without further notices under subsections (2) and (3), proceed with the sale of the real property by giving notice as required under subsection (4).

**12(4.1)** Where notice has been given under subsection (4), the Minister may, at any time prior to the sale of the real property under subsection (3), postpone the sale, but the liens on the real property under subsections 11(1), (1.01), (1.1) and (1.2) shall not be discharged by such postponement.

**12(4.2)** Where a sale has been postponed under subsection (4.1), the Minister may at any time reinstitute proceedings to sell the real property by giving notice as required under subsection (4) and the sale may proceed in accordance with this Act and the regulations.

**12(4.3)** If a sale referred to in subsection (4.01), (4.02) or (4.2) is held, all taxes and penalties on the real property in respect of which the sale is held that are due and unpaid on the date of the sale, shall be recovered from the proceeds of that sale without further notices under subsections (2), (3) and (3.5).

**12(5)** Where taxes and penalties mentioned in subsection (3) or, in respect of real property referred to in subsection (4.01), (4.02) or (4.2), taxes and penalties on the real property that are due and unpaid immediately before payment under this subsection, any amount of payments under subsection 5(13) and any interest on that amount under subsection 5(15) that are due and unpaid and all costs of any sale proceedings to the date of payment are paid to the Minister at any time prior to the sale under subsection (3), the sale is not to be held.



**12(5.1)** The Minister may enter into an agreement with any person to carry out on behalf of the Minister any proceedings in relation to the sale of real property under this section.

**12(5.2)** Subject to subsection (5.3), a person who has entered into an agreement under subsection (5.1) shall carry out any proceedings in relation to the sale of real property under this section in accordance with the agreement, this Act and the regulations and this Act and the regulations apply with the necessary modifications to such proceedings.

**12(5.3)** Where there is a conflict between an agreement under subsection (5.1) and this Act and the regulations, this Act and the regulations prevail.

**12(5.4)** The Minister may terminate an agreement under subsection (5.1) if the person who entered into the agreement with the Minister does not carry out any proceedings in relation to the sale of real property under this section in accordance with the agreement, this Act or the regulations.

**12(5.5)** The Minister may publish, in a newspaper having general circulation in the area where the real property to be sold is located, a notice indicating that a person who has entered into an agreement under subsection (5.1) will be carrying out the sale of the real property and the notice may contain the name of the person in whose name the real property was last assessed, the name of the owner of the real property, if the real property was assessed pursuant to subsection 14(7.3) of the *Assessment Act*, and the location and description of the real property as set out in the assessment and tax roll.

**12(5.6)** A person who has entered into an agreement under subsection (5.1) shall not sell real property for less than the total of

- (a) the costs associated with the tax sale proceedings;
  - (b) subject to subsection (20), all taxes and penalties due and unpaid,
    - (b.1) the amount of payments under subsection 5(13) and any interest on that amount under subsection 5(15) that are due and unpaid, and
  - (c) unpaid taxes imposed on the real property before January 1, 1967.

**12(5.7)** The Minister is discharged of any responsibility and liability in respect of any matter relating to the sale of real property for which an agreement has been entered into under subsection (5.1).

**12(6)** When the real property is sold under this section, the Minister shall deliver to the purchaser at the sale a certificate in the form prescribed by regulation describing the real property and the sum for which it was sold.

**12(7)** The Minister shall maintain in his records a duplicate of the certificate mentioned in subsection (6) and any person may inspect the certificate during business hours.

**12(8)** Within thirty days of any sale under this section the Minister shall file a duplicate of the certificate mentioned in subsection (6) with the registrar of deeds of the county in which the real property lies.

**12(9)** On receipt of the certificate mentioned in sub-section (6) the purchaser is the owner of the real property described therein so far as is necessary to enable him to protect the real property until the expiration of the redemption period under section 13, and may collect rents on the real property and use it but shall not commit waste.

**12(10)** The purchaser is not liable for damage done to the real property without his knowledge during the time the certificate is in force.

**12(11)** All money received as the proceeds of any sale of real property under this Act is to be disbursed in the following order or priority:

- (a) first, in payment of the costs associated with the tax sale proceedings;
- (b) second, in pro rata payment of all
  - (i) subject to subsection (20), tax arrears and penalties,

(i.1) debt remaining unpaid with respect to the amount of the payments under subsection 5(13) and any interest on that amount payable under subsection 5(15), and

(ii) Repealed: 1982, c.56, s.9

(iii) unpaid taxes imposed on the real property prior to January 1, 1967; and

(iv) third, to the person in whose name the real property is assessed.

**12(12)** Where, in relation to the disbursement of money under paragraph (11)(c), there are adverse claimants, the whereabouts of the person in whose name the real property is assessed is unknown or there is, in the opinion of the Minister, no person capable of giving and authorized to give a valid discharge, the Minister may, without an order, pay the money into The Court of Queen's Bench of New Brunswick.

**12(13)** Where the Minister pays money into The Court of Queen's Bench of New Brunswick under subsection (12), the Minister is discharged of the Minister's responsibilities under paragraph (11)(c) and the money shall be dealt with as The Court of Queen's Bench of New Brunswick may order on application by any person claiming an interest in the money.

**12(14)** Notwithstanding subsection (12), money received as the proceeds of any sale of real property under this Act that is required to be disbursed in accordance with paragraph (11)(c) but has not been so disbursed within five years after the date of the sale and has not been paid into The Court of Queen's Bench of New Brunswick under subsection (12) shall, subject to subsections (15) and (16), be forfeited to the Crown in right

**12(15)** In any case in which the money subject to forfeiture under subsection (14) exceeds the amount prescribed by regulation, that money shall not be forfeited to the Crown in right of the Province under that subsection unless notice of the intended forfeiture has been published

(a) at least once in a newspaper having general circulation in the area where the real property is located, and

(b) in one regular issue of *The Royal Gazette*.

**12(16)** If within thirty days after notice has been published under subsection (15) an application is made to the Minister by a person claiming an interest in money referred to in that notice, the Minister shall

(a) if satisfied that the person is entitled to the money, disburse the money to that person, or

(b) without an order, pay the money into The Court of Queen's Bench of New Brunswick.

**12(17)** Before money referred to in a notice published under subsection (15) is

(a) forfeited under subsection (14),

(b) disbursed in accordance with paragraph (16)(a), or

(c) paid into The Court of Queen's Bench of New Brunswick in accordance with paragraph (16)(b),

the Minister may deduct from that money the expenses incurred in respect of the publication of the notice.

**12(17.1)** Where the Minister pays money into The Court of Queen's Bench of New Brunswick under paragraph (16)(b), the Minister is discharged of any and all liability in respect of that money and the money shall be dealt with as The Court of Queen's Bench of New Brunswick may order on application by any person claiming an interest in the money.

**12(18)** Where money is forfeited to the Crown in right of the Province under subsection (14), the Minister is discharged of any and all liability in respect of that money.

**12(19)** No interest is payable on money paid to a person under paragraph (11)(c) or (16)(a) or paid into The Court of Queen's Bench of New Brunswick under subsection (12) or paragraph (16)(b).

**12(20)** Subsection (2), paragraph (5.6)(b) and subparagraph (11)(b)(i) do not apply to the tax imposed by a municipality under paragraph 5(2)(a) or the tax imposed by a rural community under paragraph 5(2)(a.1) and the penalties on such taxes unless the Minister approved a request by the municipality or rural community under section 12.1 or 12.2, as the case may be, before a tax sale proceeding was instituted under this section.

1966, c.151, s.12; 1969, c.67, s.2; 1972, c.60, s.2; 1980, c.46, s.2; 1982, c.56, s.9; 1983, c.76, s.3; 1986, c.68, s.4; 1987, c.51, s.1; 1989, c.35, s.2; 1990, c.52, s.1; 1993, c.11, s.7; 1994, c.43, s.1; 1996, c.25, s.31; 1996, c.46, s.9; 1998, c.16, s.4; 1999, c.34, s.1; 2000, c.26, s.257; 2000, c.20, s.3; 2004, c.28, s.2; 2007, c.10, s.83; 2010, c.2, s.8; 2010, c.31, s.117; 2014, c.17, s.3,

**12.1(1)** Section 12 does not apply to the tax imposed by a municipality under paragraph 5(2)(a) and any penalties with respect to such tax where the municipality collects such tax and penalties under subsection 6(2).

**12.1(2)** Notwithstanding subsection (1), a municipality referred to in subsection (1) may request the Minister to institute any proceeding under section 12 for and on behalf of the municipality and upon approval of the request by the Minister and payment of such fee as the Minister considers appropriate, the Minister shall institute such proceeding for and on behalf of the municipality in accordance with section 12. 1996, c.46, s.10

**12.2** Section 12.1 applies with the necessary modifications to a rural community.

2010, c.2, s.9

# Chapter 5

## City of Saint John Funding Agreement – Special Review - Executive Council Office

### Contents

Chapter Summary.....	113
Key Findings and Observations Table.....	114
Recommendations and Responses.....	116
Introduction.....	120
Conclusions.....	120
Inadequate Decision Records and Documentation.....	125
Rushed Agreement Increased Taxpayer Risk.....	127
AG Concerns with Legislative Compliance.....	137
Appendix I – Excerpts from Former Premier’s Letter (December 2017).....	140



# City of Saint John Funding Agreement – Special Review - Executive Council Office

Report of the Auditor General - Volume I, Chapter 5 – June 2019  
One-Page Chapter Summary

---

## Why Is This Important?

- The Province of New Brunswick entered into a funding agreement with the City of Saint John to provide up to \$22.8 million to address the city's anticipated budget deficit.
- It is abnormal for the Province to provide financial assistance to address a municipal deficit, especially since municipalities are discouraged from operating with ongoing deficits.
- Provincial agreements must comply with legislation and include safeguards to minimize risk to taxpayers.

## Overall Conclusions

- The City of Saint John Funding Agreement constitutes excessive risk to New Brunswick taxpayers.
- Agreement terms created inappropriate incentive for city to report deficits to maximize funding.
- Other municipalities may be enticed to report deficits and seek financial relief from the Province.
- In our view, Agreement terms effectively circumvented the *Local Governance Act* meant to discourage ongoing municipal deficits.
- Legislative authority was not obtained before funding was provided.

## What We Found

### Excessive Risk to New Brunswick Taxpayers

- Province's financial assistance inappropriately dependent on City reporting a deficit
- Funding agreement did not include specific outcomes and set risky precedent for Province
- Government negotiators allowed removal of key agreement clauses protecting the Province
- No provincial analysis to confirm the City's 3-year anticipated budget deficit
- Report intended to solve long-term problems months overdue

### Agreement Rushed

- Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval
- Property Tax compensation paid before Agreement signed by Premier
- Rushed decisions resulted in several development and implementation issues
- Key Department (Environment and Local Government) not involved in decision making process or development of the Agreement
- Supporting documentation for decision inadequate and lacking in clarity
- News release containing agreement details made public before agreement finalized

### AG Concerns with Legislative Compliance

- In our view, Agreement circumvented *Local Governance Act* which discourages ongoing deficits
- No budget appropriation for Funding Agreement violates intent of *Financial Administration Act*

## Key Findings and Observations Table

### City of Saint John Funding Agreement – Special Review - Executive Council Office

Paragraph	Key Findings and Observations
	<b>Inadequate Decision Records and Documentation</b>
5.17	<i>Former Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval</i>
5.20	<i>Supporting documentation for decision inadequate and lacking in clarity</i>
5.26	<i>AGNB denied access to information</i>
5.28	<i>Potential Auditor General Act obstruction – evidence not provided</i>
5.30	<i>Poor record retention in Premier’s Office during government transition</i>
	<b>Rushed Agreement Increased Taxpayer Risk</b>
5.34	<i>City leveraged election timing to gain provincial support</i>
5.36	<i>Premier’s Office intricately involved in agreement negotiation and development</i>
5.37	<i>Agreement negotiated and developed over a two-month timeline</i>
5.42	<i>Financial assistance dependent on City reporting a deficit</i>
5.43	<i>Precedent setting funding agreement created risk for the Province</i>
5.46	<i>In our view, agreement effectively circumvented Local Governance Act</i>
5.47	<i>Rushed decisions resulted in several development and implementation issues</i>
5.48	<i>Government negotiators allowed removal of key agreement clauses protecting the Province’s interests</i>
5.55	<i>Key Department not involved in decision making process or development of the Agreement</i>
5.58	<i>Department of Environment and Local Government struggled to implement Agreement in 2018</i>
5.59	<i>Public communications in advance of agreement ratification</i>
5.61	<i>Errors in news release flagged by Department of Post-Secondary Education, Training and Labour</i>
5.65	<i>Regional Development Corporation made payments before agreement ratified</i>
5.68	<i>Key committee report not delivered as required</i>

*Key Findings and Observations Table (Continued)*

<b>Paragraph</b>	<b>Key Findings and Observations</b>
	<b>AG Concerns with Legislative Compliance</b>
5.72	<i>No supplementary estimates or budget appropriation to fund Agreement payment despite Cabinet direction to do so</i>
5.74	<i>No budget transfer prior to first payment</i>
5.83	<i>Treasury Board not compliant with the Financial Administration Act</i>
5.84	<i>Financial Administration Act requires modernization</i>

## Recommendations and Responses

Recommendation	Department's response	Target date for implementation
<b>City of Saint John Funding Agreement</b>		
<p><b>5.29 We recommend the Executive Council Office ensure funding decisions by Cabinet:</b></p> <ul style="list-style-type: none"> <li>• follow due process with proper approval by all relevant parties;</li> <li>• are justified by a documented business case, detailed financial analysis and clear rationale for critical decisions; and</li> <li>• are supported by a documented legal review prior to decisions being made.</li> </ul>	<p><i>The Executive Council Office will follow all due processes associated with the submission to Cabinet of requests for funding approval.</i></p>	<p><i>Immediate and ongoing</i></p>
<p><b>5.33 We recommend the Executive Council Office develop a records retention policy to ensure key records are maintained in the Premier's Office throughout government transitions.</b></p>	<p><i>The Department of Finance and Treasury Board, responsible for records management under the Archives Act, will ensure policies/protocols are in place to manage records during Government transitions</i></p>	<p><i>2019</i></p>



Recommendations and Responses (continued)

Recommendation	Department’s response	Target date for implementation
<p><b>5.54 We recommend the Executive Council Office/Treasury Board Secretariat ensures:</b></p> <ul style="list-style-type: none"> <li>• <b>funding agreements do not effectively override the spirit and intent of legislation, such as:</b> <ul style="list-style-type: none"> <li>○ <b>subsection 100(8) of the <i>Local Governance Act</i> discouraging ongoing deficits; and</b></li> <li>○ <b>the need for an appropriation in advance of expending provincial funds as per the <i>Financial Administration Act</i>;</b></li> </ul> </li> <li>• <b>a detailed risk analysis is completed when developing funding agreements and necessary clauses are included to address identified risks to the Province; including:</b> <ul style="list-style-type: none"> <li>○ <b>an appropriations clause based on legal advice to ensure proper budget authority is obtained; and</b></li> <li>○ <b>a clause requiring financial reports follow Public Sector Accounting Standards;</b></li> </ul> </li> <li>• <b>a sufficient multi-year appropriation is obtained to cover all legally committed funding over the life of the agreement.</b></li> </ul>	<p><i>The Executive Council Office and Department of Finance and Treasury Board will ensure that funding agreements are aligned with applicable legislative provisions; that best practice is employed with respect to analysis including due diligence and legal review; and that multi-year appropriations are considered where appropriate, recognizing that clauses in most agreements enable alterations to those agreements, including cancellation.</i></p>	<p><i>Immediate and ongoing.</i></p>

*Recommendations and Responses (continued)*

Recommendation	Department's response	Target date for implementation
<p><b>5.64 We recommend the Executive Council Office involve all relevant provincial entities when planning, developing and reviewing future contracts and agreements for Cabinet approval.</b></p>	<p><i>The Executive Council Office will ensure involvement by all relevant provincial entities for any contract or agreement which constitutes a formal submission to Cabinet.</i></p>	<p><i>Immediate and ongoing.</i></p>
<p><b>5.71 We recommend the Executive Council Office ensure agreements approved by Cabinet:</b></p> <ul style="list-style-type: none"> <li>• <b>are complete and authorized prior to making payments under the agreement;</b></li> <li>• <b>contain clauses to mitigate risk and protect the taxpayer;</b></li> <li>• <b>include clear, measurable deliverables;</b></li> <li>• <b>include monitoring mechanisms; and</b></li> <li>• <b>are monitored to ensure key deliverables, such as committee reports, are completed as required.</b></li> </ul>	<p><i>The Executive Council Office will ensure that contracts and agreements which take the form of submissions to Cabinet, are complete, authorized, identify clear measurable deliverables, and include monitoring mechanisms.</i></p> <p><i>NOTE: With respect to the reference to payments having been made prior to the Agreement being ratified (page 135 of the Auditor's Report and elsewhere), the current description is not reflective of actual process. A separate, and previous appropriation was made for all municipalities receiving funds related to the 2018 tax freeze. These funds were all issued simultaneously. The reference to these funds in the SJ funding Agreement is one of the various examples provided in relation to the former Government's support for the City, and does not constitute part of any financial commitment under the Agreement.</i></p>	<p><i>2019-2020</i></p>

Recommendations and Responses (continued)

Recommendation	Department’s response	Target date for implementation
<p><b>5.85 We recommend Treasury Board Secretariat/ provincial Comptroller review and update the <i>Financial Administration Act</i> to:</b></p> <ul style="list-style-type: none"> <li>• <b>modernize the Act with respect to payments, accruals and conformance with Public Sector Accounting Standards;</b></li> <li>• <b>increase clarity for key financial officers processing payments throughout government to know if proper budget authority exists; and</b></li> <li>• <b>provide for budget appropriations for multi-year agreements at the time in which funds are legally committed.</b></li> </ul>	<p><i>The Department of Finance and Treasury Board, Office of the Comptroller will undertake a review of the Financial Administration Act and make appropriate recommendations based on our findings.</i></p>	<p>2019-2020</p>

## Introduction

**5.1** The former Premier and the City of Saint John mayor signed a March 15, 2018 funding agreement providing up to \$22.8 million to the City of Saint John over a 3-year period to address the city’s anticipated budget deficit. The Province would also provide Saint John over \$1.2 million in compensation for the 2018 property assessment freeze while at the same time reducing the City of Saint John unconditional grant by \$3.6 million (17.91%).

## Why we reviewed the City of Saint John Funding Agreement

**5.2** The Auditor General chose to review this funding agreement due to potential:

- inherent risk to provincial taxpayers; and
- non-compliance with provincial Acts and regulations.

## Conclusions

**5.3** We have concluded the City of Saint John Funding Agreement constitutes excessive risk for taxpayers. The Agreement did not include specific outcomes to be achieved and as at the date of writing this report (April 2019), has failed to effectively address the City’s challenges or mitigate inherent risk to the Province. Should the City and the Province fail to address the current deficit situation within the Agreement’s three-year timeframe, the Province will again be faced with a serious financial problem in its second largest city.

**5.4** The Agreement provided funding based on the City’s anticipated deficit level, creating an inappropriate incentive for the City to incur deficits in order to maximize funding up to \$22.8 million. Further, this could set a precedent and provide an incentive to other municipalities in financial difficulty to report deficits and seek relief from the Province instead of addressing underlying challenges.

**5.5** Finally, we believe the Agreement circumvented requirements under the *Local Governance Act* discouraging municipalities from having ongoing operating deficits. Further, Treasury Board did not comply with the *Financial Administration Act* to ensure proper legislative authority through an Environment and Local Government budgetary appropriation before providing funding under the Agreement.

**Scope of Work**

- 5.6** Our work included:
- review of the City of Saint John Funding Agreement, City budget and planning documents, other supporting documentation; and
  - interviews with staff from various government departments and entities.
- 5.7** We requested all communications and documentation related to the Agreement from six government entities:
- Office of the Premier
  - Executive Council Office (ECO)
  - Office of the Attorney General (OAG)
  - Regional Development Corporation (RDC)
  - Department of Environment and Local Government (ELG)
  - Treasury Board (TB)
- 5.8** Our review led to findings categorized in three main topic areas:
- Inadequate Decision Records and Documentation;
  - Rushed Agreement Increased Taxpayer Risk; and
  - AG Concerns with Legislative Compliance.

**Background Information**

- 5.9** According to July 2017 media reports, the mayor of Saint John stated the City was in “*crisis*” and asked for a “*new deal*” with the Province to address the city’s challenging financial situation.<sup>1</sup> The City of Saint John was facing an anticipated budget deficit of approximately \$6 million in 2018 due to, among other things, population decline, a property tax assessment freeze and reductions in the Province’s unconditional grant to municipalities.

---

<sup>1</sup> Cromwell, Andrew. *Saint John Mayor says city is in ‘crisis’, demands new deal with province*. Global News. July 2017. <https://globalnews.ca/news/>

**5.10** According to a City of Saint John (City) document entitled *“Building a Sustainable Future for Saint John - 2018 Provincial Election White Paper”*, Saint John has the second largest municipal population in the Province at just over 67,500 in 2016. However, the *“population has declined by approximately 3% since 2011, and a staggering 24% since 1971”*,<sup>2</sup> one of several factors threatening the city’s economic and financial sustainability.

**5.11** In a July 2017 news article, the Saint John mayor stated a new deal was needed with the Province to address financial pressures faced by the City. He indicated the City was in *“crisis”* and *“the time to address our challenges is right now.”*<sup>3</sup>

**5.12** In September 2017 the former Premier pledged the Province would work with the City on a *“new deal.”*<sup>4</sup> The former Premier further committed to working with the City to address the city’s challenges in a December 8, 2017 letter to the Saint John mayor, stating:

*“We can begin by making investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year.”*

*“We want to work with you so you can avoid cuts to front-line services and you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John.”*<sup>5</sup>

Additional excerpts from this document are provided in Appendix I.

**5.13** A December 2017 City of Saint John news release stated *“...an estimated structural deficit of \$6-million in 2018, the situation is projected to escalate to \$14.4-million by 2022 if*

---

<sup>2</sup> *Building a Sustainable Future for Saint John - 2018 Provincial Election White Paper*. Saint John. Page 2. July 2018.

<sup>3</sup> Cromwell, Andrew. *Saint John Mayor says city is in ‘crisis’, demands new deal with province*. Global News. July 2017. <https://globalnews.ca/news/>

<sup>4</sup> *City of Saint John Funding Agreement*. Page 1. March 2018.

<sup>5</sup> *Province of NB.pdf*. Common Council Meeting Agenda Item 17.6 from Office of the Premier. City of Saint John website. <http://documents.saintjohn.ca/>

*immediate action is not taken*".<sup>6</sup> The 2018 City budget documents highlighted factors influencing the City's estimated \$6 million deficit in 2018, including:

- significant reduction in the unconditional grant provided by the Province (decreased by 17.91% or \$3.6 million in 2018);
- low tax base growth of 0.52% from 2013 to 2018 and a declining population;
- sustained decline in revenue growth (0.16% from 2013 to 2019);
- an infrastructure deficit estimated at \$433 million at the end of 2016; and
- highest municipal debt in the Province at \$206 million at the end of 2016 and expected to rise to \$235 million by the end of 2018.

**5.14** However, city council did pass a balanced 2018 operating budget on December 11, 2017. The deficit was reduced by including:

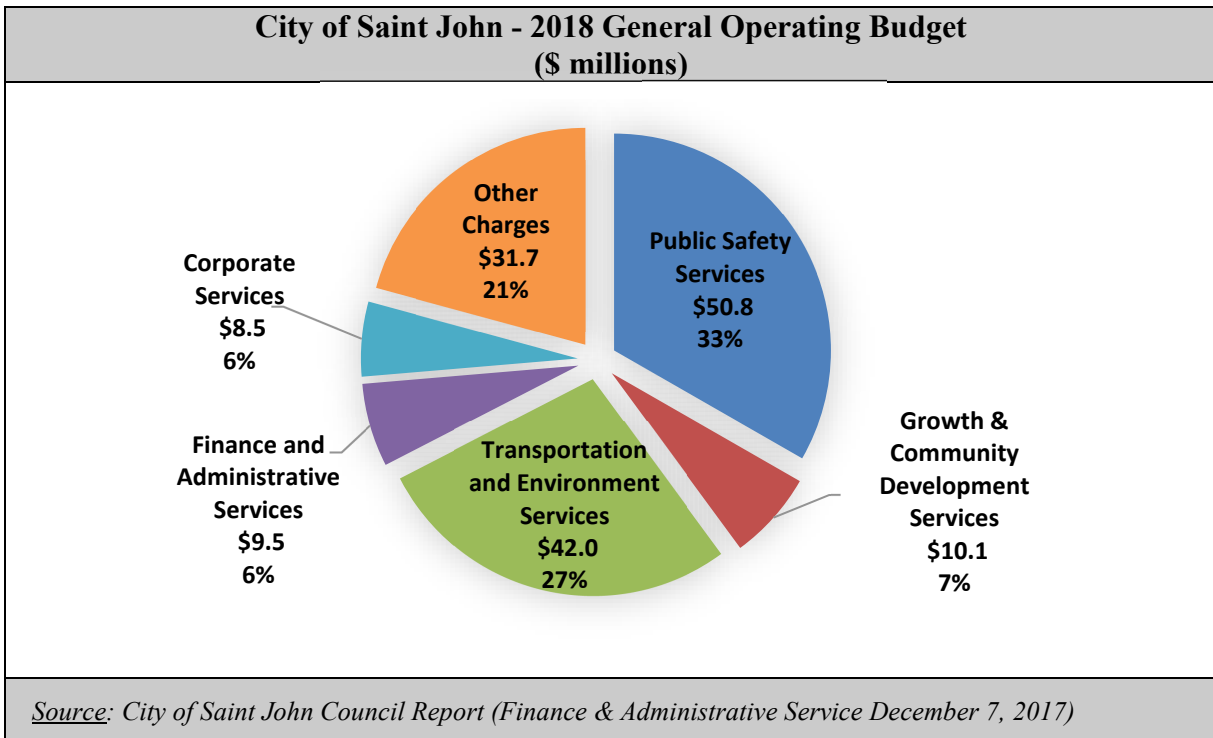
- \$3.5 million in adjustments to expected revenues and expenditures, part of which represented a reduction of \$2.5 million to front-line fire and police public safety services;
- \$1.2 million from the Province intended to counteract the provincially implemented 2018 property tax assessment freeze; and
- a carry-forward of the \$1.3 million 2016 surplus to the 2018 budget, as required under provincial legislation.

**5.15** Exhibit 5.1 presents the summarized 2018 City of Saint John budget. The Province was concerned with the social impact of the City's plan to reduce front-line services as part of the effort to reach the balanced budget shown below.

---

<sup>6</sup> Common Council. City of Saint John website.  
<http://www.saintjohn.ca/en/home/news/newsreleases/common-council-passes-2018-budget-and-sets-sights-.aspx>

Exhibit 5.1 - City of Saint John - 2018 General Operating Budget (\$ millions)



**5.16** As highlighted in Exhibit 5.1, Public Safety Services accounted for 33% of the budget total followed by Transportation and Environment Services at 27%. Among other planned adjustments to achieve a balanced budget, the City intended to reduce the Public Safety Services budget by \$2.5 million.



## Inadequate Decision Records and Documentation

**Former Premier appeared to guarantee assistance to Saint John before obtaining Cabinet approval**

**5.17** After pledging the Province would work with the City of Saint John (City) on a “*new deal*” in September 2017, the former Premier stated in his December 2017 letter to the City mayor “*you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John*”.

In addition, the 2017 letter stated “*We can begin by making investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year.*”

**5.18** We reviewed information from various sources but received no evidence of documented approval by Cabinet supporting the former Premier’s 2017 apparent guarantee until February 8, 2018 (two months later). Nor was there any provision or qualifier in the former Premier’s letter indicating his apparent guarantee was subject to Cabinet approval, departmental consultation, confirmation of legal, appropriation and budget authority.

**5.19** Although the agreement had significant implications on one of the province’s largest local governments, we found no evidence of consultation with the Department of Environment and Local Government in advance of Cabinet approval.

**Supporting documentation for decision inadequate and lacking in clarity**

**5.20** We expected the Province to have adequate decision support documentation, such as a business case with a detailed financial analysis, to substantiate Cabinet approval of an agreement providing up to \$22.8 million in funding.

**5.21** Instead, the only decision-support documents we were provided were dated February 7, 2018 and February 8, 2018. We found these were difficult to follow, lacked clarity and in our opinion did not include adequate analysis to support the final decision made by Cabinet.

**5.22** A key February 8, 2018 document recommended the Lieutenant-Governor in Council:

*“provide conditional repayable contributions up to \$22,800,000 to the City of Saint John, subject to the necessary supplemental estimate and appropriation being*

*made to the Department of Environment and Local Government budget;”*

**5.23** This was followed by a February 8, 2018 Order in Council approving funding to the City under the City of Saint John Funding Agreement (Agreement), only two months after the former Premier’s December 2017 letter.

**5.24** It appeared the development of the agreement and the approval process was rushed to alleviate the need for the City to avoid cuts to front-line services.

**5.25** We believe it is critical to take the time needed to ensure important decisions of this nature are considered in a well supported, rational manner. We further believe supporting documents should be clear, include adequate rationale, as well as financial analysis to support the dollars involved and provide decision-makers with assurance that recommended actions are well understood and supported by the responsible government officials.

**AGNB denied access to information**

**5.26** Documentation provided and interviews with various government officials suggested that legal advice was provided by the Office of the Attorney General (OAG) during development of the Agreement. However, we found no specific OAG documentation supporting this advice included in the information we were provided. For this reason, we requested all documentation and communications regarding the Agreement from OAG and were denied access.

**5.27** OAG responded to our request, stating “*all material in the files of the OAG related to this matter is subject to solicitor-client privilege.*” Because OAG would not provide any of the requested information, we were unable to verify the level of legal support the Province received to mitigate risk.

**Potential Auditor General Act obstruction – evidence not provided**

**5.28** During our work, we found evidence departments involved did not provide all documentation and communications requested. Although this may constitute an obstruction under the *Auditor General Act*, as at the time of this report, we have not addressed the potential obstruction but may do so at a later date. It is uncertain whether our findings and conclusions would be altered had we received this information.

- Recommendation**
- 5.29 We recommend the Executive Council Office ensure funding decisions by Cabinet:**
- follow due process with proper approval by all relevant parties;
  - are justified by a documented business case, detailed financial analysis and clear rationale for critical decisions; and
  - are supported by a documented legal review prior to decisions being made.
- Poor record retention in Premier’s Office during government transition**
- 5.30** We found the Office of the Premier did not maintain adequate records for review during a period of government change.
- 5.31** We requested all communications and documentation related to the Agreement from the Office of the Premier on October 30, 2018 and again on March 8, 2019. We followed up on our request directly with officials at ECO and the Office of the Premier but failed to obtain any relevant information.
- 5.32** We realize this was during a period of government transition but our expectation was that records would be retained to facilitate transparency, knowledge transfer and effective review of significant, ongoing files. We believe this is fundamental to effective governance.
- Recommendation**
- 5.33 We recommend the Executive Council Office develop a records retention policy to ensure key records are maintained in the Premier’s Office throughout government transitions.**

### Rushed Agreement Increased Taxpayer Risk

- City leveraged election timing to gain provincial support**
- 5.34** Our interviews with officials and review of documentation highlighted that the timing of the City’s efforts to gain provincial support to address their budget deficit was related to the upcoming provincial election.
- 5.35** While the former Premier had committed the Province’s support to the City in December 2017, the Agreement was not ratified until March 2018. The short period between these two events was devoted to negotiation and development of the official agreement.

**Premier’s Office intricately involved in agreement negotiation and development**

**5.36** RDC was given responsibility for negotiating and developing the terms and conditions for the Agreement. However, from our review of documentation and communications between RDC and the City, we found key staff in the Office of the Premier were intricately involved throughout negotiation and development of the Agreement.

**Agreement negotiated and developed over a two-month timeline**

**5.37** We could not identify the exact timeline for each stage of the Agreement development. However, our interviews and review of records suggest the process started in December of 2017. This meant the entire Agreement was negotiated, developed and approved over two months.

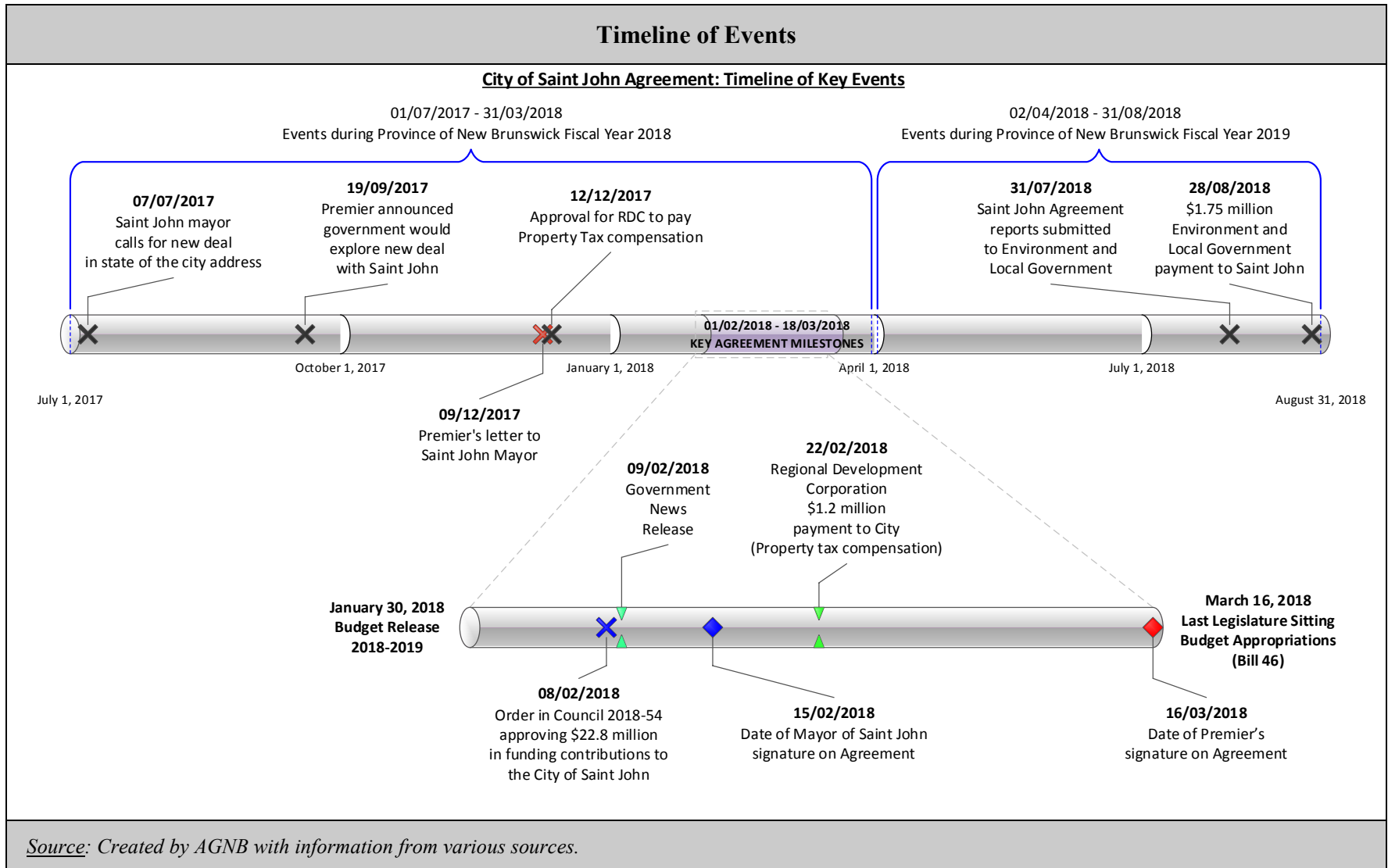
**5.38** A government news release on February 9, 2018 suggested the agreement was complete but we found the former Premier’s signature on the Agreement was dated March 15, 2018.

**5.39** Key terms and conditions of the final, signed Agreement included:

- City to limit impact on frontline services;
- City meets semi-annual and annual reporting requirements;
- operating surpluses, if any, to be repaid to the Province based on an agreed formula;
- semi-annual disbursement of funding; and
- establishment of a joint working committee to evaluate the success of the Agreement and “*review long term solutions deemed necessary to improve the fiscal conditions of the City.*” The committee would submit a report on or before January 1, 2019.

**5.40** Exhibit 5.2 provides a timeline of events related to the City of Saint John Funding Agreement.

Exhibit 5.2 - Timeline of Events



**5.41** Exhibit 5.2 highlights important dates and milestones related to development and design of the Agreement. Key events included:

- December 8, 2017 – Former Premier’s letter to City of Saint John mayor pledging government support.
- February 8, 2018 – Government decision documents approving a funding agreement with the City of Saint John.
- February 9, 2018 – Government news release and other news media announcing the Province and the City had reached an agreement.
- February 12, 2018 – City of Saint John council approves the Agreement.
- February 15, 2018 – City of Saint John Mayor signs the Agreement.
- February 22, 2018 – Regional Development Corporation completes property tax compensation payment to the City of Saint John and other local governments;
- March 15, 2018 – Date of former Premier’s signature on the Agreement.

**Financial assistance dependent on City reporting a deficit**

**5.42** Provincial funding provided to the City under the Agreement is based on the City’s annual anticipated operating deficit. When the Agreement was signed in 2018, anticipated deficits included in the Agreement were:

<b>Year</b>	<b>Anticipated Budget Deficit</b>	<b>Agreement funding</b>
2018	\$3,477,659	\$3,500,000
2019	8,912,315	8,900,000
2020	10,423,699	10,400,000
<b>Maximum</b>	<b>\$22,813,673</b>	<b>\$22,800,000</b>

According to the Agreement, annual funding is capped at the funding levels presented above. No funding would be disbursed in 2019 and 2020 if the deficit was eliminated.

We were surprised to learn there was no provincial analysis to confirm the City’s 3-year anticipated budget deficit.

**Precedent Setting funding agreement created risk for the Province**

**5.43** We believe financial assistance based on the City reporting a deficit creates inherent risk to the Province by:

- encouraging the City to report deficit numbers; and
- setting a precedent for other communities facing similar challenges in the future.

**5.44** Saint John considers their situation to be unique for the reasons identified in their 2018 budget documents and presented in the background section above. According to government representatives we interviewed, the Agreement is meant to respond to these unique circumstances.

**5.45** Providing funding to a municipality to address a projected, ongoing deficit could incite other communities to seek the same solution to financial issues. This precedent would represent additional increased risk for the Province as it faces pressure to address municipal deficits with similar actions.

**In our view, agreement effectively circumvented *Local Governance Act***

**5.46** Section 100(8) of the *Local Governance Act* (LGA) requires:

*“A local government having an audited general operating fund deficit at the end of a fiscal year shall debit the deficit against the fund for the second year following that fiscal year.”*

This section discourages New Brunswick municipalities from operating with ongoing deficits. In our view, the Agreement effectively circumvented the *Local Governance Act* as the Province agreed to fund the city’s deficit for three years. We believe agreements of this nature should respect the spirit and intent of provincial legislation.

**Rushed decisions resulting in several development and implementation issues**

**5.47** As noted above, timing of the City’s efforts to gain provincial support in addressing their budget deficit was related to the upcoming provincial election. We believe this contributed to rushed decisions resulting in development and implementation issues.

**Government negotiators allowed removal of key agreement clauses protecting the Province’s interests**

**5.48** Communications between the various parties revealed disagreement between the City and the Province on some key clauses within the agreement. City representatives appeared especially concerned with:

- terminology regarding accounting principles; and
- the Province’s inclusion of a clause requiring annual appropriations from the Legislative Assembly for funding approval.

***Clause requiring conformance to accounting standards changed***

**5.49** The City disagreed with a clause requiring the City to prepare all calculations and financial data to be submitted in accordance with Public Sector Accounting Standards. It was eventually changed to allow the City to prepare this information to *“conform with the budgeting principles established for New Brunswick Municipalities by the Department of Environment and Local Government.”*

**5.50** Neither ELG nor RDC could clearly explain why the City wanted this change. We did note an RDC communication identified concerns related to changing the clause. The RDC official wanted to ensure the City could not manipulate financial results impacting the size of the reported deficit and thereby affect the funding provided by the Province under the Agreement.

***Appropriations clause removed from Agreement***

**5.51** The City also disagreed with a clause added to the Agreement. The clause was based on legal advice provided to the Province. The clause stated the following:

*“Notwithstanding the Province’s obligation to make any payment under this Agreement, this obligation does not arise if, at the time when a payment under this Agreement becomes due the New Brunswick legislature has not passed an appropriation that is sufficient and constitutes legal authority for making the payment. The Province may reduce or terminate any payment under this Agreement in response to the reduction of Appropriations or departmental funding levels under which this Agreement was made.”*

**5.52** This clause meant the Province, regardless of the Agreement terms, would not be obligated to make a payment before obtaining legal legislative authority through a sufficient budget appropriation. Any reduction in the appropriation or departmental funding could also impact funding distributions under the Agreement.



**5.53** Section 24 of the *Financial Administration Act* (Act) states “...no payment is to be made out of the Consolidated Fund without the authority of the Legislature”. We believe the original clause supported this section of the Act and removing it represented increased risk to the Province.

**Recommendation**

**5.54** We recommend the Executive Council Office/Treasury Board Secretariat ensures:

- **funding agreements do not effectively override the spirit and intent of legislation, such as:**
  - **subsection 100(8) of the *Local Governance Act* discouraging ongoing deficits; and**
  - **the need for an appropriation in advance of expending provincial funds as per the *Financial Administration Act*;**
- **a detailed risk analysis is completed when developing funding agreements and necessary clauses are included to address identified risks to the Province; including:**
  - **an appropriations clause based on legal advice to ensure proper budget authority is obtained; and**
  - **a clause requiring financial reports follow Public Sector Accounting Standards;**
- **a sufficient multi-year appropriation is obtained to cover all legally committed funding over the life of the agreement.**

**Key Department not involved in decision making process or development of the Agreement**

**5.55** Senior ELG officials indicated the Department was not involved in the decision-making process approving the Agreement or in the development of the Agreement. Senior officials stated they were not aware the Department would be responsible for funding provisions under the final agreement before being copied on the February 8, 2018 final Cabinet decision.

**5.56** On February 9, 2018 the Executive Council Office provided senior Department personnel with an unsigned, incomplete version of the contract they would be required to implement and manage.

**5.57** Various staff communications we reviewed in late April 2018 between staff at TB and ELG highlight confusion regarding responsibility for the contract and how aspects of

the Agreement would be administered. Since the Agreement was signed by the former Premier in March 2018, by April 2018 we would have expected all required parties to have a sound understanding of the Agreement terms and conditions and their roles in administering the Agreement. This clearly was not the case.

**Department of Environment and Local Government struggled to implement Agreement in 2018**

**5.58** This lack of information and direction made it difficult for ELG to begin effectively managing the Agreement. The first \$1.75 million in funding was to be provided at the end of August 2018. In late July 2018 it was still verifying terms and conditions with the City and confirming the City’s June reporting requirements which were due July 31, 2018. In mid-August it was trying to determine how they would obtain the necessary budget authority to make the initial disbursement of funds at the end of the month.

**Public communications in advance of Agreement ratification**

**5.59** We also noted both parties to the Agreement publicly released information on the Agreement over a month in advance of it being finalized. The Province issued a February 9, 2018 news release before the City formally approved the Agreement in Council on February 12, 2018. The former Premier signed the Agreement on March 15, 2018.

**5.60** We believe it is important to ensure an agreement is legally ratified before publicly releasing contract details or undertaking funding disbursements. It is clear in this case both the Province and the City were motivated to publicly disclose the Agreement as soon as possible.

**Errors in News Release flagged by Department of Post-Secondary Education, Training and Labour**

**5.61** On February 11, 2018 a senior official from the Department of Post-Secondary Education, Training and Labour was concerned with the accuracy of information in the news release. The official contacted ECO, suggesting departments should have an opportunity to provide input on public communications before release.

**5.62** The official was concerned with two statements in the announcement:

- the first of which stated a “*guarantee that at least 25% of immigrants under the Atlantic Immigration Pilot Project*” would be “*attributed to employers in Saint John*”; and
- the other regarding the use of the Youth Employment Fund to aid Saint John, noting there were “*serious issues*”

*with the Youth Employment Fund numbers in the release”.*

The number referred to in the second bullet was a measure to “*Support private sector development opportunities and subsidize job placements in Saint John with an estimated \$273 million through the enhanced Youth Employment Fund...*”

**5.63** PETL was concerned with the details in the original February 9, 2018 news release by Corporate Communications in ECO. Information we reviewed showed PETL officials had no knowledge of how the estimated funding number was calculated and were questioning where the funding was coming from. The Province issued a revised release to address these issues on February 13, 2018

***Recommendation***

**5.64 We recommend the Executive Council Office involve all relevant provincial entities when planning, developing and reviewing future contracts and agreements for Cabinet approval.**

**Regional  
Development  
Corporation made  
payments before  
Agreement ratified**

**5.65** On February 22, 2018, RDC paid over \$1.2 million to the City of Saint John under the Agreement almost a month before the former Premier signed and the Agreement became effective. This was due to a December 2017 government decision to freeze property tax assessments for 2018.

**5.66** A total of \$2.4 million was paid to 42 municipalities in the Province as compensation for the 2018 property tax assessment freeze. The City of Saint John received approximately 51% of this amount.

**5.67** We believe it is important to ratify agreements before undertaking deliverables and actions required in the contracted terms and conditions. We believe draft agreements are working documents until fully ratified.

**Key committee report  
not delivered as  
required**

**5.68** Prior to completing our work on this report, we verified with ELG that a key working committee report due January 1, 2019 under the Agreement had not been completed.

**5.69** The joint working committee was established to evaluate the success of the Agreement and “*review long term solutions deemed necessary to improve the fiscal condition*”

of the City.”<sup>7</sup> The committee work is critical in developing and recommending actions the City could take to address their unique situation and avoid deficits past 2020, when the Province’s financial assistance would end.

**5.70** While we recognize the change in government that occurred in late 2018 could have affected the Agreement, we believe deliverables under a contract with the Province should be honored by both parties. Considering the significant challenges facing the City, delaying this report could impact the City’s ability to address future financial challenges.

***Recommendation***

**5.71 We recommend the Executive Council Office ensure agreements approved by Cabinet:**

- **are complete and authorized prior to making payments under the agreement;**
- **contain clauses to mitigate risk and protect the taxpayer;**
- **include clear, measurable deliverables;**
- **include monitoring mechanisms; and**
- **are monitored to ensure key deliverables, such as committee reports, are completed as required.**

---

<sup>7</sup> City of Saint John Funding Agreement. Page 3 March 2018.

## AG Concerns with Legislative Compliance

**No supplementary estimate or budget appropriation to fund Agreement payment despite Cabinet direction to do so**

**5.72** ELG made the first \$1.75 million payment to address the forecasted 2018 deficit before any budget appropriation for the Department was approved by the Legislative Assembly. This payment was completed on August 28, 2018 despite Cabinet direction to secure the necessary legislative authority (even though the legislature was in session until March 16, 2018.)

**5.73** The February 8, 2018 TB documentation we reviewed included a recommendation to Cabinet that the Lieutenant – Governor in Council provide funding to the City “*subject to the necessary supplemental estimate and appropriation being made to the Department of Environment and Local Government budget*”. Despite this direction there was no supplementary estimate or appropriation granted.

**No budget transfer prior to first payment**

**5.74** We further verified that no budget transfers were made to ELG related to the funding agreement prior to the first distribution of funding by ELG on August 28, 2018.

**5.75** On August 9, 2018 ELG requested direction from TB personnel in “*regard to the mechanism to provide ELG with the funds (\$1.75M) so that we can then disburse the funds to Saint John*”.

**5.76** On August 15, 2018 ELG communications indicated the Department would “*proceed with a permitted over expenditure.*” We were told by TB officials that approval for this expenditure was provided by Treasury Board as part of a \$62.3 million supplementary funding provision under general government.

**5.77** While this appropriation was not specifically related to the Agreement or ELG’s responsibility to provide funding under the Agreement, Treasury Board believes it is government-wide and meant to address this type of situation (unforeseen expenditures).

**5.78** TB further confirmed no supplementary estimates had been undertaken for ELG to appropriate the additional funds and no transfer of funding had been completed prior to the August distribution of funding to Saint John. It stated it would be completed near the end of the year, as is its standard practice.

**5.79** While Treasury Board believed this to be fully compliant with the *Financial Administration Act*, it noted the Act was outdated and as such, open to interpretation. It also indicated the meaning of terms such as “*payment*” might not apply as it does not represent current accounting principles. It could not tell us if the Act would be modernized at some point in the future.

**5.80** In addition to section 24 of the Act noted above, section 30(3) states “*No expenditure is to be made unless provided for in an appropriation.*”

**5.81** The Act defines appropriation as “*any authority of the Legislature to pay money out of the Consolidated Fund.*” The Legislative Assembly votes on a department’s budget as part of the main estimates process. If passed, the department is approved to spend up to the appropriated budget.

**5.82** If required, government can seek approval for unforeseen expenditures by voting on a supplementary estimate during the fiscal year.

**Treasury Board not compliant with the *Financial Administration Act***

**5.83** We do not believe the process undertaken in this instance complies with the *Financial Administration Act* or follows the recommendation to Cabinet noted above. We believe the Act requires modernization to ensure proper terminology is included and current financial management and accounting principles are followed by government.

***Financial Administration Act* requires modernization**

**5.84** In Chapter 4 of our June 2018 report, we raised concerns over government spending before obtaining approval from the Legislative Assembly. We believe this to be another example where the spirit of the Act was ignored and appropriate approval was not obtained.

***Recommendation***

**5.85 We recommend Treasury Board Secretariat/provincial Comptroller review and update the *Financial Administration Act* to:**

- **modernize the Act with respect to payments, accruals and conformance with Public Sector Accounting Standards;**
- **increase clarity for key financial officers processing payments throughout government to know if proper budget authority exists; and**
- **provide for budget appropriations for multi-year agreements at the time in which funds are legally committed.**

## **Appendix I - Excerpts from Former Premier’s Letter (December 2017)**

The information included below is an excerpt from a December 8, 2017 letter from the former Premier to the Mayor of Saint John.

*“I recognize that Saint John is at a crossroads and I applaud you for your leadership in facing your challenges head on. Saint John faces a perfect storm created in part by factors forced upon the city in years past.*

*You have done an excellent job laying out the fiscal challenges faced by the city.”*

*“Saint John needs to grow. New Brunswick needs a stronger Saint John.*

*We want to help. You asked for a new deal and we are prepared to give it....”*

*“...We have already begun with investments in projects such as Safe Clean Drinking Water, the Port of Saint John modernization, the field house, the new Museum, the Dalhousie Medical Program, the fund to end generational poverty in Saint John, the Saint John City Market, the Seaside Elementary School, the NBCC trade facility, and the Saint John Regional Hospital renovations. We are prepared to continue down that road by Investing even more in the Infrastructure Saint John needs to succeed.*

*So I urge you to continue to pursue a growth agenda and to enhance it. And I promise as your Premier and your Regional Minister that if you do, the Province will stand right there with you.*

*We can begin by making Investments today that will alleviate short-term budget pressures in the upcoming 2018 fiscal year. We can then immediately roll up our sleeves to look at medium and long term solutions that address Saint John's unique challenges and opportunities, all the while ensuring that the environment for growth is maintained and enhanced to drive up revenues and achieve economies of scale.*

*I know that you and your Council will consider a difficult budget on Monday. I know that you feel you have no option but to do so. We want to work with you so you can avoid cuts to front-line services and you have my guarantee that the Province will work with you towards short-term assistance for investments in a growth agenda while we continue to work shoulder to shoulder on a new deal for Saint John.*

*Respectfully,*

*Brian Gallant”*