

Chapter 5

Department of Finance

Collection of Accounts Receivable

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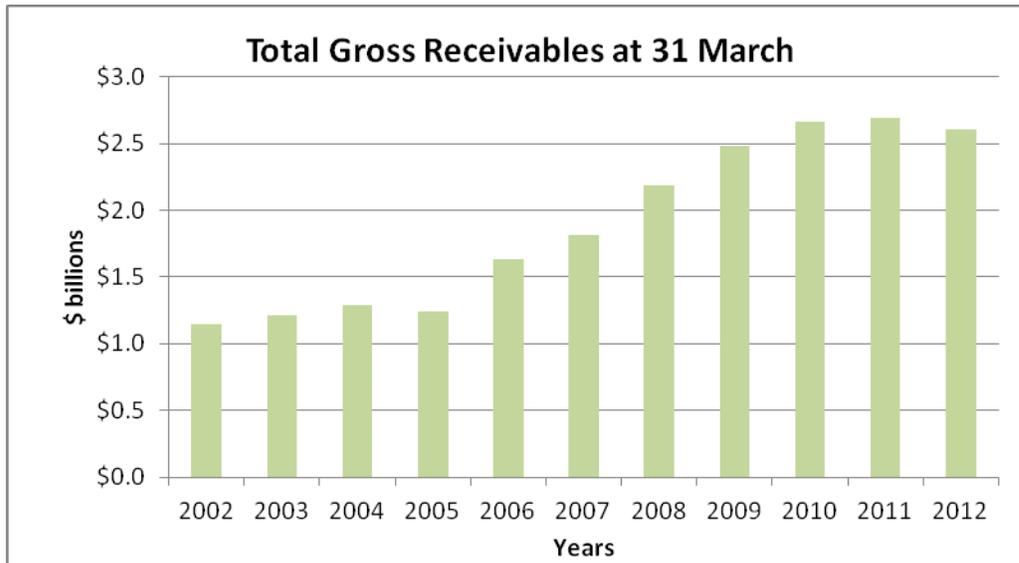
Department of Finance Collection of Accounts Receivable

Introduction

- 5.1** In 2011, the Office of the Comptroller lead an analysis of the collection of receivables in government. The purpose of the analysis was to create “A plan for the most effective and efficient method of maximizing collection of amounts owing to the Province of New Brunswick as well as proposed changes to legislation/regulation/policy required to implement the plan.”¹
- 5.2** This work was part of government’s efforts to improve its finances. A November 2011 news release issued by the Department of Finance stated “we need to make sure that we are doing an adequate job of collecting money owed to taxpayers.” It went on to say “in light of the provincial government’s difficult financial situation, we have an obligation to recover these funds on behalf of taxpayers.”
- 5.3** The balance of amounts owing to the Province has gradually been getting larger since 2002. Exhibit 5.1 shows that gross receivables more than doubled between 2002 and 2012, growing from \$1.1 billion in 2002 to \$2.6 billion in 2012.

¹ Source: Collection of Receivables-Government Renewal Project #11

Exhibit 5.1 - Total Gross Receivables at 31 March (in billions)



Figures obtained from Public Accounts at 31 March

Why we are interested

5.4 We decided to prepare an information report on accounts receivable to better understand the work currently underway to improve the collection of amounts owed to the Province. The objective of our work was:

To review and comment on provincial policies and initiatives for the collection of accounts receivable.

5.5 Our report is addressed to the Department of Finance/Office of the Comptroller as this department has ultimate oversight of accounts receivable. Paragraph 14(a) of the *Financial Administration Act* states that the “Comptroller shall (...) ensure the proper receipt (...) of public money”.

What we looked at

5.6 As we will discuss in this report, the collection of accounts receivable is a complex topic:

- Numerous departments have accounts that require collection activities;
- Each department has its own approach to collections; and
- Each department has different clients. The nature of amounts owing, and the ability of the debtor to pay, can vary significantly depending on the program.

5.7 In order to gain an understanding of what the Province is doing to improve collections, we met with representatives from a number of departments to learn

about their policies and collection efforts, including the recoveries made under the Canada Revenue Agency Refund Set-off Program. We also obtained data on a number of accounts in order to identify trends in accounts receivable. Finally, we looked at the legislative changes recommended in the 2011 Office of the Comptroller analysis to improve the collection of amounts owed to the Province.

5.8 Our work is based on information provided by various departments. This report is a summary of that information. As a result of observed trends in accounts receivable during our office's annual financial audit as well as significant write offs in recent years, we decided to take a closer look at accounts receivable balances across government. Our purpose is to provide an update on initiatives currently underway and to follow-up on identified barriers to collection. We carried out some analysis of accounts receivable across several departments and we relied on the data provided by those departments. We did not perform any test of the systems producing the data. We have not audited the information and therefore do not provide any assurance with regards to its accuracy or completeness.

Summary of our findings

Province is working to improve collections

5.9 Due to the Province's fiscal situation, there has been an increased focus on the state of the Province's receivables. The Province has recently taken a number of steps to improve the collection of amounts owed including:

- implementing the Canada Revenue Agency Refund Set-off Program;
- moving towards a central collection unit within government to focus collection activities; and
- amending legislation to facilitate collection activities.

Accounts receivable continue to grow

5.10 In summary, gross provincial receivables more than doubled in the past ten years to \$2.6 billion.

5.11 The Province's receivables fall into three categories:

- General receivables;
- Taxes;
- Loans.

5.12 General receivables totaled \$607 million at 31 March 2012:

- 38% or \$232 million were considered doubtful accounts;
 - Almost \$100 million was written-off during 2011 and 2012.
- 5.13** Taxes receivable have grown significantly since 2002, going from \$471.9 million in 2002 to \$1,126 million in 2012.
- 5.14** Loans receivable totaled \$870.2 million at 31 March 2012:
- 32% or \$276.8 million was considered doubtful;
 - Loans to students and businesses make up approximately 85% of the loans receivable amount.
- 5.15** Loans to students totaled \$431.6 million at 31 March 2012:
- Represents close to 50% of the total loan balance for the Province;
 - Student loans are going into default at a 3 year average rate of \$860,000 per month.
- 5.16** Loans to business totaled \$245 million at 31 March 2012:
- 29% or \$70 million was considered doubtful;
 - Loans issued by the Province before 2000 have a default rate of 93%.
- 5.17** Since 2003, the Province's carrying cost to cover outstanding debtors has been over \$950 million, an average of \$95 million per year.
- 5.18** During our work we found that collection activities vary by department and by account, which has affected collection results. Some departments have established collection policies and collection teams while others have not. Some departments have difficulty locating the debtor due to a lack of current contact information.

Collection activities vary by department

Many programs have been registered with Canada Revenue Agency Refund Set-off Program

5.19 From our discussions with department staff, once traditional recovery methods (such as letters or phone calls) are exhausted, departments turn to the Canada Revenue Agency's Refund Set-off Program to pursue debtors. Although recoveries may increase over time, we viewed recovery rates to date for most departments using this option as low². Many departments expressed satisfaction with the results achieved.

5.20 Numerous recent amendments to legislation have had a positive impact on collections. Some proposed amendments have yet to be made, therefore leading to missed recovery opportunities.

Changes to the Limitation of Actions Act will have a negative impact on collections

5.21 Changes to the *Limitation of Actions Act* have placed a tight timeframe of two years on the Province to collect outstanding debt. Beginning in 2016, once a claim is discovered³ or the debt has been acknowledged⁴, the Province has two years (reduced from a previous six years) to attempt to recover outstanding amounts. After that time, the ability to take action expires. The time limit also applies to "non-judicial" recovery methods such as wage set-off or withholding payments.

Collecting accounts receivable from First Nations is complicated

5.22 Amounts receivable from First Nation communities have been steadily increasing (\$85.8 million) until 2012 when significant write-offs were made. Our analysis found:

- Negotiation of education amounts owing by First Nation communities is a complicated process involving multiple departments and 16 First Nations.
- In recent years, there have been significant write-offs of both principal and interest (approximately

² Based on findings in figures 5.16 and 5.18 and paragraphs 5.72 and 5.73

³ Per section 5(2) of *Limitation of Actions Act*: A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

- (a) That the injury, loss or damage had occurred;
- (b) That the injury, loss or damage was caused by or contributed to by an act or omission; and
- (c) That the act of omission was that of the defendant.

⁴ Refers to a defendant acknowledging the liability or obligation in writing.

\$27 million) on balances owed by First Nations.

- Outstanding amounts owed by First Nations have not been settled in a timely manner despite the Province's ability to offset amounts owing against amounts payable by the Province to First Nations under various gas, tobacco and gaming agreements.

Debtors are not treated equally

5.23 We discovered that debtors are treated differently depending on the department that holds the debt. In some cases, we noted differences between departments that appeared inequitable and inconsistent.

5.24 The following are some examples of inequitable treatment:

- Interest is charged and collected on some overdue accounts but not others.
- An entity can owe money to one department but receive payment from another.
- Some public servants who owe money to government (e.g. employees with overdue student loans) are having their wages set-off⁵ while others are not (e.g. employees who owe veterinary fees).
- There have been increased recovery efforts towards individuals rather than towards businesses when pursuing amounts owed to the Province (pursuit of current or former social assistance clients for overpayments vs. pursuit of businesses with defaulted loans).
- Practices with regards to collection of accounts receivable from First Nations appear unique and less stringent than all other accounts receivable we reviewed.

5.25 We believe it is a best practice to have equitable collection policies for all government debtors. Government should treat taxpayers who owe money in a fair and equitable manner. This concept should be included in any policies developed during the implementation of the

⁵ Per section 52(1) of the *Financial Administration Act*: If a person is indebted to the Province in a specific sum of money, the Comptroller may retain by way of deduction or set-off the amount of the indebtedness out of any sum of money that may be due or payable by the Province to that person.

centralized collection unit.

More work is needed

5.26 As the Province transitions to a centralized collection model, departments need to continue their work of collecting amounts owing. At 31 March 2012 there was over \$2 billion owing from various sources, and a number of types of receivables are continuing to grow. The collection of nearly \$550 million (27%) was considered doubtful⁶. Given the Province's fiscal situation, collection efforts need to be a priority focus to ensure all money owed to government is collected. We encourage continued progress to prevent further growth and to achieve an overall reduction of the accounts receivable balance.

⁶ Per Public Accounts at 31 March 2012

Exhibit 5.2 – Summary of Recommendations

Recommendations	Department's Response	Target Date for Implementation
<p>5.49 We recommend departments identify those accounts at risk of becoming statute-barred and implement collection procedures in order to maximize their collection prior to the expiry of the May 2016 standstill provision.</p>	<p><i>Regarding your request that the Department distribute the recommendations [...] to departments and advise them that these recommendations will be subject to follow up, an email to this effect was sent by the Acting Comptroller to the Directors of Finance on October 9, 2013.</i></p>	<p><i>See comments in Department's response</i></p>
<p>5.61 We recommend departments share debtor contact information, where legislation permits (for example, the <i>Family Income Security Act</i> or <i>Right to Information and Protection of Privacy Act</i>), for the purpose of collecting accounts receivable.</p>		
<p>5.81 We recommend the Department of Post-Secondary Education, Training and Labour register employment program overpayments with the Canada Revenue Agency Refund Set-off Program.</p>	<p><i>PETL has been advised that the CRA will not accept employment program overpayments in the Refund Set-Off (RSO) program. The criteria which CRA uses to determine what programs will be accepted into RSO require that legislation or regulation specifically support the debt as a debt owing to the Crown. An amendment to central legislation may be required in order to register employment program overpayments with CRA.</i></p>	<p><i>loans/receivables. These recommendations will ultimately be examined by the central collection unit and timeframes are therefore related to the timing of the transfer to NBISA.</i></p>

Exhibit 5.2 – Summary of Recommendations (continued)

Recommendations	Department's Response	Target Date for Implementation
<p>5.88 To improve the recovery of loans receivable from businesses, we recommend that independent expertise in collection of business accounts be engaged to assist either the Department of Economic Development or the central collection unit. The expert engagement should include the development of an action plan to address the historic high delinquency rate of economic development loans to businesses.</p>	<p><i>We are pleased to advise that we have recently hired a Special Accounts executive effective June 2013. This person has several responsibilities including the maximization of recoveries where account companies are delinquent and/or insolvent. This may involve evaluating restructuring proposals which could be voluntary or pursuant to the Bankruptcy and Insolvency Act (BIA) or the Companies' Creditors Arrangements Act (CCAA). With respect to reducing the delinquency rate, the Department is seeking to convert all loans to payment via automatic debit and reviewing its collection policy. It is noted that loans provided by the Minister are normally (and sometimes significantly) riskier than those offered by financial institutions. As most of our loans provide significant incremental economic benefits to the Province, a higher risk level is tolerated.</i></p>	<p><i>See comments in Department's response</i></p>
<p>5.99 We recommend a matching process be undertaken to identify provincial employees with past due accounts for veterinary services or with any other amounts in arrears. Payment arrangements should be established or payroll set-off applied. In the future, departments should collect a "unique identifier" from individuals in order to facilitate recovery (through matching) should default occur.</p>	<p><i>DAAF will continue working with New Brunswick Internal Services Agency (NBISA) to establish a centralized collection unit to assign governance and operational responsibility for collection of past due accounts to a single entity. The unit is intended to have standard business practices and a number of collection tools, such as payroll set-off, will be used to collect past due accounts.</i></p>	<p><i>Early 2014</i></p>

Exhibit 5.2 – Summary of Recommendations (continued)

Recommendations	Department's Response	Target Date for Implementation
<p>5.105 We recommend the Department of Finance complete its work to routinely register overdue property tax receivable accounts with the Canada Revenue Agency Refund Set-off Program.</p>	<p><i>The Department of Finance agrees with the recommendation. The Department of Finance obtained the approval to proceed with the CRA program for Property Tax receivables in a Board of Management decision in November 2012. The Department is currently in the process of transferring its collection function to the NBISA Collection Services Unit. This new centralized unit will be responsible for the collection of bad debt for all Departments. One of the objectives of the new unit is to expand the use of the CRA Refund Set-off Program and to utilize other collection tools and techniques not currently available to departments. The Department of Finance is scheduled to transition in the first phase, once NBISA receives approval from Board of Management for their proposed structure.</i></p>	<p><i>Timing will be based on the transitioning of collection of past due debts to NBISA</i></p>

Exhibit 5.2 – Summary of Recommendations (continued)

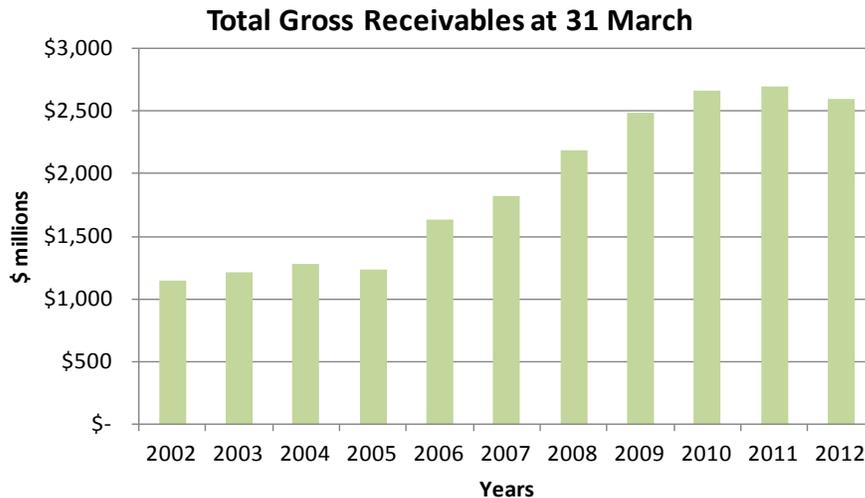
Recommendations	Department's Response	Target Date for Implementation
<p>5.124 Given the current five year Enhanced Agreements with First Nations are ending in 2013, we recommend the Aboriginal Affairs Secretariat and the Department of Education and Early Childhood Development establish payment arrangements for all arrears owing prior to the signing of new Enhanced Agreements. Reinvestment of provincial funds (under the new Agreements) should not take place until payment arrangements have been negotiated.</p>	<p>Response from Aboriginal Affairs: Cabinet has approved the one-year extension of the Enhanced Agreements with First Nations in New Brunswick for the 2013-2014 school year. This extension gives the Department of Education and Early Childhood Development (EECD) the necessary time to work collaboratively with First Nation partners in developing new five-year agreements. Cabinet has also directed that an arrears repayment agreement must be in place by September 2013 for all First Nations with an outstanding tuition balance due to the Province.</p> <p>EECD is now preparing a document for signature in order to formally recognize the one-year extension which recognizes the terms described above. In order for these agreements to be renewed, EECD requires that First Nations be in good standing prior to the signing of an extension.</p> <p>Response from Education and Early Childhood Development: Government has approved the one-year extension of the Enhanced First Nation Education Programs and Services Agreement in New Brunswick for the 2013-2014 school year. The extension gives the Department of Education and Early Childhood Development (EECD) the necessary time to work collaboratively with First Nation partners in developing new five-year agreements. Government has also directed that an arrears repayment agreement must be in place by September 2013 for all First Nations with an outstanding tuition balance due to the Province.</p> <p>EECD is now preparing a document for signature in order to formally recognize the one-year extension which recognizes the terms described above. In order for these agreements to be renewed, EECD requires that First Nations be in good standing prior to the signing of an extension.</p>	<p>September 2013</p>
<p>5.129 We recommend the Department of Finance establish collection guidelines to ensure equitable treatment of debtors.</p>	<p>The Department of Finance agrees with the recommendation. The Department of Finance continues to work with the establishment of the NBISA Collection Services Unit. As part of this work, guidelines are being established to ensure the equitable treatment of debtors.</p>	<p>This will be an area of focus as long as debts are owed to the Province</p>

Background

5.27 The existence of accounts receivable is a normal part of doing business. However, unless the accounts are prudently managed, problems may arise that cause the collection of the account to be in doubt. Businesses can counter this risk by carefully screening their customers before providing credit. Government, however, cannot always choose its debtors in this manner. For example, students receive student loans based on their need and not their ability to repay the loan. Businesses typically receive funding from government to achieve some economic development objective in a particular industry. The Province often acts as a lender of last resort for businesses.

5.28 The balance of amounts owing to the Province has been growing since 2002. Exhibit 5.3 shows the increase in gross receivables between 2002 and 2012.

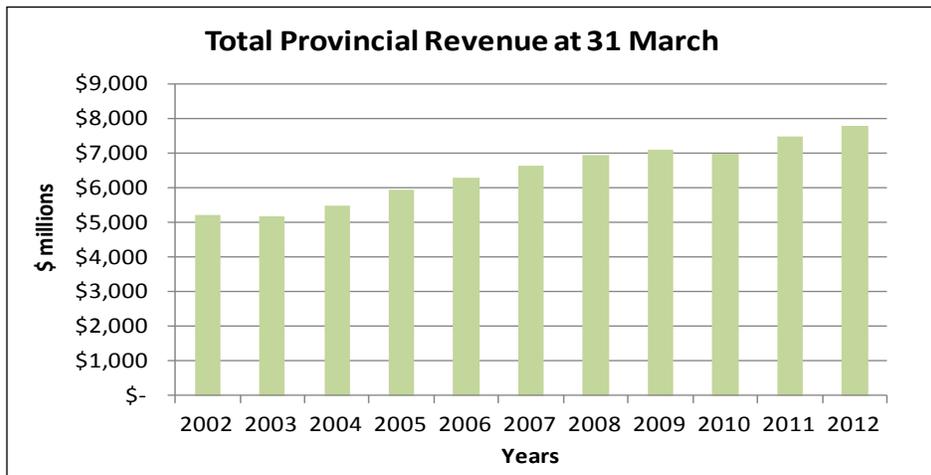
Exhibit 5.3: Total Gross Receivables at 31 March (in millions)



Figures obtained from Public Accounts at 31 March

5.29 Exhibit 5.3 shows that gross receivables more than doubled in the past 10 years, increasing from \$1,145.9 million in 2002 to \$2,603.3 million in 2012. Exhibit 5.4 shows the growth in total provincial revenue during the same period.

Exhibit 5.4: Total Provincial Revenue at 31 March (in millions)



Figures obtained from Public Accounts at 31 March

5.30 New Brunswick is facing a growing demand for revenue to fund programs, be it for roads and highways, for healthcare or for education. This revenue comes from taxes, user fees, royalties, investment income and grants.

5.31 Exhibit 5.4 shows the growth in total revenue has been much more gradual than the growth in receivables. Accounts receivable at 31 March 2012 represented 33% of 2012 revenue. When debtors don't pay, the Province's financial position is negatively impacted.

5.32 Since the Province uses revenue to fund the programs and services offered to residents, accounts not collected result in additional costs to the Province as it must then finance the carrying costs (interest cost and provision for loss expense) of accounts receivable. These carrying costs are estimated in Exhibit 5.5. Since 2003, the Province's carrying cost to cover outstanding debtors has been over \$950 million, an average of \$95 million per year. To put this into perspective, the average annual carrying cost of the Province's receivables is greater than the estimated 2011-12 expenditures for each of the following departments: Agriculture, Aquaculture and Fisheries; Economic Development; Energy; Environment; Finance;

Justice and Consumer Affairs; Tourism and Parks; and
Wellness, Culture and Sport.⁷

Exhibit 5.5: Estimated carrying costs related to the balance of accounts receivable at 31 March (in millions)

Estimated carrying costs related to the balance of accounts receivable at 31 March (in \$ millions)											
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	Total
Interest Costs	24.57	28.16	22.04	32.72	57.75	59.33	28.59	4.66	12.46	16.46	286.74
Provision for Loss Expense	28.20	54.40	33.00	62.00	60.70	72.30	105.00	109.40	94.50	45.70	665.20
Total	52.77	82.56	55.04	94.72	118.45	131.63	133.59	114.06	106.96	62.16	951.94

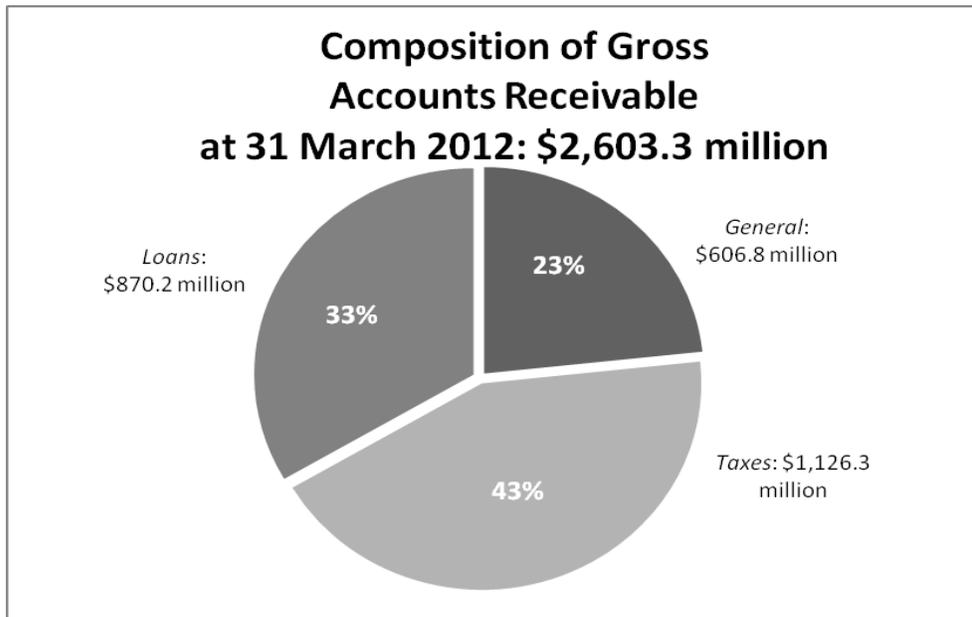
Calculation for 2003-2011 was prepared by the Department of Finance (unaudited); updated by OAG for 2012

Types of Receivables

5.33 There are three main types of provincial receivables, as displayed in Exhibit 5.6:

1. General accounts receivables and advances
2. Taxes receivable
3. Loans

Exhibit 5.6: Composition of Gross Accounts Receivable at 31 March 2012



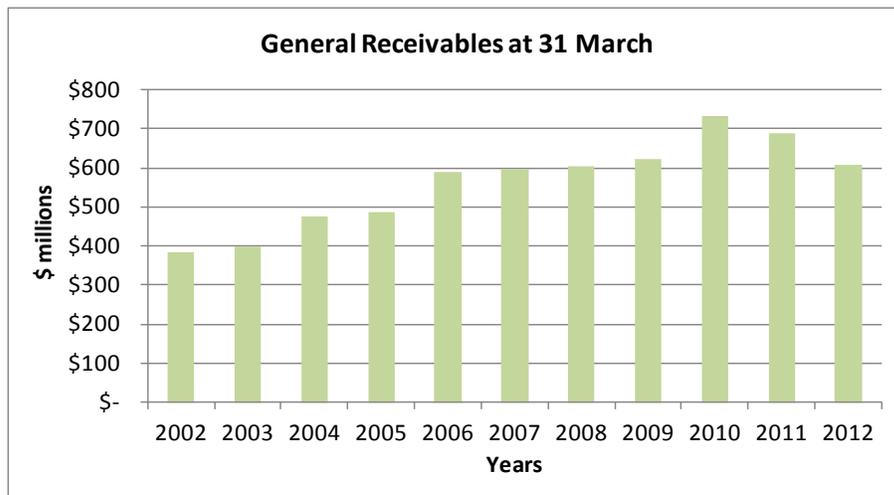
Figures obtained from Public Accounts at 31 March 2012

⁷ Based on 2011-12 Main Estimates of total expenses

General accounts receivable and advances

5.34 General accounts receivable and advances includes such things as receivables from government departments and entities, amounts due from the Federal government, guarantee payouts, advances of grants or working capital and interest receivable. The amount included in general accounts receivables and advances has been decreasing in recent years, as shown in Exhibit 5.7.

Exhibit 5.7: General receivables at 31 March (in millions)



Figures obtained from Public Accounts at 31 March

5.35 This recent decrease is not the result of better collection efforts alone; a total of almost \$100 million in accounts receivable was written-off during 2011 and 2012 resulting in the decrease seen in Exhibit 5.7. Of the \$607 million in general receivables at 31 March 2012, 38% or \$232 million were considered doubtful accounts⁸ (a small increase over 2011).

Taxes receivable

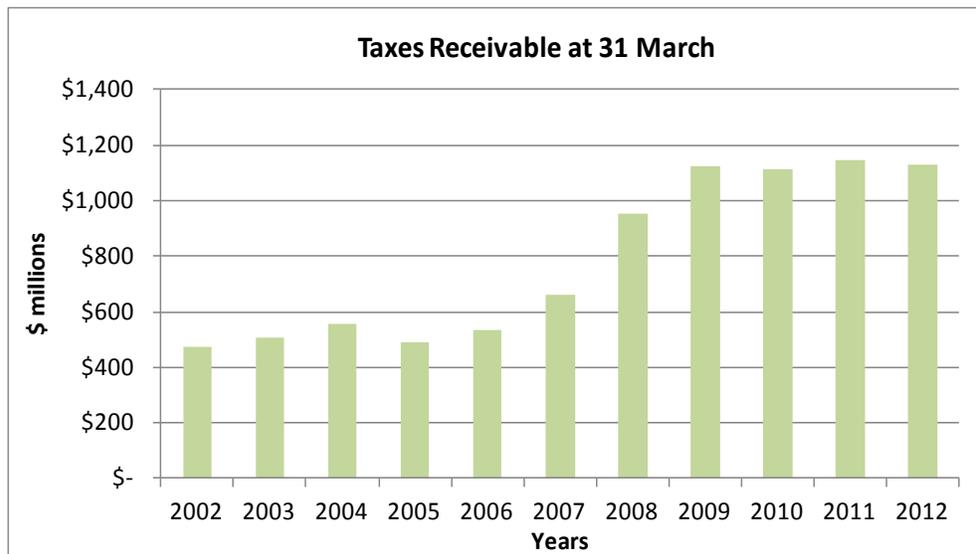
5.36 The largest component of taxes receivable is property tax. At 31 March 2012, property tax receivable was \$1,038.1 million. The amount is high because property tax billings are recorded as receivable at 31 March but are not due until 31 May, creating a large receivable at year-end. Other items included taxes receivable such as taxes from sales, tobacco, gasoline and motive fuels; royalties and

⁸ A provision for doubtful accounts is established when a department anticipates that an account will be uncollectible. Management estimates the uncollectible amount based on past experience with the debtor or other information.

stumpage on timber, etc. Of the taxes receivable at 31 March 2012, only 3% were considered doubtful. Exhibit 5.8 shows that taxes receivable have grown significantly since 2002; they have more than doubled, going from \$471.9 million in 2002 to \$1,126.3 million in 2012. The increase is mainly due to the amounts related to property tax:

- In 2008, real property tax amounts were adjusted to include the municipal portion of the receivable (amounts prior to 2008 do not include these amounts).
- Since 2008, amounts related to property tax have been climbing as a result of continued growth in the assessment base.

Exhibit 5.8: Taxes receivables at 31 March (in millions)



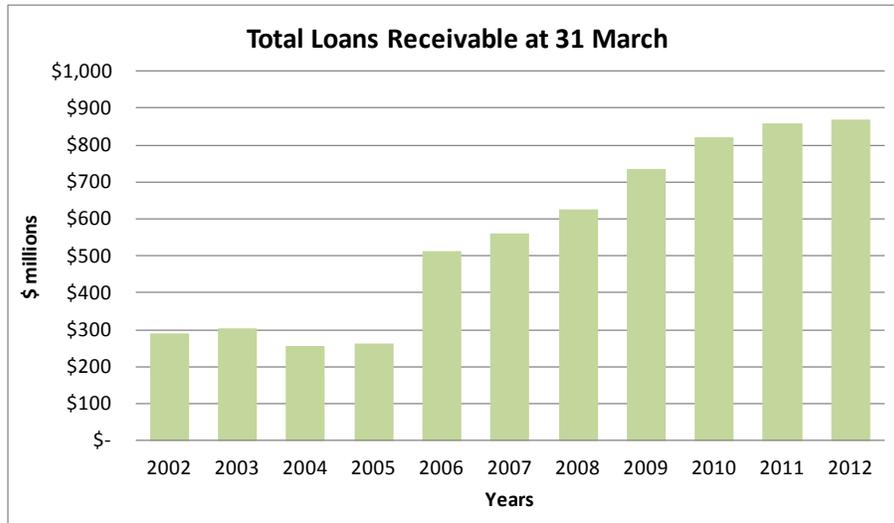
Figures obtained from Public Accounts at 31 March

Loans

5.37 The Province had loans of \$870.2 million outstanding at 31 March 2012, the collection of \$276.8 million of this amount was considered doubtful. Loans to students and to businesses (under the *Economic Development Act*) make up approximately 85% of the loans receivable amount. Other loans included in this category were provided under the *New Brunswick Housing Act*, *Fisheries Development Act* and *Agricultural Development Act*. It also includes loans for energy efficiency upgrades, l'Office de stabilisation, and Provincial Holdings Loans. The loans receivable balance has increased significantly as a result of the Province taking on student loans in 2006. Loans to business under the *Economic Development Act* have also

grown. Since 2008, loans issued under the *Economic Development Act* have increased by 80% (\$136 million). Exhibit 5.9 shows that total loans receivable to the Province at 31 March have grown significantly since 2002, going from just under \$300 million in 2002 to \$870 million in 2012.

Exhibit 5.9: Total Loans Receivable at 31 March (in millions)



Figures obtained from Public Accounts at 31 March

Government's work to improve the collection of accounts receivable

Changes made to facilitate collection

5.38 The Office of the Comptroller lead an analysis in 2011 of the collection of receivables in government. The objective of the analysis was to develop “a plan for the most effective and efficient method of maximizing the collection of amounts owing to the Province of New Brunswick (...) as well as proposed changes to legislation/regulation/policy required to implement the proposed plan.”⁹

5.39 The analysis looked at existing provincial legislation with the purpose of identifying barriers that restrict collection efforts. As a result, a number of recommendations were made in order to eliminate these legislative barriers so departments can maximize collection efforts.

5.40 In addition, the analysis recommended that government

⁹ Source: Collection of Receivables-Government Renewal Project #11

collection efforts be centralized (i.e. that a single entity is assigned governance and operational responsibility for the collection of accounts receivable). Other changes were also proposed. In this section we will look at the various changes and initiatives that the Province has taken in order to improve the collection of accounts receivable.

Canada Revenue Agency Refund Set-off Program

5.41 One initiative common to many departments in their attempt to improve collections is the implementation of the Canada Revenue Agency (CRA) Refund Set-off Program. This program provides a mechanism for the Province to recover amounts owed by individuals. Once an individual is registered with the program, the CRA redirects income tax refunds, GST rebates and provincially funded tax credits to be applied against amounts owed to the Province by that individual. If a taxpayer's net family income is below a certain threshold, set-off will not be applied against certain credits. A news release from the Department of Finance in November 2011 noted that the balance of accounts receivable approved for CRA set-off was about \$200 million as of 31 March, 2011.

5.42 When we obtained information from various departments, the range of recovery from the CRA set-off program varied by department. Some departments have been using the program since 2009 while others were just beginning to use the program at the time of our work. More information on the results of CRA set-off by department is provided in the section *Accounts receivable across government* (paragraph 5.68).

Changes to legislation to maximize collections

5.43 To report on the status of the work currently underway to improve collections, we looked at the recommendations made in the 2011 analysis in order to follow up and determine their level of implementation and their impact on collection efforts.

Defining Crown debts

5.44 The CRA rejected the application of several PNB programs to the Refund Set-off Program as they did not meet CRA's criteria for "Crown debt". Officials at the Department of Finance explained to us that CRA requires that legislation or regulation specifically support a debt as one owing to the Crown in order to be part of the Refund Set-off Program. We found that section 52.1(2) of the *Financial Administration Act* was amended in 2011. It now specifically lists the types of Crown debts that may be referred to CRA for set-off. This amendment has a positive implication on collections as it will facilitate the successful

registration of government programs with CRA.

Preserving the Province's ability to collect Crown debts

5.45 In the context of collecting outstanding receivables, the *Limitation of Actions Act* places a time limit on bringing legal claims against debtors. The purpose of a “limitation of action” is to prevent unresolved legal actions from remaining enforceable indefinitely. Once the limitation period expires, so does the ability to make a legal claim. According to the 2011 analysis on collection activities, there is a substantial amount of past debt that has become statute-barred and is now not recoverable as a result of government’s lengthy past history of not enforcing rights against debtors.

5.46 In 2010, the *Limitation of Actions Act* was amended. The amendments negatively impacted the Province’s ability to collect outstanding amounts. The impact of the amendments is discussed in the following paragraphs.

Effect of Limitation of Actions Act: Crown debt to be statute-barred earlier

5.47 One of the elements of the new *Limitation of Actions Act* was a reduction of the “limitation period” from six years to two years effective May 2010. The *Limitation of Actions Act* was further amended in 2011 to include a standstill provision to May 2016 to allow the Province to install a central collection unit without further debts becoming statute-barred in the interim period. Effectively, this amendment offers a limited period of time where departments can collect Crown debts before the new two year limitation period begins. The reduction of the “limitation period” from six years to two years will restrict the Province’s ability to collect amounts owing from debtors.

5.48 We attempted to determine what departments are doing to prepare for this upcoming deadline by inquiring as to what accounts were at risk of becoming statute-barred and what strategies had been developed to collect these accounts. We were unable to determine the amount of debt that was at risk or had become statute-barred as many departments had not identified these accounts at the time of our work.

Recommendation

5.49 **We recommend departments identify those accounts at risk of becoming statute-barred and implement collection procedures in order to maximize their collection prior to the expiry of the May 2016 standstill provision.**

**Effect of Limitation of
Actions Act: CRA
Refund Set-off
Program**

5.50 The *Limitation of Actions Act* also applies to non-judicial remedies. Non-judicial remedies includes such things as CRA set-off, wage set-off (per the *Financial Administration Act*), or withholding social assistance payments for overpayment recovery. The Act states that if the limitation period expires, the province cannot enforce any non-judicial remedy that the Province would otherwise be entitled to enforce against a claim. In other words, once the limitation period of two years has expired, the Province will be unable to make a legal claim against debtors and unable to use such things as wage garnishment, wage set-off or the withholding of payments to recover amounts owed.

5.51 During our review, we found that the *Limitation of Actions Act* is similar to legislation in other provinces, except when it comes to non-judicial remedies. The Act applies to all claims with no exceptions, which was different from the jurisdictions we examined. For example, Ontario's *Limitations Act* states that there is no limitation period in respect of a proceeding to recover social assistance payments, student loans, awards, grants, contributions and economic development loans¹⁰. We also reviewed a report by the *Manitoba Law Reform Commission* which stated the following pertaining to changes considered for their province's legislation:

“As a matter of public policy, it may be desirable (...) to exempt certain types of actions brought by the Crown. The Crown is the manager of public funds, and it is generally in the public interest that the Crown's ability to recover money owing to it resulting from unlawful activity or from the administration of public programs ought not to be subject to being forfeited through the expiration of a limitation.”

5.52 In late 2011, the *Financial Administration Act* was amended to preserve the “legal ability” of the Province to collect amounts using CRA set-off. As a result, if a debt is registered with CRA prior to the expiry of the limitation period, the use of CRA set-off will continue. This will have

¹⁰ Limitations Act, 2002 (Ontario), section 16 (3)

a positive impact on collections as it preserves the debts that are registered for set-off with CRA. If the limitation period expires before, CRA set-off cannot be applied against the debt.

5.53 Based on our review, the changes to the *Limitation of Actions Act* have placed a tight timeframe on the Province to collect outstanding debt. Beginning in 2016, once a claim is discovered¹¹ or the debt has been acknowledged¹², the Province has only two years (reduced from a previous six years) to attempt to recover outstanding amounts. After that time, the ability to take action expires. Overall, the changes to the *Limitation of Actions Act* will negatively affect the Province's ability to recover amounts owing from debtors.

Garnishment of wages **5.54** At the time of our work, the Province did not have legislation allowing it to garnish the wages of individuals with a Crown debt. However, Bill 65 was tabled in the Legislature in May 2013. Once approved, this *Enforcement of Money Judgments Act* would “overhaul the law on enforcement of money judgments” (NB Law Reform Notes #32, Office of the Attorney General, December 2012, page 2).

5.55 Currently, the Province is applying set-off¹³ against the wages of provincial employees who have defaulted student loans. Since garnishment legislation is still outstanding, there are missed opportunities for recovery of Crown debts owed by other individuals. We did not attempt to quantify this amount.

¹¹ Per section 5(2) of *Limitation of Actions Act*: A claim is discovered on the day on which the claimant first knew or ought reasonably to have known

(d) That the injury, loss or damage had occurred;

(e) That the injury, loss or damage was caused by or contributed to by an act or omission; and

(f) That the act of omission was that of the defendant.

¹² Refers to a defendant acknowledging the liability or obligation in writing.

¹³ Section 52(1) of the *Financial Administration Act* states “if a person is indebted to the Province in a specific sum of money, the Comptroller may retain by way of deduction or set-off the amount of indebtedness out of any sum of money that may be due or payable by the Province to that person.”

Set-off of arrears in social assistance housing rent against benefits

5.56 Outstanding rents from tenants in the Social Housing Program are challenging to collect as tenants can be difficult to locate once they have vacated a property. Some of these tenants are social assistance recipients. Therefore, past due rent could potentially be withheld from current social assistance payments. However, this is not currently being done and the Department's position is that this process will be undertaken only with the client's consent.

5.57 According to staff at the Department of Social Development, there is a team actively working on other solutions for recovery of outstanding housing rent against social assistance benefits. They also plan to look at CRA set-off.

5.58 While the Department is working towards a solution, there are missed opportunities for recovery of Crown debts. We did not attempt to quantify this amount.

Information sharing

5.59 Lack of current information is one of the challenges when it comes to the effective collection of Crown debts. Many departments we spoke to claimed that they simply do not have current information on their debtors, resulting in an inability to contact them. Information sharing between departments could facilitate the settlement of outstanding Crown debts. The Department of Social Development has current contact information for a number of residents of NB. The *Family Income Security Act* has specific provisions as to what information can be shared. Recent amendments to the Act could allow for the sharing of information. Paragraph 13.1(3) states that "the Minister may permit the release of confidential information" in certain circumstances. Some departments believe the legislation provides the authority to disclose personal information. An official at the Department of Social Development has informed us that, though legislation provides discretion in this matter, the Department is prepared to share information with other departments for the purpose of collecting monies owed to the Province. We were told that the Department has received no such request for information, and should a request be received, it would share information as allowed within the legislation. We believe this is a missed opportunity for departments to get accurate contact information of debtors.

5.60 There may be other Departments willing to share contact information, if authorized. Other sources of

information could be motor vehicle records maintained by the Department of Public Safety or medicare records maintained by the Department of Health. Disclosure of personal information is allowed under the *Right to Information and Protection of Privacy Act* when the purpose is to collect “a fine, debt, tax or payment owing by an individual to the Province of New Brunswick¹⁴.” As of 1 September 2013, the *Right to Information and Protection of Privacy Act* (RTIPPA) takes precedence over other acts that would prohibit the disclosure of information for this purpose, unless the other act expressly states that it applies despite RTIPPA¹⁵. A number of amendments were proposed in Bill 67, tabled in May 2013, affecting 39 pieces of legislation. Once approved, the 39 pieces of legislation would prevail over RTIPPA if one of their provisions is inconsistent with or in conflict with the RTIPPA¹⁶.

Recommendation

5.61 We recommend departments share debtor contact information, where legislation permits (for example, the *Family Income Security Act* or *Right to Information and Protection of Privacy Act*), for the purpose of collecting accounts receivable.

Tuition cash back

5.62 Post-secondary graduates who live and work in New Brunswick can receive cash back on their tuition cost under the NB Tuition Rebate Program. Individuals receive a non-taxable rebate against provincial personal income tax up to 50% of their tuition costs. The analysis lead by the Office of the Comptroller identified the possibility of individuals with defaulted student loans receiving payments from the program. In the past, legislation did not allow the set-off of tuition rebates against defaulted student loans. The analysis estimated that individuals with defaulted student loans are scheduled to receive \$960,000 in tuition rebates over 4 years.

5.63 We found that the *Tuition Tax Cash Back Credit Act* was amended in 2012 to allow for set-off. Per officials at the Department of Finance, 2013 rebates will go through a verification process against the student loan database. If a

¹⁴ Par. 46(1) q) (i) of *Right to Information and Protection of Privacy Act*

¹⁵ Par. 5(2) of *Right to Information and Protection of Privacy Act*

¹⁶ Per Bill 67: An Act Respecting the Right to Information and Protection of Privacy Act

loan is in default, a set-off will be applied against the rebate.

5.64 This has positive implications as recoveries will begin in 2013. However, there were missed opportunities for collection between 2008 and 2013. A directive was first issued in 2008 by Board of Management that arrangements for the set-off of the rebate against defaulted student loans be made.

**Move toward
central collection
unit**

5.65 The analysis of collections lead by the Office of the Comptroller also examined the overall state of collections by government. The purpose of the analysis was to create “a plan for the most effective and efficient method of maximizing the collection of amounts owing to the Province”¹⁷. The analysis determined that “centralizing the collection of accounts receivable in a shared service environment would provide the best structure for improving collections in New Brunswick.”¹⁸

5.66 We spoke with a representative at New Brunswick Internal Services Agency (NBISA) to obtain an update on the move toward a central collection unit. At the time of our discussion, we were told that existing processes used by departments had been documented, technology in use had been reviewed, and legislation governing collections by department had been identified. A competition to recruit a *Director of Collection Services* closed on 1 March 2013 and the new Director was in place at the end of May 2013. In the competition description, the “*Director of Collection Services will be mandated to establish and implement a consolidated collection service and associated solutions that will address the collection of bad debt for the Province of New Brunswick.*” Responsibilities include “*re-engineering current processes and developing new strategies in order to achieve significant recoveries and efficiencies across multiple business streams (...) and ensure partnership agreements and performance metrics are established.*”

5.67 We were also told NBISA is now developing a plan for

¹⁷ Source: Collection of Receivables-Government Renewal Project #11

¹⁸ Source: Collection of Receivables-Government Renewal Project #11

the establishment of a central collections unit. We were unable to obtain an estimate of the total investment required to set up the unit. The analysis by the Office of the Comptroller included estimates of overall collections likely to be achieved by the central collection unit in years one to three following implementation as follows: Year one - \$6 million; Year two - \$16 million; and Year three - \$22 million.

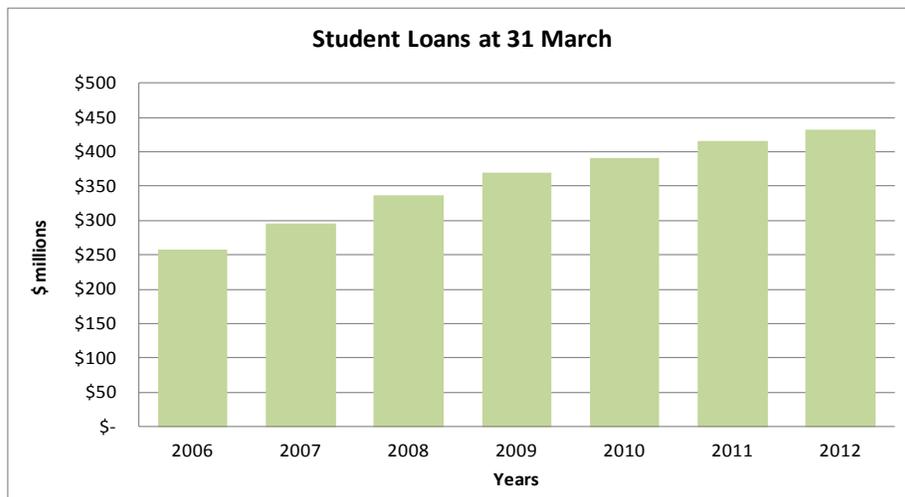
Accounts receivable across government

5.68 We decided to look at certain accounts that we felt were representative of the variety of amounts owing to the Province. For each account, we spoke to representatives at the department concerning collections and CRA set-off, and obtained data detailing trends.

Department of Post-Secondary Education, Training and Labour – Student Loans

5.69 Loans to students (\$431.6 million in principal) represent close to 50% of total government loans outstanding at 31 March 2012, making it the largest component of the provincial loan balance. In 2005, the Province became the direct lender for student loans. Prior to that, the involvement of the Province was as guarantor of loans issued by financial institutions. The portfolio was managed by the Department of Education from 2005 to March 31, 2006, when management of the portfolio was transferred to the Department of Post-Secondary Education, Training and Labour (PETL). Each year, new loans issued to students exceed collections and therefore the balance of the portfolio is increasing. As shown in Exhibit 5.10, outstanding loans to students have increased 67% in the last six years (from \$258.3 million in 2006 to \$431.6 million in 2012).

Exhibit 5.10: Student Loans at 31 March (in millions)



Figures obtained from Public Accounts at 31 March

5.70 By contract with the Province, a third party service provider manages all student loans during the time the student is in school, in compliance with repayment agreements or when the loan is less than 270 days in arrears. The repayment of student loans tends to be long term in nature and allowing the service provider enough time to establish a relationship with the borrower and attempt to bring the loan back in good standing if required, is important. The service provider actively monitors the rate of loans in arrears which are brought back in to current standing. The service provider receives incentive fees based on default reduction. When loans exceed 270 days in arrears, the provincial portion of the loan is returned to PETL's Portfolio Debt Management group (PDM) for collection. These loans are classified as "Return to Government" (RTG). When the loans are returned to the Province, the PDM group attempts to contact the debtor and negotiate a repayment agreement. In addition, the PDM group ensures that all loans returned by the service provider are registered for CRA set-off.

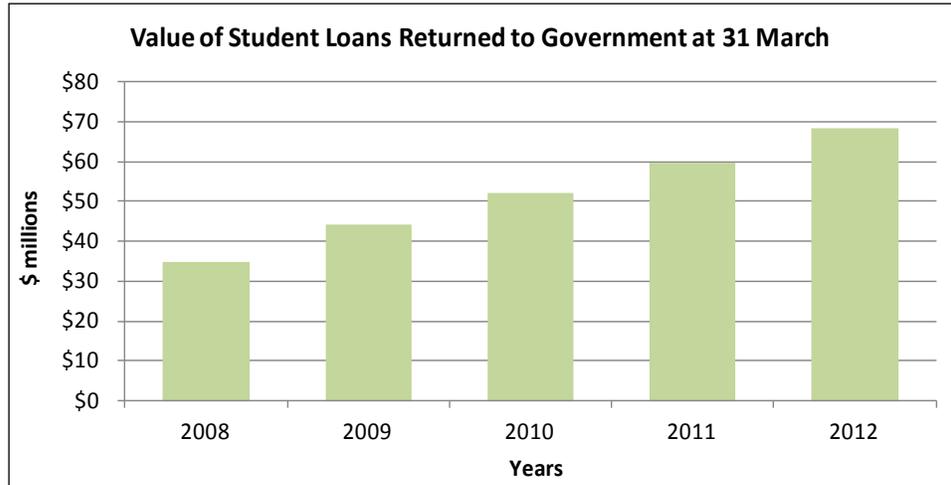
5.71 PETL began registering student loan accounts for CRA set-off in February 2009. Between February 2009 and January 2013, approximately 14,700 student loans (principal and interest) valued at \$99 million were registered for CRA set-off. During the same period, \$14 million was recovered through CRA, representing an aggregate collection rate of approximately 14% over the four year period. An additional \$3.6 million was collected by the PDM group through other methods such as repayment arrangements.

5.72 PETL's PDM group has well documented collection processes and is actively collecting on balances owed. According to representatives from the department, collection results using CRA set-off have been very successful, and a key approach for collecting overdue student loans.

5.73 Beginning in November 2011, a matching process was undertaken to identify provincial civil servants with defaulted student loans. Employees were notified in writing that they must contact PETL and make payment arrangements; otherwise, a 5% set-off would apply. As at January 2013, approximately \$250,000 has been collected from PNB employees through the wage set-off.

5.74 Despite the various collection efforts of the PDM group, the RTG portfolio is increasing in size. Exhibit 5.11 shows the growth in the portfolio over the last five years.

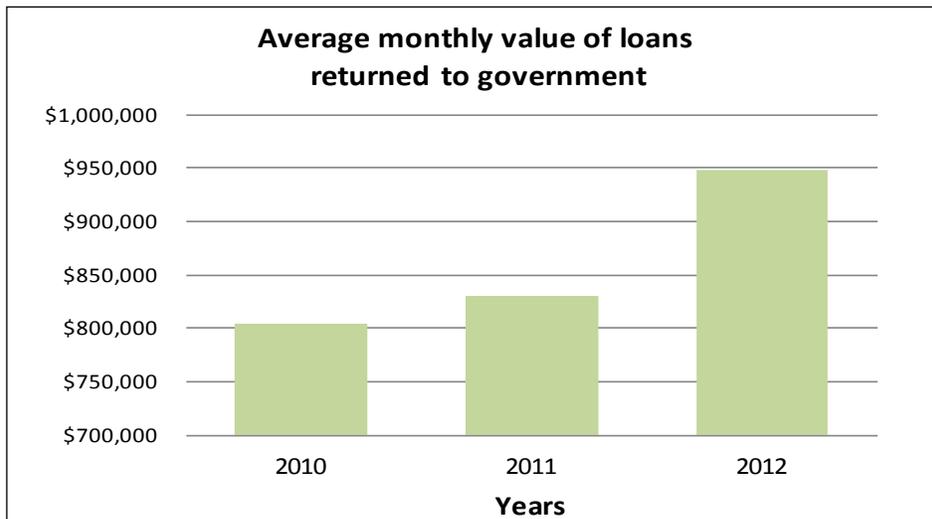
Exhibit 5.11: Value of student loans returned to government (RTG portfolio) at 31 March



Figures obtained from the Department of Post-Secondary Education, Training and Labour (unaudited)

5.75 As shown in Exhibit 5.11, RTG loans almost doubled in size between 2008 and 2012; from \$34.7 million in 2008 to \$68.4 million in 2012. During the same period, the total student loan portfolio increased in size by 28% (from \$336.2 million in 2008 to \$431.5 million in 2012). On average, for the three years ending 31 March 2012, there has been approximately \$860,000 of student loans returned to government each month. Exhibit 5.12 depicts the increase in the average monthly amount of student loans returned to government.

Exhibit 5.12: Average monthly value of loans returned to government



Figures obtained from the Department of Post-Secondary Education, Training and Labour (unaudited)

5.76 An analysis of collections for the RTG portfolio indicates that only a small portion of loans are collected annually. On average, for the three years ended 31 March 2012, the PDM group has collected less than 4% of the average RTG portfolio principal balance. The value of loans returned to government from the service provider is exceeding collections. On average, for the three years ended 31 March 2012, \$10 million of new loans were added to the RTG portfolio annually. During the same period, on average, only \$2 million was collected annually. CRA set-off accounts for approximately 80% of amounts collected. The overall growth in the portfolio balance and the low collection history should be of concern to government.

Recommendation

5.77 Given the recent rapid growth in the student loans Return to Government portfolio and the limited resources of the Portfolio Debt Management group, we recommend the Department of Post-Secondary Education Training and Labour continue to develop, in conjunction with the central collection unit, a collection strategy for the Return to Government portfolio including establishing collection targets and active monitoring of targets.

Department of Post-Secondary Education, Training and Labour – Employment Programs

5.78 Included in PETL’s accounts receivable are overpayments under various employment programs. These programs provide grants to help individuals receive training and education which assist them to return to work. The overpayments are the result of recipients receiving payments under a program to which they were no longer entitled.

5.79 From 31 March 2009 to 31 March 2012, the year-end employment programs overpayments balance has increased by almost 20%: from \$3.1 million in 2009 to \$3.7 million in 2012. During this 3 year period, average collections on these overpayments were approximately \$100,000 per year while average annual overpayments were approximately triple at \$300,000 annually. Of the \$3.7 million balance at 31 March 2012, almost \$3 million is greater than 365 days old.

5.80 Balances owing under employment programs have not been registered for CRA set-off. The Department’s collection effort includes sending monthly statements to debtors. With limited collection effort, the overpayments balance will continue to increase as the annual issuance of overpayments consistently exceeds collection. In addition, as the expiration of the standstill provision on the statute of limitations approaches, collection time will be limited and collection opportunity will end for some amounts when the limitation period expires.

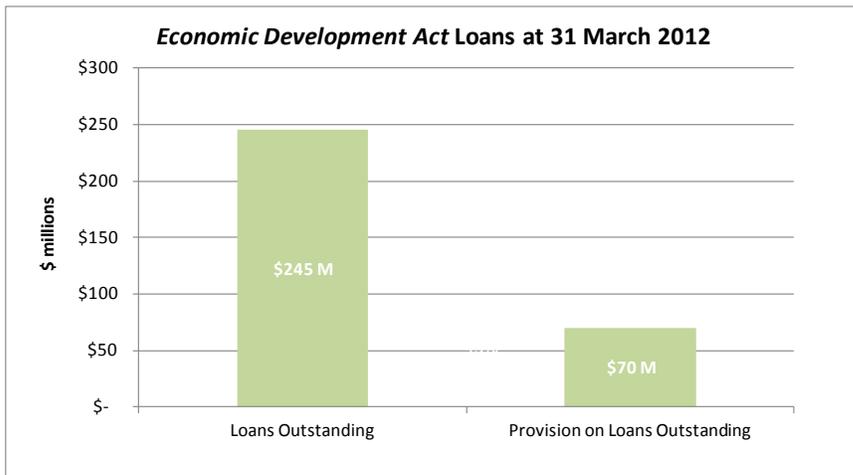
Recommendation

5.81 We recommend the Department of Post-Secondary Education, Training and Labour register employment program overpayments with the Canada Revenue Agency Refund Set-off Program.

Department of Economic Development – Loans to Business

5.82 Loans receivable under the *Economic Development Act* are the second largest component of the provincial loan receivable balance at \$245 million. These loans are provided to support business development and growth of New Brunswick companies. At 31 March 2012, there were 116 loans issued by the Department, some dating back to the early 1990’s. Exhibit 5.13 shows the principal value of these loans as well as the provision for loss on these loans at 31 March 2012.

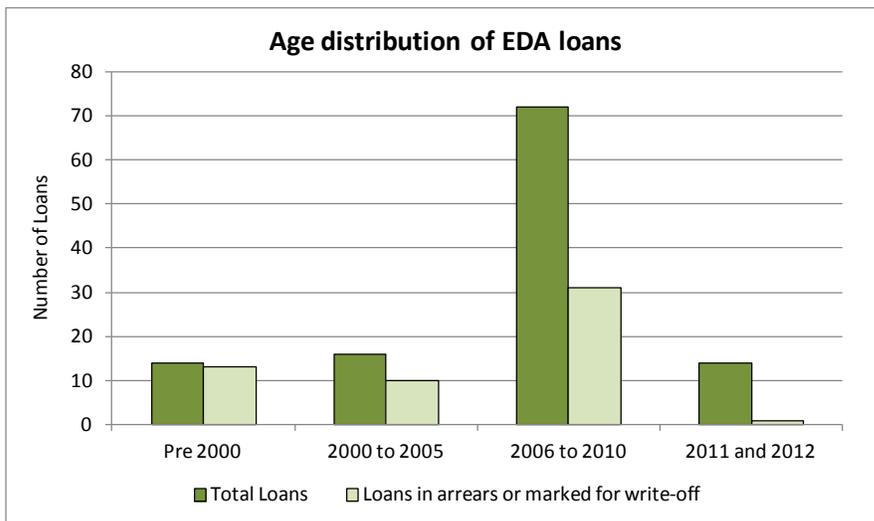
Exhibit 5.13: Economic Development Act loans at 31 March 2012



Based on data provided by the Department of Economic Development (unaudited)

5.83 We can see the collection of \$70 million (29%) of the loan balance is considered doubtful; over \$43 million (18%) of this amount is currently in arrears or awaiting write-off. In Exhibit 5.14 we can see that as a loan gets older, the rate of default increases. The oldest group of loans, those made before 2000, has a default rate of 93% while those made in recent years have a default rate of 7%.

Exhibit 5.14: Aging of Economic Development Act (EDA) loans



Based on data provided by the Department of Economic Development (unaudited)

5.84 Lending arrangements are flexible and tailored to the needs of each borrower. When companies are unable to meet the payment terms of their loan, refinancing is often required. When security is placed on these loans, it is often secondary to a bank. We were told that collecting on these

accounts can be challenging as many companies are in a vulnerable state and aggressive pursuit could lead to insolvency. However, though companies are not strong financially and there is a risk of loss, the Department believes there are other economic benefits to these loans:

- revenue from property tax collected from the business;
- revenue from personal income tax collected from individuals benefiting from the jobs created by the business; and
- potential decrease in social assistance benefits in the community where the business is located.

5.85 There is no current collection policy nor is there a collections unit at the Department. Collection efforts are the responsibility of loan officers who must ensure loans are paid when due and if not, must investigate the cause. This may conflict with their primary role of supporting the development of client companies. To improve their collection efforts, the Department indicated the need of a “special” loans manager to allow quick action in the case of default. This individual would be knowledgeable of the options available at default and assist debtors whose loans are in default, yet would not be involved in granting loans.

5.86 The CRA Refund Set-off Program cannot be used as a collection method in these situations as set-off is applied to the tax refund of individuals, not corporations. There is currently no program for set-off against corporations.

5.87 The Department recently registered loans from the Entrepreneur Program with CRA for set-off. In March 2013, 278 accounts valued at \$2,197,716 were registered for set-off. No recoveries had yet been reported at the time of our work.

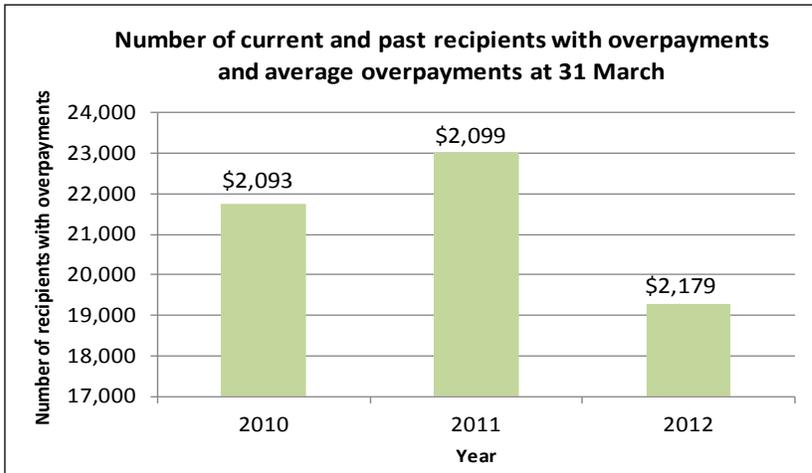
Recommendation

5.88 To improve the recovery of loans receivable from businesses, we recommend that independent expertise in collection of business accounts be engaged to assist either the Department of Economic Development or the central collection unit. The expert engagement should include the development of an action plan to address the historic high delinquency rate of economic development loans to businesses.

**Department of
Social Development
– Social Assistance
Overpayments**

5.89 At 31 March 2012, there were over 19,000 current and past recipients of social assistance who owed more than \$42 million in overpayments of benefits to the Department of Social Development. Exhibit 5.15 shows the number of clients with overpayments, as well as the average value of the overpayment, at 31 March.

Exhibit 5.15: Number of current and past social assistance recipients with overpayments and average overpayment per recipient at 31 March



Based on data provided by the Department of Social Development (unaudited)

5.90 The decrease of accounts receivable between 2011 and 2012, as shown in Exhibit 5.15 is the result of a write-off of 5,200 cases valued at approximately \$10 million. Virtually all of these accounts (96% to 98%) are over 120 days old.

5.91 Overpayments may be the result of a misrepresentation by the client or an error by the Department. Regardless of their cause, all overpayments require reimbursement to the Department.

5.92 When an overpayment occurs to a current recipient, they are required to make payments against their overpayment balance at the rate of 5% of their monthly assistance benefit.

5.93 For recipients with overpayments that are no longer receiving social assistance benefits, letters are sent advising them of the amount owing and requesting they make payment arrangements. If payment arrangements are not made, the Department registers these account with the Canada Revenue Agency for set-off.

5.94 Social assistance benefit overpayments became a

registered program with CRA in January 2011. Staff at the department provided us with figures on the success of their recovery efforts as at 31 March 2012 as well as their most recent figures for 2013, which can be found in Exhibit 5.16.

Exhibit 5.16: Recovery efforts at 31 March 2012 and 5 March 2013

Recovery efforts at 31 March 2012 and 5 March 2013		
	31 March 2012	5 March 2013
Total overpayments	\$ 42,029,178	\$ 46,343,442
Accounts registered with CRA	\$ 6,939,276	\$ 9,044,097
Amount of recoveries: CRA set-off	\$ 123,763	\$ 210,836
Amount of recoveries: repayment arrangements	\$ 51,017	\$ 114,656

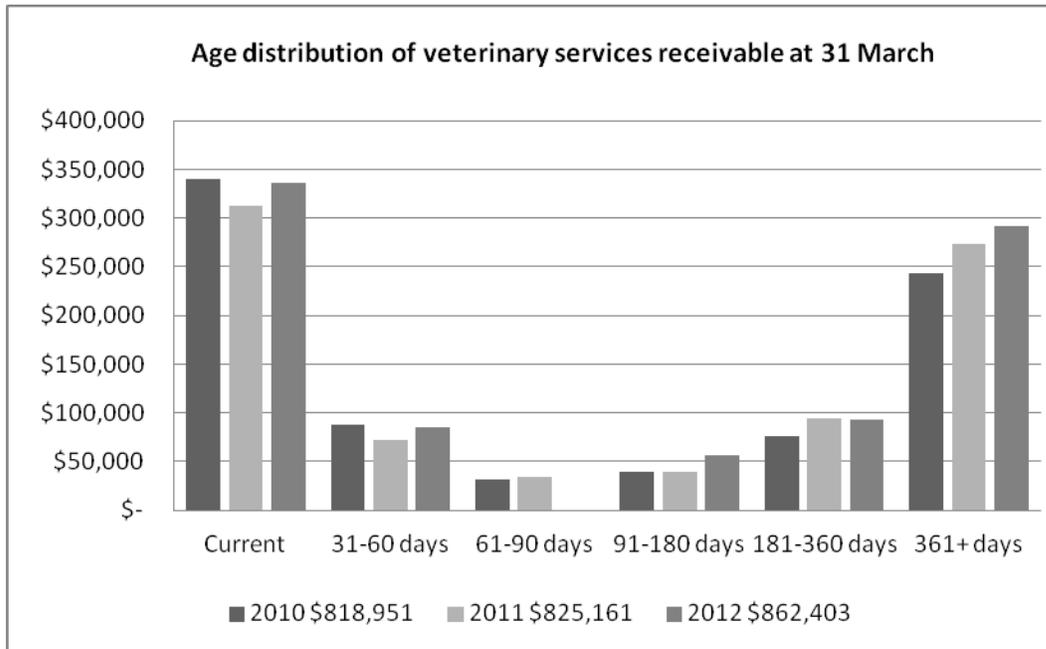
Based on data provided by the Department of Social Development (unaudited)

5.95 The Department has a collection policy for existing clients but none for terminated clients. The Department has a small team pursuing collection activities, focusing on payment arrangements and CRA set-off. Though the Department is making progress, their most recent figures indicate that less than 1% of overpayments have been recovered through CRA set-off and repayment arrangements. The Department indicated that they estimate over \$500,000 in cumulative recoveries will be provided by CRA set-off by 31 March 2013.

**Department of
Agriculture,
Aquaculture and
Fisheries –
Veterinary Services**

5.96 At 31 March 2012, there were approximately 1,100 clients owing over \$862,000 for veterinary field, clinic and laboratory services. Exhibit 5.17 depicts the aging distribution of the balance owing at 31 March. This exhibit shows that the majority of amounts outstanding are either current or over 361 days in arrears.

Exhibit 5.17: Aging distribution of veterinary services receivable at 31 March



Based on data provided by the Department of Agriculture, Aquaculture and Fisheries (unaudited)

5.97 Veterinary services receivable is a small portion of total government receivables. However, almost half of the balance is greater than six months old. In addition, the value of accounts greater than 361 days is almost equal to that of current balances and is increasing in size. Interviews with the Department revealed that part of the collection issue arises because provincial veterinary services cannot be refused to clients regardless of outstanding balances or collection history.

5.98 Some past due veterinary services receivables accounts are held by government employees. Though this is one example, there are likely other receivable amounts due from employees.

Recommendation

5.99 We recommend a matching process be undertaken to identify provincial employees with past due accounts for veterinary services or with any other amounts in arrears. Payment arrangements should be established or payroll set-off applied. In the future, departments should collect a “unique identifier” from individuals in order to facilitate recovery (through matching) should default occur.

5.100 In October 2011, veterinary receivables became a registered program with CRA. Staff at the Department provided us with some figures on the success of their

recovery efforts at 31 March 2012 as well as their most recent figures for 2013, which can be found in Exhibit 5.18 below. This exhibit shows that approximately 18% of accounts receivable were registered for CRA set-off at 31 March 2012. Recoveries through CRA set-off were approximately 4% at 31 March 2012 but have grown to 16% at 4 March 2013.

Exhibit 5.18: Recovery efforts at 31 March 2012 and 4 March 2013

Recovery efforts at 31 March 2012 and 4 March 2013		
	31 March 2012	4 March 2013
Total Receivable	\$ 862,403	\$ 876,184
Accounts registered with CRA	\$ 152,343	\$ 153,176
Amount of recoveries: CRA set-off	\$ 6,646	\$ 24,217

Based on data provided by the Department of Agriculture, Aquaculture and Fisheries (unaudited)

Department of Finance – Property Tax

5.101 As mentioned earlier, property tax is the largest component of taxes receivable. For the three years ending 31 March 2012, the average balance of property tax receivable was approximately \$1 billion.

5.102 However, approximately 90% of the receivable balance relates to current year billings. Property tax billings are made at the end of the fiscal year in March but are not due until the following fiscal year; creating a significant receivable at year-end. Exhibit 5.19 shows the year-end balance of property taxes receivable, excluding current year billings, over the past ten years.

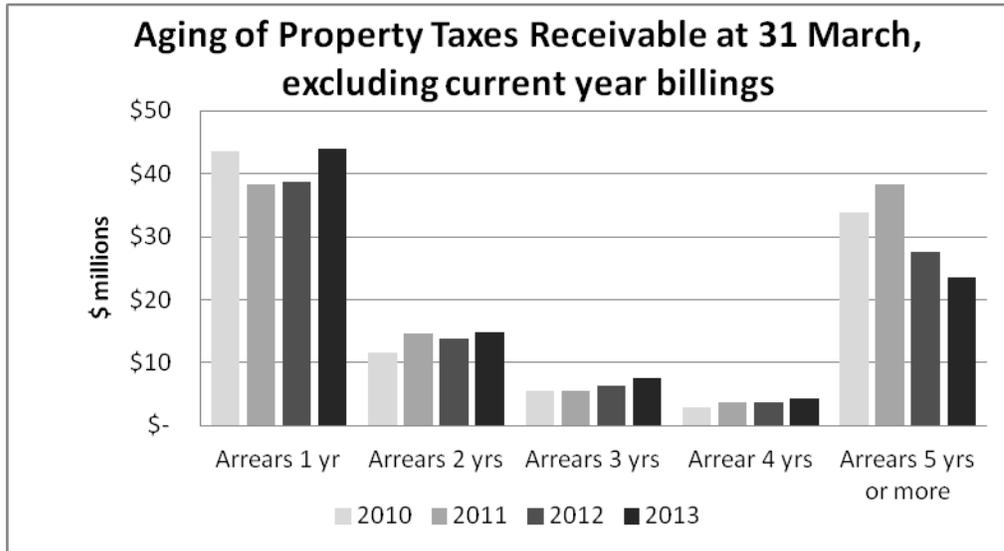
Exhibit 5.19: Property Taxes Receivable at 31 March, excluding current year billings (in millions)



Amounts for years 2003 to 2011 were prepared by the Department of Finance (unaudited); 2012 figure calculated by OAG

5.103 Exhibit 5.20 shows that a significant portion of the property tax receivable balance is greater than five years old.

Exhibit 5.20: Aging of Property Taxes Receivable at 31 March, excluding current year billings (in millions)



Based on data provided by the Department of Finance (unaudited)

5.104 Over the past year, the Department of Finance has undertaken several initiatives in an effort to reduce the receivable balance including: administrative improvements and an increase in the amount of deletion authority for the Minister. A property tax reconciliation program has been implemented offering property owners with arrears greater than one year an opportunity for relief of a portion of penalties if they make arrangements for repayment. There are three relief options depending on the repayment plan selected. We were informed that by March 2013, \$3.7 million had been collected on 1,100 accounts under this initiative. The Department of Finance intends to use CRA set-off for the collection of property tax accounts in 2013.

Recommendation

5.105 We recommend the Department of Finance complete its work to routinely register overdue property tax receivable accounts with the Canada Revenue Agency Refund Set-off Program.

**Accounts receivable
– First Nations
Tuition**

5.106 Amounts receivable from First Nations, including principal and interest, is a material component of the general receivables. This balance had been steadily increasing until 2012 when significant write offs were made. At 31 March 2011, prior to these significant write-offs, receivables from First Nations accounted for 12% (\$ 85.8 million) of the balance in general receivables. This amount has accumulated over a number of years. Education agreements between the Province and First Nations involve multiple government departments, 16 First Nation communities as well as the Federal government. Given the value and complexity of these balances, we decided to complete a more detailed analysis on accounts receivable from First Nations.

Background

5.107 New Brunswick First Nation communities and their regional organizations have the responsibility of managing and delivering education programs and services in a number of band-operated schools on reserves across the Province. When a First Nations student attends a provincial school (off-reserve), the Department of Education and Early Childhood Development (EECD) charges a tuition fee to cover the cost of the student's education. Aboriginal Affairs and Northern Development Canada (AANDC) provides funding to First Nation communities to cover these tuition fees. Each year, approximately 1,500 on-reserve First Nations students attend New Brunswick public schools.

5.108 According to the Aboriginal Affairs Secretariat (AAS), the relationship between the Department and First Nation communities had been deteriorating over time and by 2004, the Department did not have signed agreements for the provision of educational programs and services for many First Nations students.

5.109 In addition, up to 2008, the funding provided by AANDC for tuition did not cover the actual cost incurred by First Nation communities. This gap in funding resulted from a federal funding cap set for the Atlantic region.

5.110 Furthermore, AAS indicated that First Nation communities did not feel they were receiving the level of educational services required for the success of their students. As a result, First Nation communities began withholding tuition payments owing to the Province.

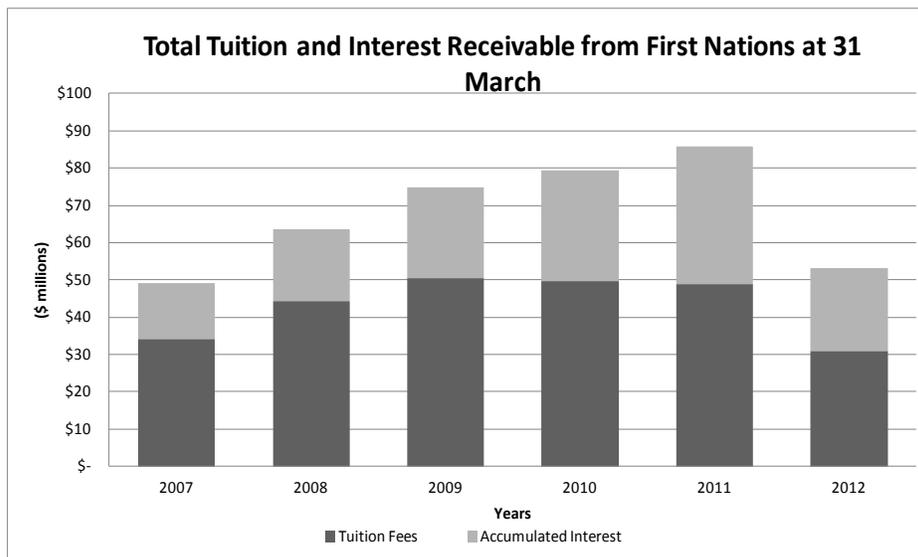
Enhanced First Nations Education Programs and Service Agreements

5.111 In 2008, EECD was given the mandate to negotiate five year (2008-2013) Enhanced First Nations Education Programs and Service Agreements (Enhanced Agreements) which would eliminate the funding gap between federally funded tuition amounts and provincial tuition rates. Enhanced Agreements were to include a commitment by the Province to reinvest 50% of the tuition paid by First Nations into the public school system to support enhanced programs for First Nation students. This was to be subject to the repayment of accumulated tuition arrears by the First Nations.

Tuition Arrears Repayment Agreements

5.112 Starting in 2008, negotiations between AAS and First Nation communities to develop the First Nation Tuition Arrears Repayment Agreement (TARA) were commenced. They included a repayment plan for outstanding tuition arrears owed to the Province for past educational services rendered. Enhanced Agreements were to be signed with First Nations who, where appropriate, had signed the Tuition Arrears Repayment Agreements (TARA). Over the course of negotiations and at the request of the First Nations Chiefs, the two agreements were temporarily de-linked with the understanding that First Nations would continue meeting with the Province to conclude tuition arrears negotiations in a timely manner. The principal amount of tuition arrears owing from 11 of 16 First Nations was approximately \$46.5 million at the commencement of negotiation. The remaining five First Nations were under a separate arrangement where tuition payments were made directly from AANDC to the Province. Exhibit 5.21 shows the total amount of tuition and interest receivable from First Nation communities at 31 March.

Exhibit 5.21: Total tuition and interest receivable from First Nations at 31 March



Based on data provided by the Department of Education and Early Childhood Development (unaudited)

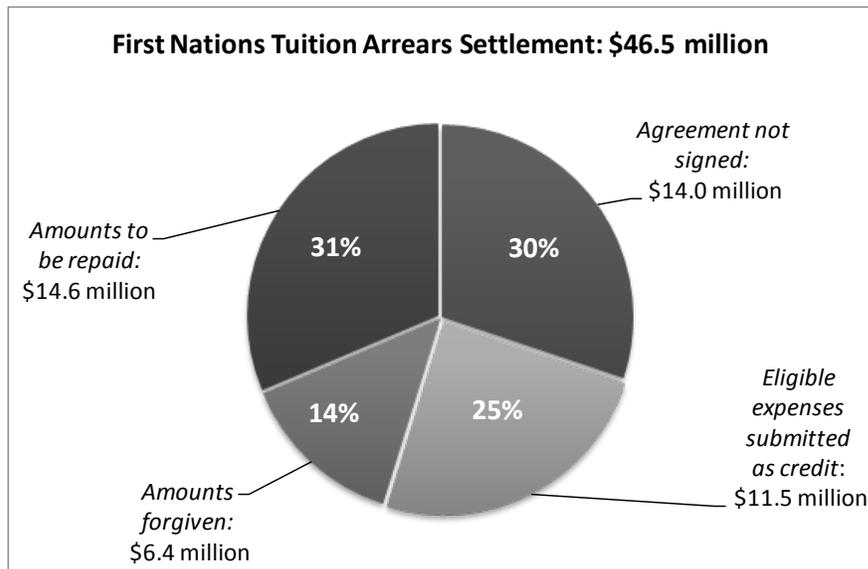
Tuition Arrears Repayment Agreements Negotiations

5.113 Tuition Arrears Repayment Agreements have been signed by eight of 11 First Nations. Agreements remain outstanding for three First Nations. However, all 16 First Nations have signed Enhanced Agreements and are currently benefiting from the 50% tuition reinvestment by the Province. Though the tuition reinvestment was subject to the repayment of accumulated tuition arrears, the three First Nations that have not signed TARA agreements began receiving the enhanced funding between April 2009 and September 2010.

5.114 During the TARA negotiation process, AAS acknowledged that prior to the signing of Enhanced Agreements, First Nations were providing educational resources to their students separate from any provincially funded programs. AAS, EECD and Board of Management agreed that credit would be given for these expenditures to the First Nations against amounts owing from tuition arrears. Many First Nations received a credit against amounts owing on tuition arrears in recognition of supported expenditures for educational purposes. In addition, during the negotiation process, a portion of tuition arrears owing by one First Nation was forgiven.

5.115 Exhibit 5.22 shows a breakdown, by category of settlement, of the \$46.5 million in arrears owed by 11 First Nations. Negotiations and settlements with individual First Nations took place over a number of years. Three are still ongoing.

Exhibit 5.22: Breakdown of First Nations Settlement of Tuition Arrears (principal only)



Based on data provided by Aboriginal Affairs Secretariat (unaudited)

5.116 To date, eligible expenses of \$11.5 million have been accepted as credit for arrear amounts owing by eight First Nations. We have been told by EECD that First Nation communities who did not have arrear amounts owing view this situation as unfair. Though these First Nations funded additional programs for their students, they received no similar benefit from the Province for their initiatives. This effectively penalized those First Nations for not having arrears owing.

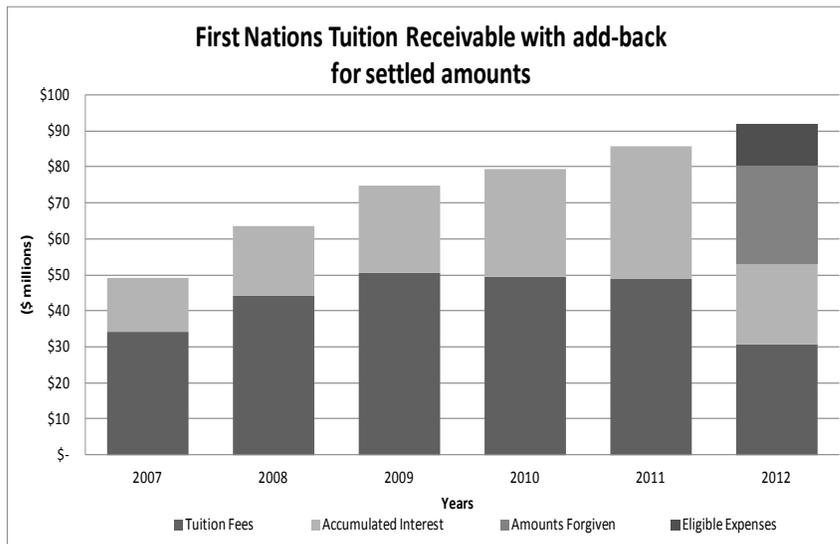
Interest

5.117 Board of Management has authorized that no interest be collected on arrears under the TARAs. Consequently, in 2011, approximately \$20 million in interest owed by four First Nations was written-off.

5.118 For amounts owing under the Enhanced Agreements, interest is accumulated annually. Board of Management noted that interest would be charged on tuition not paid in accordance with the terms of the Enhanced Agreements. However, both AAS and EECD stated that there is no expectation of interest repayment from the First Nations. When interest income is recorded, it is immediately set-up with a 100% allowance for doubtful accounts, and no portion of any payment is applied to interest owing.

5.119 Exhibit 5.23 demonstrates the significant cost to the Province of write-off and acceptance of eligible expense as credit on the balance of First Nations tuition receivable.

Exhibit 5.23: First Nations Tuition Receivable with add-back for settled amounts



Based on data provided by Aboriginal Affairs Secretariat (unaudited)

Repayment under Tuition Arrears Repayment Agreements

5.120 During the negotiation process for the TARA agreements, AAS allowed each First Nation community to choose a repayment schedule that would not cause them financial hardship. In one instance, a First Nation community is repaying approximately \$25,000 annually (on total arrears owing at January 2013, of \$580,000) until 2035. In another case, the repayment of the remaining \$800,000 in arrears is over a 20 year period. Given that amounts owing under TARA's are not subject to interest, there is a cost to government to granting lengthy repayment terms.

Opportunity for set-off against other payments

5.121 In 2008, Board of Management approved the retention of payments by way of deduction or set-off against amounts due and payable to the Province by a First Nation under the TARAs. The Province of New Brunswick issues large payments to First Nations under various gas, tobacco and gaming agreements. There exists an opportunity to recover educational amounts owed under TARAs through set-off from these payments. Even though Board of Management granted authority for set-offs in 2008, to date, this option has not been pursued.

5.122 Finally, the Enhanced Agreements contain the following clauses:

5. Tuition Arrears Repayment

5.1 The First Nation hereby agrees, where appropriate, to execute a First Nation and Province of New Brunswick Tuition Arrears

Repayment Agreement to address outstanding tuition arrears owed to the Province for past education services rendered.

5.2 Failure to fulfill the obligations under First Nation Province of New Brunswick Tuition Arrears Repayment Agreement may result in the cancellation of this Agreement.

5.123 Even though three First Nations have not signed TARA agreements, reinvestments under the Enhanced Agreements continue to be made and the agreements have not been cancelled.

Recommendation

5.124 Given the current five year Enhanced Agreements with First Nations are ending in 2013, we recommend the Aboriginal Affairs Secretariat and the Department of Education and Early Childhood Development establish payment arrangements for all arrears owing prior to the signing of new Enhanced Agreements. Reinvestment of provincial funds (under the new Agreements) should not take place until payment arrangements have been negotiated.

Equitable treatment of debtors

Taxpayers who owe money should be treated equitably

5.125 While gathering information on accounts receivable from various departments, we discovered that debtors are treated differently depending on the department that holds the debt. In some cases, we noted differences between departments that appeared inequitable.

5.126 The following are some examples of inequitable treatment:

- Interest is charged and collected on some overdue accounts but not others.
- An entity can owe money to one department but receive payment from another. In one instance, a company was in default of a loan yet received funding from the same department.
- Some public servants who owe money to government (e.g. employees with overdue student loans) are having

their wages set-off¹⁹ while others are not (e.g. employees who owe veterinary fees).

- There is greater focus on individuals than on businesses when pursuing amounts owed to the Province (pursuit of current or former social assistance clients for overpayments vs. pursuit of businesses with defaulted loans).
- Practices with regards to collection of accounts receivable from First Nations appear unique and less stringent than all other accounts receivable we reviewed.

5.127 Numerous policies in volume 6 of PNB's

Administration Manual provide guidelines for managing accounts receivable at the department level. Policy AD-6304 requires that departments “*establish documented collection procedures for the various types of accounts receivable*”. We reviewed this policy, as well as other related documents, to determine whether fair treatment of debtors is explicitly part of the guidelines to departments in establishing collection policies. We also reviewed the collection policies (where they existed) of a number of departments. We found that equitable treatment of debtors was not part of the guidelines, nor was it part of the vast majority of collection policies we reviewed. While doing research for our project, we found that some jurisdictions do include fair treatment of debtors in their policies and guidelines on managing accounts receivable. For example, the Treasury Board of Canada's *Directive on Receivables Management* lists the following responsibilities of deputy heads toward debtors:

Establishing procedures (...) to ensure fair treatment of debtors:

- *debtors are informed of their obligations under applicable acts and regulations and advised of any existing administrative review or appeal processes that provide relief, redress or both;*
- *applicable acts, regulations or policies are applied consistently toward all debtors;*
- *any information provided to debtors is accurate and*

¹⁹ Per section 52(1) of the *Financial Administration Act*: If a person is indebted to the Province in a specific sum of money, the Comptroller may retain by way of deduction or set-off the amount of the indebtedness out of any sum of money that may be due or payable by the Province to that person.

- understandable;*
- *the debtor's financial situation and any other special circumstances are considered when collecting a debt; and*
- *the department's service expectations to debtors are openly communicated to debtors.*²⁰

5.128 We believe it is a best practice to have consistent collection policies for all government debtors. Government should treat taxpayers who owe money in a fair and equitable manner. This concept should be included in any policies developed during the implementation of the centralized collection unit.

Recommendation

5.129 We recommend the Department of Finance establish collection guidelines to ensure equitable treatment of debtors.

²⁰ Per subsection 6.1.7 of *Directive on Receivables Management*, Treasury Board of Canada Secretariat