

Chapter 7

Department of Public Safety High Risk Drivers

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Department of Public Safety

High Risk Drivers

Background

7.1 The latest available edition of the Department of Transportation's *Motor Vehicle Traffic Collision Statistics* notes there were 10,746 reportable motor vehicle accidents in 1999, the latest year for which statistics have been published¹. A reportable accident is a term given to "an accident resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars or more" (Section 130(1) of *Motor Vehicle Act*). The human toll is heavy with 5,388 persons injured and 110 killed. The human and social costs of these deaths and injuries are extensive.

7.2 Most of these 10,746 accidents involved at least \$1,000 in property damage. And many were obviously much higher than that minimum reportable limit, indicating that multiple millions of dollars of property damage can be related to roadway accidents. When we add to that total the health costs, lost work time, and other factors, we see that motor vehicle accidents have a high and pervasive economic impact on New Brunswickers.

7.3 These factors all contribute to the importance of road safety to our citizens. Because of the importance of these issues, we decided to carry out an audit in this area. We began our work in the autumn of 1999.

7.4 One thing we noted quite quickly is that road safety is not a simple issue. As Transport Canada has stated, "Road safety is a systems problem – few collisions can be attributable solely to a driver, a vehicle or a road deficiency."² Further adding to the complexity is the fact that highway safety is a shared responsibility of the three levels of government in Canada with each jurisdiction having its own distinct levels of responsibility.

1. The Motor Vehicle Traffic Collision Statistics indicates the total number of reportable accidents has levelled off following a general declining trend. Figures for the last several years are:

<u>Year</u>	<u>Number</u>	<u>Year</u>	<u>Number</u>
1994	13,574	1997	11,040
1995	12,347	1998	10,425
1996	10,600		

2. As noted in the document *Canadian Road Safety and Public Highway Infrastructure*.

7.5 Within our provincial government itself, there is a division of responsibility among various government agencies. The Department of Transportation is responsible for the design, construction, maintenance and operation of provincial roads. This Department also gathers various accident statistics for use and reflection. The Justice system deals with various charges and tickets that come before the courts and assesses damages in certain proceedings. The Department of Public Safety now administers the *Motor Vehicle Act* (MVA) and is responsible for licensing and monitoring of drivers and vehicles.¹ The Coroner's Office, which is part of the Department of Public Safety, investigates road fatalities and makes suggestions for improvements. And Service New Brunswick now employs the driver examiners who give the road tests to those wishing to be licensed to drive in New Brunswick.

Scope

7.6 We identified over fifteen potential projects in the area of road safety.

7.7 However, given our limited resources, we decided to look at one particular area. After some analysis, we decided to focus on the so-called high-risk drivers of private passenger vehicles.

7.8 This area appealed to us for a number of reasons. First of all, most New Brunswickers can easily identify with it. They are, or have been drivers of private passenger vehicles. Or they depend upon someone who drives them in a private passenger vehicle. They know our road systems and many of the factors that make a driver high risk. And they often understand the implications of various high-risk behaviours.

7.9 Secondly, the private passenger vehicle makes up the vast majority of the registered motor vehicles in the Province. By focusing on private passenger vehicle drivers, we are covering the most numerically significant part of the vehicle population.

7.10 And, thirdly, concentration on the high-risk driver was noted as one of four key areas in the so-called *Road Safety Vision 2001*. This document, which was adopted by all Canadian Ministers responsible for transportation and highway safety, contained a goal to make Canada's roads the safest in the world. *Road Safety Vision 2001* committed the provinces and territories to four key safety priorities; one of these was to develop "more efficient enforcement to deal with problem areas, e.g. impaired driving, non use of seat belts, repeat offenders, high-risk drivers."

7.11 We drafted two specific objectives to focus on high-risk drivers. The first was "to determine if there is a system in place to identify and respond appropriately to high-risk drivers." The second objective focused directly on one specific class of high-risk driver – the so-called student

1. When we began our audit, the Motor Vehicle Division was in the Department of Transportation.

driver. Our objective here was “to determine if training and testing processes for student drivers maximizes the potential contribution to road safety.”

7.12 The bulk of our work was performed in the Department of Public Safety, primarily within the Motor Vehicle Division. We also had meetings with representatives from Service New Brunswick and the Department of Transportation. As part of our work, we also contacted policing agencies, the insurance industry, academic researchers, and an expert in adaptive driving services.

7.13 Our work did not include a detailed test of controls over the information system known as the Driver Records System. While we observed a number of processes in place, our primary focus was not a systems audit so we are not expressing an opinion on the adequacy of the control systems.

Results in brief

7.14 The Department has a number of practices in place to identify high-risk drivers. We recommended the Department consider expanding the current practice of reviewing drivers who have three accidents in a twelve-month period. We would also encourage the Department to do more to ensure the physicians and optometrists are fulfilling their statutory obligations. In our view, the Department should assign clear responsibility for ongoing monitoring and updating of the definition of high-risk drivers.

7.15 The Department has an objective system for determining when driving privileges should be suspended or revoked. Although it has some re-testing and re-education programs, we believe these could be expanded, particularly through the use of the Registrar’s discretionary power to require a retest.

7.16 The Department inspected each licensed driver training school in the Province in 2000 to ensure the facilities and teaching materials satisfy the terms and conditions set out in the *Motor Vehicle Act* and Regulations. However, a formal school inspection policy needs to be documented. The Department also has a combination of written and practical testing to ensure that individual instructors are licensed and maintain their knowledge level, although the instructors’ test should be improved.

7.17 In our opinion the Department does not satisfactorily measure and report on the effectiveness of student driver training. There has been no analysis to justify the reduced stage one time for students taking driver-training courses. The Department needs to develop better statistics to allow it to examine pass/fail rates specifically for novice drivers.

7.18 There is an opportunity in the Department for one position, such as that of the Registrar, to play a pro-active role in encouraging and promoting road safety.

Identifying and responding to high-risk drivers

7.19 Our first objective was:

To determine if there is a system in place to identify and respond appropriately to high-risk drivers.

7.20 We developed three criteria to assist us in auditing this audit objective.

Identifying high-risk drivers

7.21 Our first criterion states “there should be an adequate process in place to identify individuals who are high-risk drivers”. In our view, this “adequate process” involves several important elements. The first aspect of identifying a high-risk driver is to define what is meant by that term. In other words when it comes to identifying “high risk drivers”, you have to know what you are looking for. Once that term is defined, it should be documented formally (such as in policy and procedures) in order to direct the organization’s efforts.

7.22 The next important aspect is to have an ongoing process to identify those drivers that meet the definition “high risk”. This also involves appropriate documentation of the driver’s high-risk status. In the case of the Motor Vehicle Division, documenting this would be achieved through the Driver Records System.

7.23 The final part of the process is to be proactively updating the definition on an ongoing basis in response to local or national trends. For example, if the Canadian Ministers responsible for transportation and highway safety had an initiative to reduce a particular condition of risk, one would expect the Department would need to revisit the definition. If a particular type of high-risk driver was becoming a concern, the Department could respond with appropriate measures to reduce the incidence of risk.

Defining and documenting high risk

7.24 The Department did not have a definition of “high-risk driver” in place when we began the audit. This is somewhat surprising, as our impression at one time was that high-risk might well have a standard national definition. As mentioned earlier, all Canadian Ministers responsible for transportation and highway safety are signatories to a document called *Road Safety Vision 2001*. This document announced the Ministers’ goal to make Canada’s roads the safest in the world and, in doing so, it established four key safety priorities. One of these was to develop “more efficient enforcement to deal with problem areas, e.g. impaired driving, non use of seat belts, repeat offenders, **high-risk drivers**” (emphasis ours). Given this important national objective, we felt that the Ministers would have established a standard definition of high-risk drivers to share among all the provinces. It would seem such a definition is necessary in order to allow for measurement of performance

against this priority. *Road Safety Vision 2001* did not include any definition of high-risk driver.

7.25 In January 2001, a senior departmental employee was given the task of developing such a definition for use in the audit. His work was documented in an internal departmental memo. It reads in part as follows:

... I assume that a high risk driver is one whose actions, health, experience or knowledge makes the driver a risk to themselves or other drivers on the highway.

7.26 The internal memo contained a number of points that appeared to include various classes or definitions of drivers whose “actions, health, experience or knowledge makes the driver a risk to themselves or other drivers on the highway.” These included:

- New drivers; (this would appear to relate to the “experience/knowledge” components of the definition)
- Those committing infractions under the *Motor Vehicle Act* (MVA) as tracked by the loss of points under the Driver Records System; examples of common infractions include speeding, driving without wearing a seatbelt, etc. (this would appear to relate to the “actions” component of the definition.)
- Those committing driving infractions under the Criminal Code of Canada; a common example is driving while impaired (DWI) but it also includes such things as reckless driving; (as in the previous point, this would appear to relate primarily to the “actions” component of the definition.)
- Drivers with an unusual number of accidents in a short time; currently the Department identifies this as three in a one year period; (this would appear to relate to the “actions” component of the definition, although certainly the “health”, “experience”, and “knowledge” factors could all play a prominent role.)
- Drivers with certain medical conditions (this would clearly relate to the “health” component of the definition.)

7.27 We were pleased to see that the Department did develop this definition. We understand from our discussions that since January it has received wide circulation and acceptance at senior levels in the Department. We also understand that the Department has been involved with a national effort by the Canadian Council of Motor Transport Administrators (CCMTA) which will include defining high-risk as an important part of its work.

Recommendation

7.28 We recommended the Department formally document a definition of high risk driver. To the extent possible, this definition should be consistent with national perspectives.

Departmental response

7.29 CCMTA, through the Task Force on High-risk Drivers, is currently working on a national definition. The Department of Public Safety will embrace the definition of High-risk Drivers approved by the Task Force. Expected timeframe: Fall 2001. Consistent with the other Canadian jurisdictions, New Brunswick will assess the size of its high-risk driver population and its crash involvement by the end of 2002.

Recognizing the high-risk driver

7.30 As we have noted, once the high-risk drivers have been defined, the Department needs to be able to recognize who they are. There has to be a process of recognition before the Department can respond appropriately to these individuals. And this recognition must be documented in the Department's Driver Records System.

7.31 The Department has several recognition procedures in place depending on the type of high-risk drivers being referred to. Exhibit 7.1 shows how the Department recognizes and documents these behaviours.

7.32 Exhibit 7.1 shows that the Department has a relatively robust recognition process in place. This can help to ensure the Department recognizes and records those high-risk drivers that it has defined. This is a key part of the identification process. Following are a few observations on the Department's processes.

Motor Vehicle Act violation warnings

7.33 *Motor Vehicle Act* violations are noted on the driver record in cases of convictions. This is an important source of information for identifying those who are defined as high-risk drivers because of their driving actions. Most of these violations are noted from tickets received from various police forces throughout New Brunswick. Approximately 60,000 tickets are entered onto the Driver Records System each year.

7.34 During our field work, we discussed various aspects of our audit with police representatives. One issue that was brought to our attention was that peace officers, in exercising their lawful discretion, often issue a driver a warning rather than a ticket for certain *Motor Vehicle Act* violations.

7.35 Based on what we were told by a major police force, the number of warnings issued to drivers may be approximately equal to the number of tickets. Warnings, though, are not entered in the Driver Records System. We did note, however, that at least one police force keeps a record of driver warnings for its jurisdiction on its own in-house information system. Officers at this police force use the record of warnings in assessing how to respond to future infractions of the *Motor Vehicle Act* by the same driver. In other words, a driver with no warnings on this police force's system, might be looked upon as less risky than one who has had warnings noted. The police can use this information in exercising their policing powers at a roadside stop.

Exhibit 7.1
High-risk driver identification processes

Type of High-Risk Driver	How High-Risk Drivers are Identified by the Department of Public Safety
<i>New drivers</i>	Graduated licensing program; all drivers required to pass a vision test/road test/written test.
<i>MVA Violations*</i>	<p>This points system program which is tracked through the Driver Records System (DRS) allows for drivers to earn points based on driving experience. New drivers start with four points and earn two additional points per year until a total of ten have been earned. The DRS monitors drivers continually based on the convictions that they receive based on their driving.</p> <p>Most infractions under the MVA involving a moving vehicle result in points being lost if convicted. If a driver loses all points that have been earned then a licence suspension of three months will result. This is an important method of identifying high risk drivers as these are the drivers who have little experience or have multiple infractions.</p>
<i>Criminal Code Violations</i>	Convictions made under the Criminal Code of Canada (CCC) result in the automatic loss of all points and result in a licence suspension and possible prohibition by the courts. All CCC convictions involving the use of a motor vehicle are recorded on a driver record for use in subsequent court proceedings for sentencing.
<i>High Accident Rate</i>	<p>One of the features of the Driver Records System is it identifies drivers who have been involved in three or more accidents in a one year period. The accidents are reviewed and if there appears to be a problem with the driver then the driver is requested to take a test and/or medical. Failure to comply will result in licence suspension.</p> <p>Police agencies may observe a driver operating a vehicle or during the course of investigating an accident, and feel that the driver's skills need to be re-evaluated. They make a recommendation to the Registrar (either on the accident report or as a separate note) to request a medical and/or test. This is followed up and the individual must comply or be suspended. The tests may result in a cancellation or downgrade of the licence.</p>
<i>Medical Condition</i>	<p>In addition to the police ordering a medical as noted above, medical doctors and optometrists are now required by law to report to the Registrar any medical condition that might affect the ability of an individual to safely operate a motor vehicle. The notices are handled by the Driver Qualifications Officer (DQO). Medical reports are reviewed and/or road tests conducted to determine if the driver may continue to hold a particular class of licence. The licence may be cancelled or downgraded depending on the case.</p> <p>Family members or concerned citizens may submit a signed request that a driver be reviewed. The same process is followed with the DQO playing a lead role in handling the requests and ensuring the appropriate action is taken.</p>

* Included here are violations of motor vehicle laws in other North American jurisdictions

7.36 In our opinion, the warnings may be an untapped source the Motor Vehicle Division could also use in “recognizing” certain high-risk drivers. For example, a driver with a number of warnings for speeding over the years may be much more of a risk than a driver with a couple of minor equipment violations under the Act. But yet the Driver Records System would not even recognize the risk associated with the “warnings only” speeder while the driver with faulty equipment could receive a so-called three-point warning notice under section 297(3) of the Act.

7.37 If the warnings were tracked, the Department could also use this information to begin monitoring trends. For example, after a few years the Department would be in a position to know whether warnings were

increasing or decreasing in comparison to tickets. Departmental employees could also assess if there were certain types of behaviours that seemed more likely to attract a warning. This information could be shared with police forces to help them in their work.

7.38 We believe it would be useful for the Department to explore the possibility of adding warnings to the Driver Records System. We recognize that they would add a significant volume of work. Therefore, it would be important to consider the benefits and the costs of this additional source of information to recognize high-risk drivers.

Recommendation

7.39 We recommended the Department carry out a cost-benefit analysis to determine the merits of adding warnings to the Driver Records System.

Departmental response

7.40 *The Department of Public Safety will survey other Canadian jurisdictions on the matter. It will research the pitfalls versus benefits, including legal and cost implications, and report on the feasibility of adding warnings to the Driver Record System by March 31, 2002.*

Re-examining accident indicators

7.41 Twice each week the Motor Vehicle Division receives a report of all drivers who have been involved in three or more accidents in a twelve-month period. As noted in Exhibit 7.1 if a review of the driver record indicates a problem, the driver can be requested to take a retest.

7.42 We find this a positive procedure to help identify a high-risk driver. In fact, we believe the Department should expand this procedure. Perhaps the Registrar should look at every driver who has had four accidents in a two-year period, for example. Or five accidents in a three-year period might identify other high-risk drivers.

Recommendation

7.43 We recommended the Department consider the costs and benefits of expanding the current practice of reviewing three accidents in a twelve-month period. The Department could consider such indicators as four accidents in two years and five accidents in three years.

Departmental response

7.44 *The Department of Public Safety will undertake to adjust its review policy to match the national definition of the High-risk Driver to be determined this fall.*

Role of medical doctors and optometrists

7.45 One of the key components in identifying high-risk drivers is the input provided by medical doctors and optometrists.

7.46 The *Motor Vehicle Act* puts the onus on medical practitioners and optometrists to report certain medical conditions to the Registrar. The pertinent sections are:

309.1(1) A medical practitioner, who has information that reasonably ought to cause the medical practitioner to suspect

*that a person who is apparently of driving age may not, because of physical or mental impairment, disease or condition, be able to operate a motor vehicle with safety on the highways, **shall report** to the Registrar the person's name and address and the information. (emphasis ours)*

*309.2(1) An Optometrist who has information that reasonably ought to cause the Optometrist to suspect that a person who is apparently of driving age may not, because of visual impairment, disease or condition, be able to operate a motor vehicle with safety on the highways, **shall report** to the Registrar the person's name and address and the information. (emphasis ours)*

7.47 Obviously, the Department is highly dependent on the compliance of these professionals in order to identify those who may be high risk because of medical condition. During the audit we inquired about what procedures the Department had in place to ensure these two sections of the Act are complied with. We were informed that no procedures are in place. Staff, however, believe compliance is improving. And they are reluctant to be seen as actively forcing the doctors and optometrists to comply. The feeling is such an approach would hurt the co-operative relationship between the Department and these two groups.

7.48 Nonetheless, we believe more can be done to assist the doctors and optometrists in educating them about their responsibilities under the MVA. Ensuring these professionals carry out their responsibilities under Section 309 is a key part of having an "adequate process" to identify high-risk drivers. Perhaps this could be done through dialogue with the provincial governing bodies for the medical doctors and the optometrists. Possibly the Department could ensure an information package was distributed to each doctor or optometrist opening a new practice in the Province.

Recommendation

7.49 We recommended the Department initiate discussions and ongoing education with the medical practitioners and the optometrists of New Brunswick to help ensure Sections 309.1(1) and 309.2(1) of the MVA are being complied with.

Departmental response

7.50 A letter will be sent from the Registrar's Office to the New Brunswick Medical Society and Optometrists Association in regards to the CMA Guide and other applicable provisions under the Motor Vehicle Act. The letter will advocate the inclusion of the CMA Guide and other relevant information to be sent to all new medical doctors and optometrists. A request will also be made to do a survey to identify those who have not received a copy of the Guide.

Updating the definition

7.51 The final part of the process for identifying high-risk drivers is to be proactively updating the definition on an ongoing basis in response to

local or national trends. We would like to offer a few comments on what we think such a proactive approach might entail.

7.52 A couple of the more intriguing documents we reviewed during the audit were the *Road Safety Vision 2001* and, its follow-up, the *Road Safety Vision 2010*. The documents commit the various Canadian jurisdictions to measurable targets.

7.53 Some of these targets and objectives provide a stepping-off point for the Department to be continually examining the definition of high risk. Consider for example, the commitment in *Road Safety Vision 2010* to reduce by 30% “serious injuries and fatalities of pedestrians, motorcyclists and cyclists.” To achieve the 30% reduction, the Department would have to place a special watch on this category of high-risk practices.

7.54 This could include such things as expanding the accident review criteria. For example, in addition to reviewing three accidents in a year, the Department could start looking at all accidents involving serious injury or death to pedestrians, motorcyclists and cyclists. Updating of the definition would then have a direct impact on the goal of a 30% reduction.

7.55 The definition of high-risk driver would not be static. It would be revised to reflect such things as these national initiatives. And it would be a key catalyst of action, policy and procedures which would help the Department achieve important change. And all this change would be focused, of course, on making our roadways safer – achieving public safety.

Recommendation

7.56 We recommended the Department assign clear responsibility for ongoing monitoring and updating of the definition of high-risk drivers. Further, this definition process should be a key component of national and provincial change initiatives aimed at improving the safety of our travelling public.

Departmental response

7.57 *The Registrar has been designated to lead the initiative on high-risk drivers and to work closely with the national Task Force.*

Conclusion

7.58 We believe this criterion is partially met. The Department has a number of practices in place to identify high-risk drivers as outlined in Exhibit 7.1. We would like to see an expansion beyond the three accident review and would encourage the Department to do more to ensure the physicians and optometrists are fulfilling their statutory obligations under section 309. In our view, the Department should assign clear responsibility for ongoing monitoring and updating of the definition of high-risk drivers.

Responding appropriately to high-risk drivers

7.59 Our second and third criteria read as follows:

There should be a re-testing¹ and/or re-education program in place for high-risk drivers which is designed to improve the safety of our roadways.

The Department should have a system or a practice in place to objectively assess whether or not the driving privileges of high-risk drivers should be revoked.

7.60 The two criteria summarize the various corrective measures the Department of Public Safety may take against a high-risk driver. They relate to the “respond appropriately” part of our audit objective. We have categorized the Department’s possible responses or corrective measures under the three broad headings of re-education, re-testing and revoking (or suspension) of driving privileges. In our opinion, these appear to be three broad categories of response that the Registrar is permitted to use under the *Motor Vehicle Act* in addressing those drivers the Department has identified as high risk.

7.61 Building on the categories identified earlier in this chapter (see Exhibit 7.1 for a listing of these categories), we have put together a table which summarizes how the Department may respond to high-risk drivers. Exhibit 7.2 shows each category or type of high-risk driver in the first column. In the next three columns we have inserted comments on what actions the Department may take to re-educate, re-test, or suspend high-risk drivers.

7.62 The final column shows our audit comments. In cases where we have observations and/or recommendations around the Department’s response process, we have included a brief note as well as a reference to further discussion in this chapter.

Consideration of expanded re-education program

7.63 In Exhibit 7.2 we pointed out that a driver convicted of a driving while impaired violation under the Criminal Code of Canada, must attend a re-education course prior to being re-licensed. A first conviction requires the high-risk driver to complete a three-hour seminar course. But a second conviction within a three-year period requires a weekend program offered by a third party service provider. The progressive degree of commitment or demand required by the two different courses (i.e. three hours of correspondence study versus a full weekend away from home on a second offence) seems to be well designed. It recognizes that the driver committing a second offence within three years is even more risky than the one-time offender. The “appropriate response” to this driver must be somewhat tougher.

7.64 This DWI program is the only formal re-education program required at this time. In our opinion, the Department should consider extending some type of re-education program to other categories of

1. For purposes of this section, re-testing is considered to include any or all of a written test, an eye examination, a medical examination, and/or a road test.

high-risk drivers. For example, there are various other non DWI offences under the Code that result in automatic suspension (e.g. failure to stop at an accident, dangerous driving). These are serious driving related offences. The Department could consider extending some type of re-education to these drivers.

7.65 There are also several hundred people who lose their licenses each year for *Motor Vehicle Act* violations. In other words, their actions are such that the Registrar must suspend their privileges. The Department should consider a program to re-educate these offenders. This might be particularly relevant in the case of a high-risk driver losing their driving privilege for more than the first time. The person who has lost their licence more than once would seem to be more risky behind the wheel than the driver who lost their licence once years ago but maintained a clean driving record since reinstatement. The “appropriate response” to this additional risk could be re-education.

7.66 The DWI re-education program is essentially offered on a cost recovery basis. The Department has contracted with a third party to provide the service. Each participant pays a fee which is in turn forwarded to the provider to compensate for their services. If the Department established a re-education process for other types of high-risk drivers, this could also be done on a cost-recovery or revenue generating basis.

Recommendation

7.67 We recommended the Department expand its driver re-education courses to include additional types of high-risk driving behaviours.

Departmental response

7.68 *The Department of Public Safety proposes to follow the national approach on this issue.*

Re-testing under section 95(3)

7.69 In Exhibit 7.2 we outlined a number of circumstances in which re-testing could occur. As well, for certain multiple DWI offenders, a re-test may become necessary when they re-apply for their license. This is because the *Motor Vehicle Act* requires that if a driver has been without a licence for over two years, that driver must be re-tested in order to obtain a new licence. With recent amendments to the MVA, some suspensions will last long enough such that a suspended driver will fall outside the two-year rule and will therefore have to be re-tested if they wish to have another licence after the period of suspension. For example, the licence suspension for a second DWI violation increases from one to three years. For the third, and any subsequent offence, it increases from three to five years.

Exhibit 7.2

Public Safety's response to high-risk drivers

Risk Type	Re-education Process	Re-testing	Revoking of Driving Privileges	Our Comments
<i>MVA Violations</i>	<ul style="list-style-type: none"> There is no formal re-education process other than the "three demerit point" warning letter and the "seven demerit point" warning letter. No mandatory re-education, even for multiple suspensions. 	<ul style="list-style-type: none"> None, even if a driver loses all ten points on more than one occasion. Registrar does not appear to ever exercise discretionary power to re-test on application for a renewal under Section 95(3) of MVA. 	<ul style="list-style-type: none"> If a driver loses all points that have been earned then a licence suspension of three months will result. Suspensions reports are generated automatically by Driver Records System (DRS). In year end 31/03/2000, 593 drivers were suspended for MVA violations. 	<ul style="list-style-type: none"> Consider expanded re-education program. (7.58) Consider use of re-testing under 95(3). (7.64)
<i>Criminal Code Violations</i>	<ul style="list-style-type: none"> Re-education is required for a liquor-related offence (DWI); a first offence requires the driver to complete a three-hour seminar; a second offence within three years requires a weekend course. DWI totals 1,733 of the 2,537 CCC offences noted in year end 31/03/2000; no re-education program required for the remaining CCC violations. 	<ul style="list-style-type: none"> Re-testing potential exists for multiple offender (i.e. if their suspension lasts more than two years). Appears to be no use of 95(3). 	<ul style="list-style-type: none"> Convictions made under the Criminal Code result in the automatic loss of all points and result in a licence suspension and possible prohibition by the courts. Multiple CCC convictions result in increasing suspension periods and will result in no appeal being allowed for early reinstatement. May be a problem with undelivered suspensions. Enforcement officials can levy a 24-hour suspension on drivers with a blood alcohol reading between 0.05 and 0.08. 	<ul style="list-style-type: none"> Re-education for non-DWI CCC Violators (7.58) Delivery of suspension. (7.75) Revisit photo I.D. issues.(7.81) Impounding vehicles. (7.83)
<i>High Accident Rate</i>	<ul style="list-style-type: none"> No re-education required. 	<ul style="list-style-type: none"> No systematic application of 95(3). Police while investigating an accident may feel that the driver's skills need to be re-evaluated. They make a recommendation to the Registrar to request a medical and/or test. 	<ul style="list-style-type: none"> The DRS identifies drivers who have been involved in three or more accidents in a one-year period. The accidents are reviewed and if there appears to be a problem with the driver then the driver is requested to take a test and/or medical. Failure to comply will result in licence suspension. If the driver takes the test and fails, the driver is required to surrender the license to the examiner. If police request a re-test, the individual must comply or be suspended; tests may result in a cancellation/downgrade of the licence. 	<ul style="list-style-type: none"> Consider re-testing under 95(3). (7.64)
<i>Medical Condition</i>	<ul style="list-style-type: none"> No re-education required. 	<ul style="list-style-type: none"> Medical doctors and optometrists are required by Section 309 of the MVA to report to the Registrar any medical condition that might affect the ability of an individual to safely operate a motor vehicle. Medical reports are reviewed and /or road tests conducted to determine if the driver may continue to hold a particular class of licence. Police Force representatives may also request a driver take a re-test. Family members or concerned citizens may request that a driver be reviewed. The same process is followed. No use of Section 95(3) other than SNB agents may notice applicant wearing glasses and request an eye test. 	<ul style="list-style-type: none"> If the driver fails the test ordered after a Section 309 (or a police or citizen request) the driver examiner will ask the client to surrender their licence. 	<ul style="list-style-type: none"> Consider mandatory medical testing of aging drivers.(7.71).

7.70 These re-testing procedures all contribute towards making our roadways safer. We do believe, however, that the Department has an excellent opportunity to expand its re-testing to make an even greater contribution to road safety. Section 95(3) of the *Motor Vehicle Act* appears to grant the Registrar broad discretionary power. It states:

*Every such licence is renewable on its expiration, upon application and surrender of the existing licence and payment of the required fee, but **the Registrar in his discretion may require an examination of the applicant as upon an original application.** (emphasis ours)*

7.71 This section allows the Registrar to re-test anyone reapplying for a licence. The Department informed us that it is used sparingly. Officials informed us that about the only time it is used is when a Service New Brunswick clerk in the act of renewing a driver's licence notices a client without a "must wear corrective lenses" restriction is actually wearing glasses.

7.72 No criteria for applying 95(3) are stated in the Act. But in our opinion, this section would offer an excellent tool for the Registrar to use in addressing certain high-risk drivers when their licenses came up for renewal. If drivers became aware that violations of certain sections of the Act had the potential to generate a retest on licence renewal, it might cause drivers to be more circumspect in their behaviour. It would probably not take long for the word to get around that the Registrar was expanding his definition of high-risk and requiring road tests for certain infractions. But this seems to be merely one way that the section might be used.

7.73 We believe it could be expanded to cover a wide variety of high-risk behaviours, particularly for multiple offenders and those who were suspended more than one time. If, for example, the Registrar began ordering tests under 95(3) for those who lost all their points more than once in three years, this could have a deterrent effect. In our opinion, if drivers were aware that they might have to face a retest when renewing after a second suspension, this could encourage some to obey the rules of the road and become a safer driver. The Registrar could promote this new approach to further reduce risk.

Recommendation

7.74 We recommended the Department adopt criteria to assist the Registrar in a more proactive application of section 95(3).

Departmental response

7.75 *The Department of Public Safety believes that it is more effective to intervene at the time the driver record reveals a high-risk rather than taking action at the time of renewal.*

Mandatory medical testing

7.76 Closely related to the use of the re-testing provision of 95(3) is the concept of mandatory medical tests for the ageing driver. Common age-related health changes include reduced vision (particularly at night), a

decrease in depth perception and disabilities such as arthritis and rheumatism which limit mobility and slow the driver's response. In recognition of this, seven jurisdictions in Canada have initiated some form of mandatory medical exam after certain age limits. The most common model appears to be a medical exam at age 75, followed by another at age 80, and then every two years after.

7.77 New Brunswick currently has no such exam. The Province appears to be relying on the doctor or optometrist to identify drivers who are a risk to themselves and/or others by reason of health. Unfortunately though, not all these at risk drivers will necessarily be identified by this process. For instance they might not have a family doctor. Or the doctor or optometrist who sees them may be unaware of the legislated responsibility to report.

Recommendation

7.78 We recommended the Province of New Brunswick consider the costs and benefits of joining those other Canadian jurisdictions that have initiated a mandatory medical testing program designed to identify those ageing drivers who pose a risk to themselves or others.

Departmental response

7.79 *The Department will study what other Canadian jurisdictions are accomplishing in this respect and will inquire about existing volunteer and mandatory programs. We will tie in with the Ageing Driver Strategy endorsed by CCMTA.*

Serving of notice of suspension

7.80 In Exhibit 7.2 we have discussed the various circumstances in which suspensions are given. Our criterion stated "the Department should have a system or a practice in place to objectively assess whether or not the driving privileges of high-risk drivers should be revoked." In our opinion, the system is objective. Suspensions are generated automatically from the Driver Records System points system. And the input to the points system is obtained from external objective sources (i.e. police agencies).

7.81 When a suspension is generated from the system, the driver must be notified. The practice is to notify the offender by certified mail. We were informed that since this practice is known by the community at large, some drivers who have violated the MVA will refuse to accept a certified letter. The feeling is that as long as they have not been notified, they can continue to drive. This is despite the fact that sections 13(1) through 13(5) of the Act appear to give the Registrar the authority to revoke driving status even if the notice is not delivered.

7.82 During our field work, we did notice a large number of suspension notices returned by Canada Post. Probably many of these drivers had not yet surrendered their licence since they had not been notified. The Department informed us that despite the clear language of sections 13(1) through 13(5), there have been cases where suspended drivers, who had either not received or accepted the certified letter, were stopped by

enforcement agencies, but could not be convicted of driving while suspended.

7.83 The Department informed us that in some areas police forces will serve these returned suspension notices. This appears to be an excellent way of dealing with the issue. Perhaps the Sheriff's Office could assist in these efforts as well.

Recommendation

7.84 We recommended the Department develop ways to ensure notices of suspension are delivered in a timely fashion to high-risk drivers.

Departmental response

7.85 *The Crown does not wish to pursue the matter of proceeding in court with charges of driving while under suspension if the driver has not accepted delivery of the certified letter. The Department of Public Safety will meet with the Department of Justice to try to arrive at a common understanding on the issue. The Department will also make efforts to search for other cost effective ways to ensure that notices of suspension are delivered in a timely fashion. Legislation is currently being proposed to allow for alternative methods of delivery.*

Revisiting possible legislative amendments

Mandatory photo ID

7.86 One legislative amendment the Department has considered is the use of mandatory photo ID on each driver's licence. Enforcement agencies believe this would help them in their work as it relates to extremely high-risk drivers. That is, in the current situation there is some thought that a small percentage of drivers who are suspended will actually drive and carry someone else's licence with them. Of course, this would have to be a licence without a photo. If stopped by the police, the suspended driver shows a licence without the photo. Therefore, he or she may not be identified as driving a vehicle while suspended.

7.87 Apparently there are some concerns that the \$8 cost of the photo ID may be unacceptable to some drivers. This is said to be the major obstacle to its implementation. On the other hand, it is our understanding that all other Canadian jurisdictions, and all but one of the jurisdictions in the United States, have already implemented mandatory photo ID.

Impounding vehicles

7.88 As noted above, a small percentage of drivers who are suspended will continue to drive. In these cases, it appears the threat of increasing suspension for this very serious offence does not act as a deterrent. Our understanding is that in at least one Canadian jurisdiction the charge of driving while suspended results in the driver's vehicle being impounded. If the lack of a licence does not discourage a suspended individual from driving, then the lack of a vehicle would! At least that seems to be the theory behind this action. And it seems like a highly effective way of dealing with a very high-risk driver.

7.89 We discussed this option with Department of Public Safety staff. There appeared to be some reluctance to propose such legislation in New

Brunswick, largely because of the cost of unpaid towing charges and the hardship impoundment might impose on innocent family members. In our opinion though, the costs and benefits of what seems like an effective technique should be studied.

Recommendation

7.90 We recommended the Department revisit possible legislative changes regarding mandatory photo ID and impounding vehicles to determine if they have merit.

Departmental response

7.91 *The Department will revisit and make inquiries with other jurisdictions on their experience with the subject matters.*

Conclusions

7.92 In our opinion, the Department partially meets the second criterion. Although it has some re-testing and re-education programs, we believe these could be expanded.

7.93 In our opinion the Department meets the third criterion. It does appear to have an objective system for determining when driving privileges should be suspended or revoked.

Student drivers

7.94 In 1996 the Province put in place a system commonly referred to as “graduated licensing”. This system requires that all novice drivers go through two one-year levels to obtain a full class 5 driver’s permit.

7.95 After having successfully completed the written test, a new driver obtains a class 7 – stage one driving permit. With the stage one permit, the new driver is permitted to drive only under the supervision of a fully licensed driver with no other passengers in the vehicle. After twelve months of learning under the supervision of a licensed driver, the novice driver is permitted to take the road test offered through Service New Brunswick. Upon successful completion of this test, the novice driver obtains a class 7 – stage two permit that eliminates the restriction on passengers and the need to have another licensed driver in the vehicle. The novice driver must wait an additional twelve months to obtain a regular class 5 driver’s license. Under both levels of the class 7 license, the driver’s privileges can be suspended if they have positive readings for blood alcohol. This means that they must have no alcohol in their blood if they are driving.

7.96 This two level class 7 licensing system does have one exception. Drivers passing an approved driver training course can attempt the road test after only four months with the stage one permit. This reduced learning period is permitted in the belief that an organized driver training program can help these student drivers become more effective drivers in a shorter period of time. So-called “student drivers” who take approved training courses constitute one specific class of high-risk drivers.

7.97 Our second objective was “to determine if training and testing processes for student drivers maximizes the potential contribution to road

safety.” We developed three criteria to assist us in auditing under this objective.

Use of qualified instructors

7.98 Our first criterion states that “Only qualified instructors should be permitted to train students.” The criterion focuses on the quality of training of student drivers. One way the government can ensure that the training process for student drivers maximizes their potential contribution to road safety is to ensure that students are only trained by qualified instructors.

Licensing driver training schools

7.99 At the time of our fieldwork, there were 53 licensed driver training schools in the Province. A school that wants to offer a driving course must apply to the Registrar of Motor Vehicles for a license. The terms and conditions that the applicant must satisfy are outlined in a document entitled “Licensing of Driving Schools”. This document includes a copy of Regulation 95-164, policies established by the Registrar, industry standards and other related information and forms.

7.100 The Regulation sets out various requirements for licensing courses at these schools and for granting permits to the driving instructors who provide the training to the student drivers. The Regulation also contains provisions for inspection of the schools.

7.101 Before issuing the initial driving school license, the Department of Public Safety performs an inspection of the training school to ensure the facilities and teaching materials satisfy the terms and conditions set out by the Act and Regulations. We believe that this is a positive step to ensure that driver training schools are properly established from the very first day.

7.102 There is no documented policy or regulation establishing the frequency of inspections. We believe it is important to develop such a policy to ensure that all driving schools are inspected on a consistent and timely basis. The Department informed us current practice is to inspect all schools at least once per year and that a checklist is used on each inspection.

7.103 Documentation on the Department’s inspection summary sheet showed that all 53 schools were inspected in 2000. We randomly tested files for five training schools as part of our audit procedures. The inspection checklist was not on file for two of the five schools tested, although there was other correspondence on file. Because these two inspections were performed at the time that the staff members were being moved to the Department’s new location, it appears that these specific checklists were misplaced. Only one of these five schools was inspected in 1999 and all five were inspected in 1998.

Recommendation

7.104 We recommended that the Department document the existing practices relating to training school inspections, especially those

relating to the frequency of the audits and the documentation requirements.

Departmental response

7.105 *The Department concurs with this recommendation. Steps have already been taken to follow up.*

Permits for driving instructors

7.106 All driver instructors at the training schools must be licensed. Of the five schools that we tested, we found that all instructors were properly licensed.

7.107 In order to issue a license, the Registrar must be satisfied that the applicant is a “fit and proper person”. Every three years, in addition to an extensive road test, each applicant must pass a written test. This test is the same basic written exam that student drivers must pass to get their stage one permit.

7.108 We feel that the test should ensure that instructors have an advanced level of knowledge. The basic test required for a stage one permit is not sufficient for an instructor’s exam.

Recommendation

7.109 **We recommended that an instructor’s test be upgraded to test specific items that a driver-training instructor should know. This will help to ensure that only qualified instructors are permitted to train students.**

Departmental response

7.110 *A new instructor’s test is already in the final draft stage of development with approval required by the Registrar. Translation and implementation will follow this fall.*

Conclusion

7.111 The Regulation establishes the quality standards for schools and individual instructors. The Department inspected each school in 2000 to ensure compliance, although a formal school inspection policy needs to be documented. The Department also has a combination of written and practical testing to ensure that individual instructors are licensed and maintain their knowledge level, although the instructors’ test should be improved. In our opinion, the Department meets this criterion.

Effectiveness of driver training

7.112 Our second criterion states that “There should be an established means to measure and report on the effectiveness of the driver training.” In other words, we are asking does it make sense to encourage novice drivers to take training courses by offering them a reduction in the stage one period?

7.113 The answer might seem obvious or intuitive. But we felt that it would be important to have objective support for the practice of reducing the time spent at stage one for those who take a qualified driver training course.

Three aspects of effectiveness

7.114 There are at least three methods of evaluating the effectiveness of the training courses. The first is a comparison of the pass rates on the road tests of student drivers who took a driver training course versus other novice drivers with no formal driver training. The second measure would be some type of analysis of accident statistics to determine if the trained student driver is a “safer driver.” The third measure would be more subjective – a client satisfaction survey of student drivers.

Comparison of pass rates

7.115 One would assume that the structured training format offered by qualified instructors to student drivers would lead to improved test results as compared to other novice drivers. While the Department does keep statistics on pass/fail rates, it is not immediately clear if the data the Department maintains is capable of answering the question posed; that is, do student drivers perform better on their tests?

7.116 Service New Brunswick performs the actual road tests and compiles most of the testing information, which is in turn shared with the Department of Public Safety. However, both Service New Brunswick and the Department stated that the current method of collecting the information is not producing complete, reliable information relating to pass/fail rates of student drivers. As well, the timeliness and amount of information currently being compiled is not meeting their needs to adequately manage and evaluate various aspects of the driver testing program.

7.117 As a result, we have concluded that the Department is currently unable to effectively evaluate the success of the driver training program and reduction in the time for stage one permits based on analysis of pass/fail rates.

7.118 We feel that information such as the following should be compiled for each driving test:

- Did the new driver take a training course? If so, which training school provided the training?
- Where did the driving test take place?
- Who was the driving examiner?
- Was this the first attempt?

Recommendation

7.119 **We recommended that the Department continue to work with Service New Brunswick to ensure that changes are made to the computer systems to allow appropriate information to be compiled in a timely fashion. The Department needs to ensure that these changes will allow it to effectively evaluate the success of the driver training programs.**

Departmental response

7.120 *The required changes will be completed by April 2002.*

Analysis of accident statistics

7.121 As we have noted, a reduction in the stage one period is available to student drivers who pass an approved training course. This appears to

be based on the assumption that training by qualified instructors should reduce the risk of accidents being caused by these student drivers. Classroom education and behind the wheel training should help address the key factors of risk-taking and lack of experience. Certainly the driving schools promote the “safety benefits” in marketing their programs. The fact that the insurance industry offers discounts to these student drivers also indicates that they may pose a lower risk than other novice drivers. However, one document we reviewed during the audit indicated the value of time discounts for student-driving programs is not clear. The document “*Graduated Licensing: A Blueprint for North America*” made the following statements:

“Traditional driver education has not reduced crashes, although it can be a superior way to learn basic driving skills. The on-road training it involves also can contribute to a beginner’s driving experience. How to integrate driver education with a graduated licensing system has been the subject of much general discussion and extensive consideration in a recent report . . .” (emphasis ours)

“Graduated licensing works with or without driver education. In jurisdictions that do not already require driver education, the graduated system need not include any such provisions. In jurisdictions that do require driver education, the training should be integrated to complement graduated licensing. Ways should be explored to harmonize the delivery of driver education lessons with multistage graduated licensing requirements. However, there is no justification for time discounts, which have been found to be detrimental.” (emphasis ours)

7.122 This document was prepared by the Insurance Institute for Highway Safety and the Traffic Injury Research Foundation in January 1999. It offers an intriguing perspective on the student driver training issue. It raises questions that can only be answered by a more detailed analysis of the “student driver” component of the graduated licensing program. We are particularly concerned by the statement “*there is no justification for time discounts, which have been found to be detrimental*”. We discussed this statement with Department staff, and they were unable to provide us with any evidence to show that the time discounts are justified in New Brunswick’s case.

7.123 Although there is evidence that graduated licensing in general has been effective, we found no evidence that would justify the Province’s support of the reduction of the stage one time on the basis of promoting road safety.

Recommendation

7.124 We recommended that the Department compare the various accident rate statistics of student drivers versus other novice drivers.

The results should be used to evaluate the merits of the reduction in the stage one period.

Departmental response

7.125 *The Department will undertake to do this activity on all current drivers that have a Class 7(2) driver licence.*

Client satisfaction survey

7.126 A third measure of evaluating effectiveness is a client satisfaction survey. In other words, the Department should ask the student drivers how effective the program was in meeting their particular needs for training. Granted, it is more subjective, but we feel it offers some means to measure and report on the effectiveness of driver training.

7.127 The Department informed us it does contact students on a random basis. The one problem that we did note was that the results of these surveys are not formally included in the training school files. Information in the file was limited to a class list with the students that were called highlighted and comments such as “OK” written on the side. We would have liked to have seen a better indication of the types of questions asked and the student’s response.

Recommendation

7.128 **We recommended that the questions asked and the results of the surveys be formally included in the training school files.**

Departmental response

7.129 *The Department concurs with the recommendation. Implementation will occur as soon as possible and will be communicated to the Licensing and Record Branch.*

Conclusion

7.130 In our opinion the Department does not satisfactorily measure and report on the effectiveness of student driver training. There has been no analysis to justify the reduced stage one time for students taking driver-training courses.

Testing student drivers

7.131 Our third criterion states “Student driver testing should identify those drivers that do not have the knowledge and/or ability to safely drive on our road systems.” In examining this, we were auditing to see if the Department had systems in place to ensure student drivers are tested for knowledge and ability to drive safely.

7.132 To obtain a class 5 license, student drivers must pass vision, written and practical tests. These tests are designed to meet the standards set out by the Canadian Council of Motor Transport Administrators who establish the national guidelines. In other words, they are examined in exactly the same manner as others who have not taken training courses.

7.133 One area relating to driver testing in general (not just student driver testing) that concerned us was the large variances in the pass/fail rates on the road tests by examiner. Statistics that we examined showed that a few examiners fail over 36% of the drivers that they test, which is considerably above the national average and Department benchmark of

20%. Conversely, some examiners fail less than 15%, considerably below the 20% benchmark. These pass/fail rates for specific examiners remained relatively consistent over the last few years. These statistics were for all driving tests and could not be separated by the type of license being tested.

7.134 There are a number of possible explanations for the large variances. For instance, these statistics include re-tests for high-risk drivers that police or doctors have recommended be re-tested. If an examiner tested a higher proportion of these high-risk drivers (perhaps because they are a more experienced examiner) then one would expect them to have a higher failure rate than the average. Another example would be the testing of commercial drivers who generally have higher failure rates due to the more stringent requirements.

7.135 One concern for us was that we found no evidence that the Department had reviewed these statistics and discussed the large variances with the individual examiners to find explanations. Another concern is that the current computer system does not allow the Department to examine these pass/fail rates specifically for novice drivers.

Recommendation

7.136 We recommended that the Department discuss these variances with Service New Brunswick to ensure consistent and equitable testing. Additionally, the Department needs to develop better statistics that identify the type of license and reason for testing to allow for better variance analysis.

Departmental response

7.137 *The Department will have a better grasp on variance analysis when the computer system changes are completed in the spring of 2002. The changes will provide the means for a better measuring tool to look at the discrepancies in driver examiners' testing. A review will be undertaken yearly with Service NB and appropriate action taken where and if necessary.*

Conclusion

7.138 In our opinion the Department meets this criterion.

Other observations

Work on overarching objective re responsibility appropriately assigned

7.139 When we began our audit, we had contemplated work on an additional objective – to determine if the responsibility for road safety is appropriately assigned to government staff. Shortly after our fieldwork commenced, the government announced a major restructuring initiative. On 23 March 2000 the government created the new Department of Public Safety by combining various parts of five existing departments. One of these “various parts” was the Motor Vehicle Division. The new Department was given a broad mandate. As Premier Lord said at the time “Public Safety issues concern us all and should be consolidated in one department rather than spread out across government.”

7.140 The Premier’s comments almost seemed to echo the words of our audit objective. But in terms of our own audit work, the creation of the

new Department created some hurdles. To begin, it took some time just to situate most of the employees in one location.

7.141 Perhaps more significantly from the view of conducting an audit, although the new Department was announced 23 March 2000, it certainly did not all come together conceptually and organizationally in one day.

7.142 The new Department's Deputy Minister assigned a "Discovery Team" of key individuals with various analytical skills to develop a number of options on how the new Department might be structured. This was a time consuming process beginning in the spring of 2000 and taking several months.

7.143 A Department in this degree of change does not necessarily make the best area for audit. As well, while the Premier's announcement touched directly on our audit objective, we recognize that it may take some time for all of the safety issues to be "consolidated in one department." It seemed preferable to perhaps defer any extensive audit work on this audit objective. That, combined with our own scarce level of resources, resulted in us suspending work on it.

Champion concept

7.144 Earlier in this chapter we talked about important change initiatives, in particular the *Road Safety Vision 2010*.

7.145 We have noted the active pursuit of the goals in the *Road Safety Vision 2010* requires leadership – leadership in defining high risk; leadership in leading a response to high-risk behaviours. But we feel an additional element could be considered – the element of active promotion.

7.146 Identifying and responding to high risk is one thing. But preventing high risk behaviour is even better. An important part of prevention is promotion and education of the public at large. We think there may be value in assigning overall responsibility for the initiatives in the *Road Safety Vision 2010* to a particular individual in the Department.

7.147 Note, for example, a goal in the *Road Safety Vision 2010* document of a 20% reduction in injuries and deaths due to speed related and intersection crashes. Consider for a moment the value of assigning responsibility for that 20% goal to one person such as the Registrar. In addition to the efforts of identifying behaviours and responding appropriately, the Registrar could also adopt a direct communication role. The Registrar, by taking responsibility as the champion for that goal, could do such things as press releases, interviews, and advertising to communicate the Department's proactive approach to achieving the 20% reduction. The high-risk drivers could be appropriately warned. And the attention on the goal and the Department's efforts to achieve it could prevent some drivers from engaging in high-risk behaviours.

Recommendation

7.148 We recommended the Department consider the extent to which overall responsibility for the objectives in the *Road Safety Vision 2010* can be assigned to one position such as that of the Registrar.

Departmental response

7.149 *The Registrar will take the lead in the high-risk driver initiative and will endeavour to meet with other stakeholders and interested parties to follow up on the objectives of Canada's Vision of 2010.*

Roles of the Registrar/ Deputy Registrar and the Department's current organization structure

7.150 When we began our work initially in the Department of Transportation, the Registrar took a very hands-on role in the administration of the *Motor Vehicle Act*. In our opinion, this seems to have been contemplated by the Act. In fact, when the Act introduces the concept of Registrar in section 3, it states the following:

3(1) There shall be a division of the Department of Public Safety to be called the Motor Vehicle Division over which an officer to be called the Registrar of Motor Vehicles shall preside.

3(2) The Registrar shall act under the instructions of the Minister and Deputy Minister and has general supervision over all matters relating to motor vehicles in the Province, and shall perform such duties as are assigned to him by this Act, by the Lieutenant-Governor in Council or by the Minister or Deputy Minister.

7.151 We searched the Act quickly looking for the words “shall” or “shall not”. We felt this would be a quick indication of the hands-on duties the Registrar was required to perform under the MVA. It did not take long to find over twenty-five occurrences of this wording. But even beyond this, the Registrar has a number of important discretionary powers such as the retest provisions under section 95(3).

7.152 The point is this – the *Motor Vehicle Act* appears to contemplate a hands-on leadership role for the Registrar.

7.153 In the newly organized Department of Public Safety, however, the Registrar is not the head of the Motor Vehicle Division. He is not even part of the Motor Vehicle Division. The Registrar is stationed in the Operational Policy Branch. The Motor Vehicle Division (or at least the bulk of the staff in the former Department of Transportation Motor Vehicle Division) is in the Licensing and Records section of the Department of Public Safety. According to an internal document, the Registrar's role is “a more strategic role relative to appeals, interdepartmental, inter-provincial, national and international issues.”

7.154 We have been informed that the Deputy Registrar has assumed “responsibility for day to day decisions and operations.” The Department

has said this is largely due to the desire to separate the Registrar's appeals function from the functions of issuing and revoking licences. The Department believes the following section of the Act overrides the many duties given to the Registrar directly, including the duty to be the head over the Division:

3(6) There shall be a Deputy Registrar of Motor Vehicles appointed by the Lieutenant-Governor in Council who shall have all the powers and may perform all the duties of the Registrar.

7.155 We found this new role difficult to reconcile with section 3(1) of the Act. Not only does the Registrar not "preside", he does not even work in the Division.

7.156 The "may perform" of section 3(6) is relied on to support the Deputy Registrar's position in the new structure. Of course, one might argue that the Registrar in the Operational Policy Branch is not actually the Registrar contemplated by the Act. The Deputy Registrar as head over the division is the "true" Registrar contemplated by section 3. Or, alternatively, one might argue the Deputy Registrar's current boss, the head over Licensing and Records of which the Motor Vehicle Division is a part, is the real "officer" who "presides" over the Motor Vehicle Division. To complicate things further, we have the impression that in the view of the Department, the Division does not exist. The view seems to be that various responsibilities and personnel of the "former" Division have been placed in various parts of the Department in its new matrix structure.

7.157 We do not wish to belabour the point. But we point out that the current structure may not be in compliance with the *Motor Vehicle Act*. And it may not meet the intent of the legislation.

Recommendation

7.158 We recommended the Department revisit its current structure to determine if the roles of Registrar and Deputy Registrar are in compliance with the *Motor Vehicle Act* and the legislative intent of the Legislative Assembly. If changes to the Act are required, we recommended these be made. In the future, we recommended that changes in legislation precede changes in structure if the structure is prescribed in the Act.

Departmental response

7.159 *Amendments to the Motor Vehicle Act are currently being determined.*