

Chapter 3

New Brunswick Investment Management Corporation Governance

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New Brunswick Investment Management Corporation Governance

Introduction

3.1 The New Brunswick Investment Management Corporation (NBIMC) acts as trustee for the three legislated provincial pension funds which have a growing pool of investment assets, currently in excess of \$8 billion. Those three funds are the Public Service Pension Fund, the Teachers' Pension Fund and the Judges' Pension Fund. NBIMC reports that as at 31 March 2006, they employed 36 staff.

Year end 31 March	Assets held in trust 31 March (\$ millions)	Investment income (\$ millions)	Contributions (\$ millions)	Payments including NBIMC fees (\$ millions)	Corporate expenses (\$ millions)	Number of staff
2006	8,100	1,113	328	398	9.05	36
2005	7,056	552	314	375	8.85	34
2004	6,565	1,322	303	349	9.04	32
2003	5,289	(403)	186	330	7.46	32
2002	5,835	195	167	299	6.57	31

3.2 The provincial Office of Human Resources administers payments to pensioners. And most importantly, it is the Province that guarantees all future pension entitlements of current and former employees under the three legislated plans.

Background

3.3 In the early 1990s, the Province's three legislated pension plans had large unfunded liabilities. At that time, the Province set the goal of having all legislated provincial pension plans fully funded by the year 2018. A fully funded position means that there are sufficient assets in a plan to cover all payments that must be made to current and future pensioners.

3.4 Since this funding shortfall was the responsibility of the Province, it chose to implement measures to reduce the shortfall. This included the introduction of equity investments to diversify the investment portfolio. Additional equity investment expertise was required to earn the potentially higher investment returns from equity investments while managing the higher risk associated with those investments.

3.5 In 1994, the Legislative Assembly passed the *New Brunswick Investment Management Corporation Act* to create an organization that would manage the pension assets of the three legislated plans for the Province. The primary purpose for creating NBIMC was to create a pool of investment expertise in the Province that would facilitate the achievement of the provincial goal of fully funding legislated provincial pension plans.

Importance of effective governance

3.6 NBIMC is governed by a board of directors currently composed of twelve members. Because NBIMC was established under provincial legislation (*NBIMC Act*), we consider the Province to be the de-facto owner of the organization. The Province is represented in that regard by the Minister of Finance. While the Province is the owner of the organization, NBIMC is the trustee of the pension fund assets, not the owner of the assets.

3.7 There is a correlation between the level of investment returns earned by NBIMC and the amount of funding that must be provided by the Province and current pension fund contributors. Consequently the Province, and therefore New Brunswickers, has a significant stake in the success of NBIMC.

3.8 Ultimately Crown agency governance is about performance and accountability. It is now widely recognized that effective governance can have a very positive effect on the performance of an organization and in ensuring that management and the board are accountable for that performance. And for that reason, it is clear that it is in the best interests of the Province for the governance of NBIMC to be effective.

3.9 Governance can be defined as the process and structure used to direct the business and affairs of a corporation with the objective of achieving the corporate mission. The process and structure define the division of roles and responsibilities between the shareholder(s), the board and management. They also establish mechanisms for achieving accountability between management, the board of directors, and the shareholder(s).

Scope

3.10 Our objective for this audit was:

To assess whether current governance structures and processes established for NBIMC set a framework for effective governance.

3.11 In completing this work, we interviewed eight of the twelve NBIMC board members, including all three ex-officio members, one newly appointed member and four experienced board members. We reviewed documentation including legislation, bylaws, board minutes, business plans, and various other documents. We also reviewed recently-published governance literature, and findings from our previous governance audits, in order to identify best practices.

3.12 Our audit was performed in accordance with standards for assurance engagements, encompassing value for money and compliance, established by the Canadian Institute of Chartered Accountants, and accordingly included such tests and other procedures as we considered necessary in the circumstances.

3.13 Our examination of governance at NBIMC is the first part of a planned three part audit of that organization. The other two parts of the audit will address NBIMC operations and investment performance.

Results in brief

3.14 There are many areas that can be looked at in examining corporate governance at a Crown agency. We chose seven areas we felt could have the most impact on the effectiveness of governance at NBIMC. Those areas are detailed in column one of the table that follows. Column one also shows the audit criteria, or statements of principle, for each of these areas. These criteria were developed by our Office and reviewed with senior representatives of NBIMC.

3.15 The criteria established the framework for our audit. And it is against these criteria that we evaluated the state of governance of NBIMC. Our findings for each criterion are summarized in the second column of the table and discussed in more detail in the seven sections that follow.

Audit Area and Criterion	Summary of Findings
Purposes of NBIMC - The purposes of NBIMC should be clearly documented by legislation.	<p>The “objects and purposes” of NBIMC are documented in the NBIMC Act.</p> <p>The intent of the “objects and purposes” of NBIMC, as documented in the NBIMC Act, is not always clear.</p>

Audit Area and Criterion	Summary of Findings
<p>NBIMC mandate, mission and objectives - The mandate, mission and measurable objectives of NBIMC should be clearly documented by NBIMC's board and agreed to by Executive Council or a committee thereof.</p>	<p>The NBIMC strategic plan is out of date as it covers only the period up to 31 March 2005.</p> <p>A mandate, mission and measurable objectives for NBIMC are documented in the expired 2002-2005 strategic plan.</p> <p>The 2002-2005 strategic plan was not agreed to by the Executive Council or one of its committees.</p>
<p>Relative roles and responsibilities of key players in the governance of NBIMC - The relative roles and responsibilities of the NBIMC board of directors and committees, the management of NBIMC and government should be clearly documented and agreed upon by appropriate parties.</p>	<p>The roles and responsibilities have not been agreed upon by appropriate parties.</p> <p>The board has established three permanent committees: an Audit Committee, a Human Resource Committee and a Governance Committee. Each of the Committees has documented terms of reference that have been approved by the board.</p> <p>There has been no direct communication of provincial performance expectations to NBIMC. In the absence of this, NBIMC uses other available sources of information in setting its investment policy.</p>
<p>The board appointment process - The appointment process should provide sufficient information to those responsible for selecting candidates for appointment to the NBIMC board to allow them to choose candidates with the characteristics, skills and abilities that will best contribute to board effectiveness. The process should be clearly documented and followed consistently.</p>	<p>No formal appointment process has been documented or is followed by the Lieutenant-Governor in Council (LGIC). Appointments to the board of NBIMC are made on an ad hoc basis.</p> <p>No input is sought from the board as to characteristics, skills and abilities that are required of members of the NBIMC board, nor is the board asked to recommend qualified candidates to the LGIC.</p>
<p>Board succession planning - The NBIMC board should have a succession plan that recommends to government the orderly turnover of directors.</p>	<p>There is no board succession plan in place.</p> <p>There have recently been significant delays in appointing and reappointing board members, leading to concerns about the ongoing ability of the board to proactively govern NBIMC and to maintain an appropriate level of continuity at the board table.</p>
<p>Board training and development - The NBIMC board should get sufficient, appropriate training and guidance to understand and be able to apply current best practices of governance.</p>	<p>While training and development opportunities provided to the board have been somewhat ad hoc, they have covered most important areas.</p> <p>There is no formal board training and development plan in place.</p>
<p>Board code of conduct and ethics - NBIMC's board should have an appropriate documented Code of Conduct and Ethics.</p>	<p>The board is subject to a Code of Ethics that appears to cover all important areas.</p> <p>There is a process in place to handle potential conflict of interest situations.</p>
<p>Other observations and findings</p>	<p>To the best of our knowledge, the original premises under which NBIMC was established have never been revisited.</p> <p>The NBIMC Act has not been the subject of a comprehensive review since it was originally passed into law in 1994.</p>

Purposes of the New Brunswick Investment Management Corporation

Act as trustee

3.16 It is important that the purposes for which a Crown agency was created be clearly documented. This allows government, the board of directors, and management to have a common understanding of the purposes for which the organization was established, and to focus on fulfilling those purposes.

3.17 The objects and purposes of the New Brunswick Investment Management Corporation appear in section 4 of the NBIMC Act. They are discussed under the four headings that follow in this section of the chapter.

3.18 Section 4 (a) of the *New Brunswick Investment Management Corporation Act* states that the first object and purpose of the Corporation is:

... to act as trustee for the funds referred to in subsection 14(1), ...

3.19 Section 14(1) of the Act indicates that the Corporation is to act as trustee for the Public Service Superannuation Fund, the Teachers' Pension Fund and the Judges' Superannuation Fund. This is NBIMC's primary function.

3.20 At 31 March 2006, the Corporation, as part of this trustee function, was directly involved in the investment of \$6.3 billion of the pension plan assets, covering all asset classes where the organization feels it has sufficient expertise. Remaining fund assets totalling \$1.7 billion were invested through third-party managers who are engaged and monitored by NBIMC. NBIMC sets the investment policy that these third-party managers are required to follow.

Act as investment counsellor

3.21 Section 4 (b) of the *New Brunswick Investment Management Corporation Act* states that the second object and purpose of the Corporation is:

... to provide investment counselling services and other services in respect of the funds referred to in section 15,

3.22 Section 15 of the Act indicates that the Corporation is to provide investment counselling services and other services (i.e. management and administration) to the Minister of Finance or the related trustee for the following funds as directed by the Minister or fund trustee:

- Sinking funds for the Province required by the *Provincial Loans Act*

- Viscount Bennett Trust Fund
- E. Belle Lynds Scholarship Fund
- Mental Health Trust Fund
- Group Insurance Trust Fund
- Sport Development Trust Fund
- Arts Development Trust Fund
- Environmental Trust Fund
- Any other funds as designated by regulation

3.23 Investment decisions relating to the funds listed under Section 15 are made by staff in the Department of Finance. NBIMC has not been asked by the Province to get involved with these funds.

Promote development of provincial financial services industry/capital markets

3.24 Section 4 (c) of the *New Brunswick Investment Management Corporation Act* states that the third object and purpose of the Corporation is:

... to promote the development of the financial services industry and capital markets in the Province, ...

3.25 In June, 2004, the *Securities Act* was assented to. Section 2 of that Act identifies its purposes including:

...(b) to foster fair and efficient capital markets and confidence in capital markets.

3.26 Because of the creation of the N.B. Securities Commission, we wonder if NBIMC should still have a role in promoting the development of capital markets in the Province. We feel that the Province, through a letter of expectations as recommended later in this chapter, should provide clarification of NBIMC's role under section 4(c) of the Act.

Carry out other authorized activities

3.27 Section 4 (d) of the *New Brunswick Investment Management Corporation Act* states that the fourth and final object and purpose of the Corporation is:

... to carry out such other activities or duties as may be authorized or required by this Act or the Lieutenant-Governor in Council may direct.

3.28 To date, neither the Lieutenant-Governor in Council nor the Minister of Finance have provided further clarification on the meaning or intent of this or other subsections of the Act. Potential improvements in communication of provincial expectations are

discussed in more detail in the roles and responsibilities section of this chapter.

Recommendation

3.29 In the roles and responsibilities section of this chapter, we made a recommendation that the pension plan governor should clearly document government expectations of the Corporation with regards to section 4 of the Act in a letter of expectations.

Mandate, mission and objectives of the New Brunswick Investment Management Corporation

3.30 Typically, the mandate, mission and objectives of an organization are documented and renewed periodically through corporate strategic planning. The NBIMC strategic plan expired at 31 March 2005 and has not yet been renewed. The strategic plan covered the period from 2002 to 2005 and documents NBIMC's most recent interpretation of the mandate, mission, and strategic goals of the Corporation. Re-examining the mandate, mission and objectives of NBIMC and having them agreed to by the Minister of Finance (on behalf of the government) and the board would yield three major benefits:

- it would provide the Province, the board, and NBIMC management and staff with a common understanding of the purpose of NBIMC;
- it would provide NBIMC management and staff with a clear indication as to what initiatives and activities they should be undertaking; and
- it would provide a basis for corporate planning and the evaluation of corporate performance.

Corporate mandate	<ul style="list-style-type: none"> • Trustee and investment services for the Teachers' Pension Plan, the Public Service Superannuation Plan, and the Judges' Superannuation Plan. • Investment services for other funds at the request of the Minister of Finance. • Investment services for other third party funds which may be undertaken on a commercial fee basis. • Consideration of local investment opportunities based in the Province and the region. • Responsibility to support and encourage the financial services industry.
Corporate mission	<ul style="list-style-type: none"> • To meet client investment objectives with a low expense ratio.

Corporate strategic goals	<ul style="list-style-type: none"> • The goal for returns from asset mix policy is to meet the minimum long-term real return assumption set by the Sponsor's funding plan for the pension plans of 4.0 percent. • The goal for active management is to add 42 basis points (.42%) over benchmark returns net of Corporation costs over rolling four year periods. • To be prepared to market investment services to new external clients in the region by the end of the strategic plan period. • The Corporation will undertake broad based measures which engage all employees in an ongoing effort to improve corporate effectiveness. These measures will include leadership, communication, feedback, recognition and support for innovation as priorities. • The Corporation will maintain a reputation of honesty and integrity, of competence, of openness, and of being a good citizen in the community. • The Corporation will maintain its effectiveness in using technology. • Develop and maintain the highest standards of financial accounting, compliance and performance measurement to meet client needs.
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3.31 The board is aware that the strategic plan needs to be renewed. Board members indicated that the strategic plan had not been brought up to date due to uncertainty surrounding the reappointment of board members. Issues surrounding NBIMC board appointments and continuity are discussed later in this chapter.

3.32 A critical role of any board of directors is to ensure that an up-to-date strategic framework is in place for the organization they govern. We believe, despite the board members' concerns about board continuity, that a strategic plan should have been developed on a timely basis for NBIMC covering the period from 1 April 2005 forward. Uncertainty on the part of board members about their status on the board does not excuse them from their responsibility to provide corporate strategic leadership.

Strategic plan

3.33 The NBIMC strategic plan covering 2002 to 2005 was approved by the board. NBIMC is responsible to develop and implement its strategic plan, however, we believe that the Province, as owner of NBIMC, should formally agree with that strategic plan.

3.34 The strategic plan could be requested by the Minister of Finance pursuant to Section 27(4) of the Act that states:

The Corporation shall provide to the Minister such information in respect of the business and affairs of the Corporation as the Minister may request from time to time.

3.35 The requirement for the Corporation to provide the strategic plan to the Minister of Finance could be included in terms of the letter of expectations, as discussed in the next section of this chapter. The Minister could then convey the plan to the Executive Council.

Recommendation

3.36 We recommended NBIMC prepare an updated strategic plan and provide it to the Minister of Finance.

3.37 We further recommended the Minister of Finance provide NBIMC's updated strategic plan to the Executive Council or one of the Executive Council's committees for formal review.

NBIMC response

3.38 *The Board had recognized that it needed to review, and possibly modify, its strategic plan. It felt however that the existing strategy provided a proper framework in which to continue to develop an annual business plan and operating budget, and that it would be more appropriate to review the strategic plan after the appointment of a full slate of Directors with current terms of service.*

3.39 *Now that this situation has been addressed, the Board and management have begun a strategic planning exercise which is expected to be completed prior to the end of the current fiscal year (March 31, 2007). As part of this exercise the Board plans to provide a copy to the Minister of Finance for review and input.*

Roles and responsibilities

3.40 In order for governance to be effective, it is very important that the roles and responsibilities of key players be clearly documented, and understood and agreed upon by appropriate parties.

Roles and responsibilities of the board

3.41 Section 10 of the Act states:

The Board shall administer the affairs of the Corporation on a commercial basis and all decisions and actions of the Board are to be based on sound business practice.

3.42 Board members feel that they represent two key stakeholders, the guarantor of the three plans (i.e. the Province who is also the owner of NBIMC) and the beneficiaries of the pension plans, in fulfilling their roles and responsibilities.

Roles and responsibilities of ex-officio and group-specific board members

3.43 Best governance practices would dictate that among its key roles and responsibilities the board of NBIMC must ensure that the Corporation meets the performance expectations of the Province. The board is also responsible for discharging its accountability obligations to the Province in relation to corporate performance. Further, the board should also be responsible for ensuring that management is held accountable for its performance, and that there is an appropriate strategic framework in place.

3.44 The board does have by-laws and corporate policies that address key board structures and processes, as well as the roles and responsibilities of the board.

3.45 Under the current NBIMC Act, five of the twelve members of the NBIMC board are either ex-officio or selected from specific groups.

3.46 The board of NBIMC includes three ex-officio members. Section 6 of the Act states:

The board of directors of the Corporation shall consist of the following members:

(a) the President of the Corporation;

(b) the Deputy Minister of Finance, who shall be a non-voting member;

(c) the Vice-President of Finance of the New Brunswick Power Holding Corporation; ...

3.47 In addition, section 6(d) requires the appointment of two members as follows.

... (ii) one of whom shall be a member of the public service superannuation plan in respect of which the Corporation acts a trustee of the pension fund referred to in section 27 of the Public Service Superannuation Act,

(iii) one of whom shall be a member of the teachers' pension plan in respect of which the Corporation acts as trustee of the Teachers' Pension Fund referred to in section 26 of the Teachers' Pension Act, ...

3.48 We believe that the reason the Act, when originally written, required the appointment of board members from specific stakeholder

groups, including some ex-officio members, was to ensure stakeholder representation and stakeholder acceptance of the new corporation.

***Deputy Minister of Finance –
ex-officio board member***

3.49 The role of the Deputy Minister of the Department of Finance, who is a non-voting member of the board, is not documented in the NBIMC directors' manual. His role as a non-voting member of the board is to maintain an understanding of the operations of the organization, and to report to the Province on any NBIMC corporate decisions he feels may have an impact on the Province. This is necessary because of the risk the Province has assumed as the guarantor of the three legislated pension plans. The role is not to be a conduit for formal communication between the Province and NBIMC, but rather to ensure that the Minister of Finance is kept current on all matters relating to NBIMC.

3.50 The 14 December 1994 edition of Hansard reports the then Minister of Finance, the Hon. Mr. Maher saying:

I should point out that, by legislation, the Deputy Minister of Finance will be a nonvoting member, and there is a reason for him or her to be nonvoting. If they are at a meeting when decisions are made that they are not happy about, they can then come back to the minister and to Cabinet to advise them of that, so that if there is a problem we can address it very quickly.

3.51 The Deputy Minister of Finance was included on the board in order to ensure that the Minister was aware of any issues that might arise. The appointment was made non-voting to ensure there is not any conflict of interest between the Deputy's role as an NBIMC board member and his regular responsibilities to the Minister of Finance.

3.52 However, because the Minister of Finance has never provided NBIMC with a written explanation of the role of the Deputy Minister of Finance as a non-voting member, the role is not documented in NBIMC's directors' manual. Therefore we found more than one board member confused about this non-voting role. They indicated that they felt that the Deputy Minister of Finance is the formal conduit for communication between the NBIMC board and the Province.

3.53 We feel that this lack of common understanding of the role of the Deputy Minister of Finance in the governance of NBIMC needs

to be resolved. The Minister of Finance should provide NBIMC with a written explanation of the role of the Deputy Minister of Finance as a non-voting member of NBIMC's board. The NBIMC directors' manual should include a brief history of the corporation including a description of the role of the Deputy Minister of Finance.

Vice President of Finance of NB Power – ex-officio board member

3.54 When NBIMC was established, board members were selected from various stakeholder groups. This included the Vice President of Finance of New Brunswick Power Holding Corporation because that organization pays significant employer contributions into the Public Service Superannuation Fund. Board members felt that the expertise provided by having a financial person on the board was of value.

President of NBIMC – ex-officio board member

3.55 The President of NBIMC, along with his roles as the Chief Executive Officer (CEO) and Chief Investment Officer (CIO) of NBIMC, is also an ex-officio voting member of the board.

3.56 In his book, *On Board Leadership*, governance expert John Carver makes the following observations in the chapter, *Should Your CEO Be a Board Member?*

Yet having the CEO be a member of the very board that instructs and assesses him or her is by its very nature a conflict of interest. That conflict may cause only a small problem or can be a major impediment to the integrity of governance. But having the CEO on the board must eventually damage governance in some way. ...So, should the CEO be on the board? Certainly not.

3.57 As is obvious from John Carver's comments, governance best practices discourage the appointment of a corporate President/CEO to his or her corporate board. As we stated in our 2003 Report, we believe that CEOs with voting rights at the board table are essentially being asked to be both managers and directors which puts them in a conflict of interest situation.

3.58 We believe that in the long term, the best solution is for the President of NBIMC to no longer be a member of the NBIMC board. In the meantime the board needs to carefully manage the President's status as a board member through the continued use of in-camera meetings.

3.59 We were told by board members of the NBIMC board that, in fact, in-camera meetings without the President present are held regularly. They feel that this potential conflict is being managed and

in their opinion has not created a problem in the past. Our review of the minutes of the board and its committees confirmed that in-camera sessions were regularly held. However, in our opinion, the risk of a conflict of interest from having the President of NBIMC as a voting member of the board remains.

NBIMC response

3.60 *We find that the view on the inappropriateness of the President participating as a voting member of its Board is questionable. For example, the Canadian Coalition of Good Governance and Pension Investment Association of Canada, two national investor based organizations of which NBIMC is a member, identify only governance concerns with Chief Executive Officers acting in the role of Chairperson. This is clearly not the case at NBIMC.*

3.61 *We also note that due to the lay nature of most Board members, a number of Directors feel that it is important to have the President act as a voting member and be a part of the record with respect to decisions. We are pleased to note your findings with respect to how any potential conflicts are handled by in-camera sessions, the President removing them self from related decisions where appropriate, and Board controlled meeting agendas.*

Section 6(d)(ii) and (iii) board members

3.62 Board members who are also members of the Teachers' Pension Plan and the Public Service Superannuation Plan can also be in a conflict situation relating to their dual roles as board members and members of their respective pension plans. The interests of individual pension plan members may, on occasion, be in conflict with NBIMC's trustee role of protecting the guarantee of the sponsor of the three pension plans. While we were told by board members that this has not been a problem to date, all board members need to clearly understand that their primary duty is to make decisions that are in the best interest of NBIMC, not another organization or stakeholder group.

3.63 In addition to the one board member that must be selected from the members of the *Public Service Superannuation Act* pension plan, the three ex-officio board members are also members of that pension plan.

NBIMC response

3.64 *The NBIMC directors' manual clearly points out that "Although two members of the Board of Directors are members of the two large pension plans it is entirely a fiduciary not a representative Board. In other words no director, properly performing their*

responsibility, represents any other interest except their fiduciary obligation to the pension funds.”

Roles and responsibilities of board committees

3.65 The board has established three permanent committees: an Audit Committee, a Human Resource Committee and a Governance Committee. Committees have no power to pass resolutions on their own, but rather may simply recommend certain actions to the full board for approval. Each of the committees has documented terms of reference that have been approved by the board of directors. The NBIMC committee structure is generally consistent with best practices, although we would recommend adding a board nominating committee. This recommendation is discussed in more detail later in this chapter.

Roles and responsibilities of the President

3.66 Section 12(2) of the Act states,

The President is, subject to the direction of the Board, charged with the general direction, supervision and control of the business of the Corporation, and may exercise such other powers as may be conferred on the President by the by-laws of the Corporation.

3.67 During our interviews, some concern was expressed that the incumbent President of NBIMC is filling two senior executive roles. He is the Chief Executive Officer (CEO) as well as the Chief Investment Officer (CIO) for the Corporation. At present, departure of the President would mean that two key executive positions would become vacant. However, a management succession plan has been developed for NBIMC that reduces the associated risks.

Roles and responsibilities of the Province

3.68 The Province is the de facto owner of NBIMC and the guarantor for the three plans for which NBIMC acts as trustee.

3.69 Further, the NBIMC Act specifies certain key roles and responsibilities assigned to the Province as follows:

- The Lieutenant-Governor in Council (LGIC) makes all appointments to the board with the exception of ex-officio board members. The LGIC may also remove the members it appoints.
- The LGIC designates a Chair and Vice-Chair of the board from among those it has appointed.
- The LGIC appoints the President of NBIMC. The LGIC may also remove the President for cause.

- The LGIC approves NBIMC bylaws.
- The LGIC may authorize or require NBIMC to carry out additional activities or duties not specified in the Act as it sees fit.
- The Board of Management receives, but does not approve, an annual proposed budget from the NBIMC board of directors.
- The Minister of Finance receives the annual report from NBIMC and tables it in the Legislative Assembly.
- The Minister of Finance may request information from NBIMC in respect of its business and affairs as he or she sees fit.

3.70 Further, recent amendments to the *Provincial Court Judges' Pension Act*, the *Public Service Superannuation Act*, and the *Teachers' Pension Act* in each case identified a “plan governor” who is the person who has the overall responsibility for the respective legislated pension plans. The Minister of Finance is the plan governor for the Provincial Court Judges' Pension Plan while the Chair of the Board of Management (also the Minister of Finance) is the plan governor for the Public Service Superannuation Plan and the Teachers' Pension Plan.

3.71 This is the extent to which the roles and responsibilities of the Province in connection with NBIMC have been documented. However, we identified some areas where further clarification of the nature and extent of the Province's involvement with NBIMC is needed.

***Lack of clearly
communicated provincial
performance expectations***

3.72 An important part of the Province's role as de facto owner and guarantor is to communicate its general expectations for the Corporation to both NBIMC and the governors of the three pension plans. We feel that this responsibility rests with the Minister of Finance as the owner's representative and would include an expectation that the Corporation will obtain more detailed written direction from each of the three pension plan governors.

3.73 However, the Minister of Finance not only serves as the owner's representative, but also as the governor of all three of the legislated pension plans. Given the dual role held by the Minister of Finance, in practice we would now expect communication of provincial expectations for NBIMC to flow from the Minister of Finance directly to NBIMC.

3.74 As covered earlier in this chapter, NBIMC's primary function is fiduciary (i.e. to act as trustee for the three pension funds). In order to meet this fiduciary duty, NBIMC develops and maintains a corporate investment policy which drives the investment decisions it makes.

3.75 Investment returns are very much a function of how much risk is taken in investing. All other things being equal, higher risk implies higher returns. However it also implies that the potential for loss is much greater. Therefore, the Province, as pension plan guarantor, must carefully consider the trade off between investment returns and risk in determining its goals.

3.76 It is the role of the pension plan governor of the three pension plans (i.e. the Minister of Finance in each case) to provide such information to NBIMC as provincial investment goals, a provincial funding policy, its tolerance for risk, its cash needs, and expected cash contributions. All this information must be available for consideration by NBIMC in establishing appropriate investment policies for each legislated pension plan.

3.77 We expected that NBIMC would set its investment policies based on direct input from the Minister of Finance. However, at present, the Minister of Finance does not direct any activities of, nor does he provide any performance expectations to, NBIMC. There is no letter of expectations, or other formal process for communicating performance expectations to NBIMC on behalf of the owner. The only expectations provided to NBIMC are those included in the NBIMC Act.

3.78 Because the Minister of Finance does not formally communicate provincial expectations to NBIMC, the Corporation uses other available sources of information in setting investment policies. These sources of information include actuarial reports and discussions with the private-sector actuary who is responsible for evaluating the three legislated pension plans. In the circumstances, we feel that NBIMC is using all means available to it to ensure that the investment policies are appropriate. However, the current situation increases the risk that NBIMC's interpretation will not correspond with that of the Province.

3.79 If clear provincial performance expectations were provided, then NBIMC could be held to account for its success in meeting those expectations. And questions about the performance expectations

themselves could then be directed towards the Province as policy-maker, rather than NBIMC.

3.80 Opportunities for the government to hold NBIMC accountable for performance exist. For example, NBIMC presents its budget annually to the Board of Management, presents quarterly information to government, tables its annual report with the Minister of Finance, and appears before the Crown Corporations Committee of the Legislature. This accountability process would be more valuable if the Province's expectations of NBIMC's performance were documented.

3.81 One specific area that we feel the Province needs to clarify for NBIMC is its expectations of the Corporation concerning section 17(5) of the Act which states:

In the development and implementation of the statements of investment policies and guidelines, the Corporation shall have regard to investment opportunities in the Province.

3.82 In order to address this section of the Act, the Corporation has included as part of the investment policies of the three pension plans, a clause that allows up to two percent of assets to be invested in New Brunswick and Atlantic Regions instruments that would not meet the investment criteria of other asset portfolios. We were unable to find any direction from the Province compelling NBIMC to address section 17(5) in this way.

3.83 In fact, the way in which NBIMC has chosen to address section 17(5) may conflict with its section 4(a) purpose of acting as trustee for the three legislated pension plans. Furthermore, since this clause deals with investments that did not meet the regular investment criteria, we expect that extra effort is involved with identifying, acquiring, and holding these investments. We would also expect that the return on these investments would justify the extra effort. We have been told by the board that longer time lines are required to assess the success of private investments.

NBIMC response

3.84 *All investments made by NBIMC are made on a commercial basis with risk adjusted return expectations that are commensurate with our duties as Trustee. In many cases these investments are also being made alongside other commercially based investors.*

Letter of expectations

3.85 We believe that a single reference document should be prepared on an annual basis for NBIMC that clearly summarizes provincial expectations. Such a document would:

- further clarify and enhance the interpretation of the NBIMC Act;
- clarify the roles and responsibilities of the Minister of Finance and other key governance players;
- ensure that corporate investment policies and plans are aligned with the expectations and needs of the owner and the pension plan governor;
- allow expectations to be adjusted regularly in keeping with changes in provincial policy and priorities; and
- allow both the board of NBIMC and the Province to better evaluate corporate performance by establishing agreed upon targets against which to measure results.

3.86 Other jurisdictions have made use of a shareholder's letter of expectations as a way of documenting government expectations for a Crown agency. For example, the letter of expectations used by the Province of British Columbia clearly identifies:

- specific direction government has given to the corporation;
- corporation accountabilities in responding to government's performance expectations;
- shareholder responsibilities establishing that the shareholder is responsible for the legislative, regulatory and public policy in which the Crown operates; further it mandates specific shareholder actions required to meet these responsibilities and support achievement of government's performance expectations; and
- areas of shared accountability, specifically communications and reporting.

3.87 The concept of letters of expectation is discussed further in our 2005 Report, chapter 6 on NB Power Governance.

3.88 The 2006 document *Government Response to the Final Report of the Commission on Legislative Democracy* spoke to this area as well. Page fourteen of that report recognized the need to ensure that

there is clear understanding between the Crown agency boards and government. Although it was prepared by the previous government, we feel that there is merit in continuing with the plans laid out in this document.

3.89 An NBIMC letter of expectations, along with addressing specific needs of the individual pension plans, would provide the government's interpretation of the intent of the Legislative Assembly in drafting the *New Brunswick Investment Management Corporation Act*. As such, we believe that the Minister of Finance could table the NBIMC letter of expectations annually at the Legislative Assembly to allow members to review it to ensure that it mirrors the intent of the NBIMC Act.

Recommendations

3.90 We recommended NBIMC document the roles of the ex-officio board members.

3.91 We recommended the Minister of Finance develop, and update annually, a letter of expectations that, as a minimum:

- identifies the Minister of Finance as the official provincial representative who speaks on behalf of the owner and as pension plan governor for the three legislated pension plans in formal communications with NBIMC;
- provides clearly defined provincial performance expectations including targets that the Minister of Finance will use in evaluating corporate performance;
- provides a clear indication to the NBIMC board of directors as to when it needs to consult with the Minister of Finance for direction prior to making a decision;
- documents and where necessary clarifies the intended purposes of the organization as stated in section 4 of the NBIMC Act;
- documents provincial expectations for NBIMC relating to Section 17(5) of the NBIMC Act;
- documents clearly-stated mandates, missions and measurable objectives for NBIMC as developed by the Corporation and agreed upon by the Province;
- establishes the performance reporting the Province needs from NBIMC to evaluate corporate performance;

- clearly explains the role of the board in the appointment process and how board input into that process is to be provided to the Province; [*Note – The board appointment process is discussed in the next two sections of this chapter.*]
- assigns responsibility for the development and application of a board succession plan; and
- clarifies other aspects of the relationship between the Province and NBIMC as considered necessary (e.g. relative roles and responsibilities of major players in the governance of NBIMC.)

3.92 We recommended the letter of expectations be signed by the Minister of Finance, both in his role as owner representative and as pension plan governor, and the chair of the NBIMC board of directors to signify their understanding and agreement.

3.93 We recommended NBIMC should either:

- adjust the investment policies of the three pension plans to conform with provincial expectations with regard to Section 17(5) of the NBIMC Act; or, in the absence of direction from the Province,
- eliminate the requirement in their current investment policy that up to two percent of assets they administer be invested within New Brunswick, and make future decisions to invest within New Brunswick on the same basis as other investment decisions.

NBIMC response

3.94 *While we support and encourage enhanced communication between ourselves and the pension plan governor, we feel it is important to point out that as an independent body that has fiduciary obligations solely to the funds under management, it should be the responsibility of our Board to ultimately set policies and performance expectations for the Corporation. It is our understanding that for this very reason the British Columbia Investment Management Corporation, a similar peer organization, is exempted from the Shareholder's Letter of Expectations process in British Columbia.*

Board appointment process

3.95 The board of NBIMC is currently composed of twelve members appointed in accordance with section 6 of the NBIMC Act. Board members include:

- the President of NBIMC;

- the Deputy Minister of Finance, who is a non-voting member;
- the Vice-President of Finance of the New Brunswick Power Holding Corporation;
- the dean of a faculty of business administration at a New Brunswick university or similar person who is appointed by the Lieutenant-Governor in Council (LGIC);
- a member of the public service superannuation plan who is appointed by the LGIC;
- a member of the teachers' pension plan who is appointed by the LGIC;
- three non-pension plan members who have knowledge, experience and expertise relevant to the business and affairs of the Corporation who are appointed by the LGIC; and
- three other persons who are appointed by the LGIC.

Best practices

3.96 Organizations like the CPP Investment Board, the Conference Board of Canada, the Treasury Board of Canada, and our own NB Power have recognized the importance of appointing the right people to boards of directors in the ultimate effectiveness of the governance they provide.

3.97 For example, according to the CPP Investment Board website, the appointment process for the CPP Investment Board works as follows:

Directors are appointed by the federal finance minister ... with the assistance of a nominating committee, for a term of three years. The chair of the nominating committee is federally appointed, and each participating provincial government appoints one representative.

The nominating committee recommends candidates for appointment and re-appointment to the federal finance minister. In turn, the federal finance minister makes the appointments in consultation with the provincial finance ministers.

The nomination process is designed to ensure that only those with expertise in investment, business and finance are appointed to the board.

3.98 In our 2005 Report, chapter 6, which dealt with the governance of NB Power, we noted that the process for appointing members to the board of that Crown agency had been changed to include some best practices such as the use of a skills matrix and the hiring of a recruiting agency to identify potential candidates.

NBIMC process

3.99 By contrast, when we reviewed the appointment process at NBIMC, we did not find a documented appointment process, nor was there any documentation supporting recent appointments made to the NBIMC board.

3.100 Board members expressed concern about the way appointments are being made to the board of NBIMC. They felt that unless the appointment process is improved the continued quality of board members is at risk.

3.101 In particular, board members were concerned that the information considered by the Province in appointing candidates to the board of NBIMC has never included input from the board itself. NBIMC board members felt that, in fact, they were in the best position to be able to provide useful information to the LGIC with regards to skills and abilities required by board members, and also to suggest potential candidates.

3.102 In general, board members indicated that they feel there should be an appointment process similar to that adopted by NB Power. In other words, after due diligence the board should forward the names of qualified individuals to the Minister of Finance, with the LGIC having the final discretion as to who is appointed. Board members indicated that a unilateral past attempt by the board to provide the names of candidates to the Minister of Finance was not acknowledged, nor acted upon.

Provincial proposal

3.103 In our 2005 Report, we recommended that the Executive Council Office develop a global appointment process to be followed when appointing directors to the boards of all provincial Crown agencies. We further recommended that this policy should be based on the process used by NB Power as described above. In the 2006 document, *Government Response to the Final Report of the Commission on Legislative Democracy*, the following planned actions to address identified deficiencies in the provincial appointment process for the boards of Crown agencies were announced.

A new ABC Appointments Unit will be established to coordinate the appointments process. It will develop

specific procedures to guide the development of ABC position profiles, recruitment strategies, review of applications and assistance with board governance.

A specific appointments process to key ABCs, such as Crown agencies, will be established to ensure merit-based appointments aimed at appointing qualified, competent individuals. This will include:

- Developing board profiles*
- Preparing position descriptions setting out skills required and qualifications as well as any compensation*
- Advertising of vacancies and position descriptions*
- Identification and reviewing of potential candidates*
- Preparation of shortlist for review by Lieutenant-Governor in Council.*

3.104 The report went on to indicate that the ABC Appointments Unit would be created during 2006. And in fact the former Premier, on 21 June 2006, announced that the Province would name a new ABC Appointments Unit this year, although given the recent change in government the status of this initiative is unclear at the present time.

3.105 In general, we are pleased with the appointment process to be used by the ABC Appointments Unit to the extent that it is described in the *Government Response* document. However, we feel that the appointment process identified could be improved by obtaining appropriate, timely input from Crown agency boards relating to the first, second and fourth bullet points above.

3.106 The board of NBIMC could delegate the preparation of this input to a new board nominating committee, or by adding a nominating role to the terms of reference of an existing committee. We also believe that, as in the CPP Investment Board example given above, the nominating committee should focus primarily on skills and abilities in identifying potential candidates for the board.

3.107 The role of the board in the appointment process, through its nominating committee, should be clearly documented and agreed to in the letter of expectations as previously recommended. Further, the letter of expectations should clearly document the process by which

board input into the appointment process is to be communicated to the Province.

Recommendations

3.108 We recommended the Executive Council Office ensure that any new appointments process for Crown agency boards includes obtaining appropriate, timely input from those boards.

3.109 We recommended the board of NBIMC should form a nominating committee. Responsibilities of a nominating committee could include, but not be limited to:

- **developing board profiles;**
- **documenting required skills and abilities of potential board candidates;**
- **developing position descriptions; and**
- **identifying potential candidates for appointment to the board.**

3.110 In the roles and responsibilities section of this chapter we also made a recommendation that the role of the board in the appointment process, through its nominating committee, and the process by which board input into the appointment process is to be communicated to the Province should be clearly documented and agreed to in a letter of expectations.

Board succession planning

3.111 In order to ensure effective governance, a board needs orderly turnover. Orderly turnover helps ensure that the board retains corporate memory while continuing to renew itself by adding new members.

3.112 In our 2003 Report, chapter 6, on Crown agency governance, we made the following comment with regards to the timeliness and continuity of board appointments among New Brunswick Crown agencies:

On a positive note, we found four Crown agency boards for which appointments were completely up-to-date and for which expiry dates had been adequately staggered to ensure continuity at the board table.

3.113 One of those four Crown agencies was NBIMC. Unfortunately, the board appointment situation deteriorated significantly in the period after our 2003 Report, including the period of our audit field work. Subsequent to our field work, the board appointment situation has improved. Exhibit 3.1 shows board member appointments and their terms since 2003.

Exhibit 3.1
NBIMC Board member terms

Member	By	2003				2004				2005				2006				2007				2008				2009				
		JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	JFM	AMJ	JAS	OND	
1 (Chair)	LGIC	(1)	← 3 years								1 year				*															
2 (Vice-Chair)	LGIC	(1)	← 21 months				1 year				1 year				18 months				**											
3	LGIC	(1)	← 3 years		2 years				1 year				18 months				**													
4	LGIC	(1)	← 21 months				1 year				1 year				18 months				**											
5	LGIC	(1)	← 21 months				1 year				1 year				18 months				**											
6	LGIC	(2)	← 21 months				21 months				3 years																			
7	LGIC	(2)	← 21 months				21 months				3 years																			
8	LGIC	(2)	← 3 years		33 months				3 years																					
9	LGIC	(2)	← 3 years		33 months				3 years																					
DM Finance	ex-officio	(1)	←																											
VP NB Power	ex-officio	(1)	←																											
President NBIMC	ex-officio	(1)	←																											

(1) - Same person during period shown
(2) - New member starting 2 March 2006

← start of term before 2003
→ term continues
| beginning or end of term
x years term length
x months gap during which section 7 (4) invoked

* Still serving as a board member under section 7 (4). Position of Chair is vacant.
** One month gap from 15 June 2006 to 20 July 2006.

Timeliness of LGIC appointments

3.114 The timeliness of LGIC board appointments at NBIMC has become a serious concern recently. As can be seen from the table, the LGIC made eight appointments to the board of NBIMC during the first seven months of 2006, and an additional new appointment or reappointment was needed as of 31 August 2006. In particular, during March 2006 four long-serving members were replaced by four new members. The terms of the other five members expired on 15 June 2006. On 20 July 2006, four of these members including the Vice-Chair were reappointed for terms of eighteen months each.

3.115 The table also shows that for eight of the nine LGIC appointments to the board there were periods ranging from one year to thirty-three months during which board members continued on past the end of their appointment terms. The Act does allow for board members to serve past the expiry date of their term.

3.116 Section 7(4) states, *...a member of the Board appointed under paragraph 6(d) [i.e. by LGIC] remains in office until the member resigns, is re-appointed or replaced.*

3.117 However, the heavy reliance on this section of the Act in the past few years has caused uncertainty for both the board and corporate staff, thereby creating a risk that both governance and management effectiveness will be compromised. And in fact, the board indicated that this uncertainty has led the board to defer the completion of certain key initiatives including development of an updated strategic plan, and development of a board training and development plan. Board members we spoke to indicated that until the uncertainty around their appointments was eliminated, they were just trying to maintain the status quo.

***Board quorum between
15 June and 20 July 2006***

3.118 A serious situation was ongoing at the time of our audit field work as a result of delays in LGIC appointments to the board of NBIMC. As mentioned in the previous section, five members of the board whose terms expired on 15 June 2006 were not reappointed on a timely basis. These members included the Chair and Vice-Chair of the board.

3.119 As noted above, under the Act members of the board continue to serve under their old appointment until they are reappointed or replaced. However, their appointments as corporate officers (i.e. as Chair and Vice-Chair) do not continue.

3.120 Further, section 11 of the Act states:

Five voting members of the Board, of whom one is either the Chairperson or the Vice-Chairperson, constitute a quorum.

3.121 Consequently, between 15 June and 20 July 2006 (i.e. the reappointment date of the Vice-Chair) the board of NBIMC did not have a quorum. During that period it was unable to hold board meetings and therefore was unable to govern NBIMC.

3.122 For obvious reasons, board members we talked to expressed serious concerns about this situation. They also indicated that while the situation was ongoing, the board and staff were provided with no information about the status of pending LGIC board appointments by the Province. Future board appointments need to be made on a timely basis in order to avoid similar situations.

3.123 We would also note that while the Vice-Chair of the board has been re-appointed, the position of Chair remained vacant as of 31 August 2006. Therefore the Vice-Chair was acting as the Chair of the board without backup. This increases the risk that the board may again be without a quorum at some point in the future.

Board succession plan

3.124 There is currently no formal succession plan for board members at NBIMC. A formal succession plan should ensure that:

- appointments and reappointments to the board are made on a timely basis; and
- board members' terms are staggered sufficiently to ensure that there is always a mix of new and more experienced members on the board, thereby ensuring an orderly transfer of corporate memory at the board table. We would suggest that all appointments be for terms of three years and that those appointments be staggered such that one third of appointment terms expire each year.

3.125 Section 7(1) of the NBIMC Act specifies that LGIC appointments to the board shall be for a term "not exceeding three years." This allows for staggered appointment terms for directors. As well this section states that members "are eligible for reappointment." However, while the Act is structured in such a way as to permit orderly turnover, the lack of a formal board succession plan creates the risk that orderly turnover will not happen, thereby risking a reduction in governance effectiveness.

Continuity of board membership

3.126 The uncertainty surrounding board appointments that existed from the middle of 2003 until the middle of 2006 caused confusion, although the appointments of 20 July 2006 do improve the situation. This highlights the need for board input into the appointment process and a formal succession plan.

Exhibit 3.2

Status of Current LGIC Appointments

Expiry Date of Current Term	Number of Board Members	Combined Years of Experience at 31 August 2006
Expired	1	4.0
31 December 2007	4	26.8
2 March 2009	4	1.6

3.127 The fact that the NBIMC Act specifies that there are to be three ex-officio members of the board may ensure a certain level of

corporate memory will remain on the board, provided that those individuals retain their positions within the public sector. This, while not a formal succession plan, does somewhat mitigate the continuity problems created by the ad hoc nature of LGIC appointments and appointment terms over the past few years. However, it may also give ex-officio members of the board more influence over board decision-making than the nine LGIC-appointed members if continuity is not maintained among those members.

3.128 Board members indicated that they would like to have formal board succession planning to allow for transfer of corporate memory, and to lessen staff uncertainty around future corporate direction. They also indicated that maximum terms for members should be considered. However, the cooperation of the government would be necessary to implement board succession planning at NBIMC.

Recommendations

3.129 We recommended the Minister of Finance, in his role as the owner's representative, direct NBIMC to establish a board succession plan and provide it to the Province as input to the appointment process.

3.130 In the roles and responsibilities section of this chapter, we also made a recommendation that responsibility for the development and application of this succession plan should be assigned as part of a letter of expectations.

Board training and development

3.131 As part of our audit work, we identified a number of best practices in the area of board training and development. These best practices come from documents prepared by such organizations as the Treasury Board of Canada, the Board Resourcing and Development Office - Office of the Premier of British Columbia, and the Conference Board of Canada.

3.132 Key best practices include:

- there should be a mandatory comprehensive orientation program for all new directors soon after they join a board;
- there should be an ongoing professional training and development program for directors including certain mandatory training requirements;
- there should be an annual general training session for all members of the board. This session should include coverage of applicable new laws, regulations, changes in the risk environment

and government policy, as well as a refresher on the contents of the governance manual and the strategic plan; and

- there should be annual evaluations of the performance of the board, committees, chairs, and individual board members as a means of identifying future training and development needs.

3.133 Further, there are four specific areas in which we feel board members must develop and maintain a working knowledge in order to be effective contributors to the governance of NBIMC:

- pension fund governance best practices;
- investment industry terminology and practices;
- pension industry terminology and practices; and
- corporate operations (i.e. knowledge of business operations, risks faced by the corporation, and applicable laws and regulations).

3.134 We compared current practices at NBIMC with these best practices and made the following observations.

- Training and development opportunities are provided to directors on an “as requested” or ad hoc basis. Attendance is not mandatory for any training courses.
- There is no formal training and development plan for directors. However, a travel and education budget is established annually and board members are encouraged to participate in educational opportunities. Management does provide board members with information on relevant training sessions when they arise.
- All new members of the board are provided with orientation sessions which focus heavily on providing information on corporate operations, and also deals with pension investment concepts. However, attendance at orientation sessions is not mandatory.
- Board governance training has been an area of focus for the board of NBIMC. All directors who served on the board up to 15 June 2006 had received at least one general governance training course. Some directors had also been provided with specific pension and investment industry training.
- There is currently no annual general training session for all members of the board. However, we noted that the 3 February 2005 minutes of the Audit Committee stated, “should schedule a yearly educational session for members of the Committee.” Such

a session had not yet been presented by the time we completed our audit work.

- To date there have been no evaluations of the performance of the board, board committees, or individual board members, although the board has discussed having such evaluations done in the near future.

Recommendations

3.135 We recommended the board of NBIMC develop and maintain a board training and development plan that includes a program of mandatory training for directors.

3.136 The mandatory training program should seek to ensure that all board members develop and maintain sufficient knowledge about pension fund governance, the investment industry, the pension industry, and corporate operations to be able to effectively contribute to board deliberations. The corporate operations component should include annual updates on new legislation, regulations, changes in the risk environment and government policy, and the contents of the governance manual and the strategic plan.

NBIMC response

3.137 *While we agree that Board education is an important part of effective governance, we respectfully point out that some flexibility is required. After completion of the basic orientation sessions, training needs tend to be specific to current issues that arise in the investment industry, and on the level of director experience. The Board is planning to include at least one training session per annum to its calendar.*

Recommendation

3.138 We recommended there be annual performance evaluations of the board of NBIMC.

NBIMC response

3.139 *The NBIMC Governance Committee has included a self evaluation process within its terms of reference and intends to begin the process in calendar 2007.*

Code of conduct and ethics

3.140 Board members we interviewed discussed the critical importance to NBIMC of maintaining an excellent reputation with its stakeholders and in the investment community. Based upon their comments, it appears that reputation risk is taken very seriously at NBIMC. This area is addressed in the Act as well as in the by-laws and the code of conduct developed for the Corporation. Board members also indicated that in practice no significant problems have

occurred at the board level in the areas of conflict of interest or by way of unethical behaviour.

3.141 Section 21 of the *New Brunswick Investment Management Corporation Act* states:

The Corporation shall make by-laws establishing the policy of the Corporation in respect of situations considered by the Corporation to constitute a conflict of interest or a potential conflict of interest pertaining to the members of the Board and the employees of the Corporation including, without limiting the generality of the foregoing, the circumstances that constitute a conflict of interest or potential conflict of interest, the disclosure of the conflict of interest and the manner in which it is to be dealt with.

3.142 NBIMC Corporate By-Law Number Six addresses conflict of interest for directors and officers, as well as employees. The by-law requires disclosure of real and potential conflicts.

3.143 During our review, we were pleased to note that on 20 May 2004 the board approved updating its corporate *Code of Ethics and Business Conduct Covering Directors and Employees*. The preamble to the Code of Ethics explains well why it is needed:

The basic responsibility of all employees and directors is to act in the best interest of NBIMC in directing its affairs, and to do so within applicable laws, regulations, and codes. NBIMC's directors, officers, and employees have a relationship of trust with our stakeholders. It is imperative that there is no perceived violation of that trust, whether warranted or not, in the management of our business. ...

3.144 We compared the contents of the NBIMC Code of Ethics with that in place for the Canada Pension Plan. The NBIMC Code covered many important areas.

3.145 However, we do have a few suggestions for items that should be documented in the Code when it is next reviewed and updated:

- there should be a list of actions that may not be taken including an explanation of the consequences should such actions be taken;
- there should be a requirement to notify the Chair in advance of any changes in a board member's employment status, other board appointments accepted, and other pertinent changes;

- the code should state the circumstances in which a conflict of interest is serious enough to warrant resignation from the board or to disqualify a candidate from being appointed to the board;
- the code should state that a director in a conflict of interest situation cannot participate in related discussions; and
- the code should state that failure to comply with the code should result in sanctions which could include removal from the board and possible civil or criminal prosecution.

Other observations and findings

Revisiting the role of NBIMC

3.146 This section of the chapter addresses general issues that were identified during the course of our audit work.

3.147 The Province made two key choices at the time NBIMC was established that, to the best of our knowledge, have never been revisited.

- The Province chose to have NBIMC made trustee for the three legislated provincial pension funds (i.e. the Public Service Superannuation Fund, the Teachers' Pension Fund, and the Judges' Superannuation Fund), but not any other provincial pension plans or provincial trust funds. For example, although NBIMC is widely seen as having expertise in the investment industry, the Department of Finance acts as Trustee for non-legislated provincially-guaranteed pension plans with total assets in excess of \$300 million.
- The Province chose to allow NBIMC to invest pension assets for which they are the trustee directly rather than having the organization simply engage and oversee a number of competing private sector investment managers who would handle all direct investing activity.

3.148 Further, as previously discussed, section 4(b) of the NBIMC Act directs NBIMC to provide investment counselling and associated services for certain provincial trust funds if requested to do so by the Minister of Finance or a fund trustee. However, NBIMC is not currently being asked to provide such services. It is unclear to us why such a request has not been made.

3.149 Overall, we found no clear rationale as to why the Province has multiple organizations involved as trustees, and in providing investment counselling and other related services to provincial pension plans and trust funds. We feel that, if there are no

compelling reasons to the contrary, a consolidation of these services would improve the efficiency and effectiveness of their delivery.

Recommendation

3.150 We recommended the Province revisit the roles of the NBIMC and the Department of Finance in the administration of provincial funds with the goal of rationalizing roles such as trusteeship, investment counselling services, and investment of assets.

Reviewing and updating the NBIMC Act

3.151 The NBIMC Act has not been the subject of a comprehensive review since it was originally passed into law in 1994. In this chapter, we have identified a number of areas where we feel amendments to the Act should be considered:

- section 4(c) of the Act that directs NBIMC to promote the development of the financial services industry and capital markets;
- section 6(a) of the Act that makes the President of NBIMC an ex-officio member of the board of NBIMC;
- section 6(b) of the Act that makes the Deputy Minister of Finance of the Province of New Brunswick an ex-officio member of the board of NBIMC;
- section 6(c) of the Act that makes the Vice-President of Finance of the NB Power Holding Corporation an ex-officio member of the board of NBIMC;
- section 6(d)(ii) of the Act that requires the appointment of a member of the public service superannuation plan to the board of NBIMC; and
- section 6(d)(iii) of the Act that requires the appointment of a member of the teachers' pension plan to the board of NBIMC.

3.152 The list above is not exhaustive, as we did not do a complete review of the Act as part of our audit work. However, it does provide sufficient evidence to suggest that the entire NBIMC Act should be subject to a thorough review. This review should ensure that the Act continues to be relevant, that its stated purposes are still valid, and that it provides an effective framework within which those purposes can be achieved.

3.153 We would suggest that the review of the NBIMC Act be coordinated by the NBIMC board and carried out by the board

governance committee. Further, recommendations resulting from the review should be communicated through the Minister of Finance to the Legislative Assembly.

Recommendation

3.154 We recommended the board, through its board governance committee, complete a review of the *New Brunswick Investment Management Corporation Act* as soon as possible. This review should ensure that the Act continues to be relevant, that its stated purposes are still valid, and that it provides an effective framework within which identified purposes can be achieved. We believe that such a review is needed since the Act is now twelve years old, and in some areas, as we have discussed, its intent is no longer clear. Findings and recommendations resulting from the review should be communicated through the Minister of Finance to the Legislative Assembly.