

# Chapter 1

## Introductory Comments by the Auditor General

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# Introductory Comments by the Auditor General

## Introduction

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

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

**1.2** In this volume of our 2018 Report we include the following chapters:

- WorkSafeNB Governance;
- Addiction and Mental Health Services in Provincial Adult Correctional Institutions;
- Auditor General Concerns – New Brunswick's Fiscal Decline continues; and
- Auditor General's Office – AG Independence Eroded Due to Lack of Resources.

## WorkSafeNB Governance

**1.3** Chapter 2 of this volume presents our findings regarding oversight and governance practices of WorkSafeNB. We identified several weaknesses in government oversight of WorkSafeNB. We also found gaps in the corporate governance practices adopted by WorkSafeNB's Board of Directors.

**1.4** In 2016 WorkSafeNB total assets were valued at \$1.6 billion. Its operating expenses of \$429 million against revenue of \$318 million resulted in a \$111 million deficit. New Brunswick employers fund these operations to support prevention of injuries and ensure their workers are provided adequate compensation and benefits when accidents happen.

**1.5** WorkSafeNB has a social and financial impact on New Brunswick employers and workers. We chose to examine oversight and governance practices of WorkSafeNB's operations as they affect benefits for workers, costs to employers and the sustainability of the workers' compensation system. I will separately table a second report examining the WorkSafeNB claims management framework later this year.

***Good Governance of a Crown Agency Must Balance Accountability to Government with the Agency's Need for Operational Independence***

**1.6** In our audit of WorkSafeNB, we found both government and board oversight practices have weakened WorkSafeNB's independence and impeded board effectiveness. In its efforts to enforce better accountability on WorkSafeNB, government has taken actions that compromised WorkSafeNB's independence and hindered its operations. These actions included:

- delays in the appointment of the chair and vice-chair; and
- the appointment of a non-independent full-time chair who had a perceived conflict of interest.

***Board Operations Impeded by Government Delay in Appointment of Board Chair and Vice-Chair***

**1.7** We found that government delays in appointing a chair or vice-chair in late 2014 resulted in the board being unable to operate effectively. With the board requiring the presence of a chair or a vice-chair to establish a quorum for decision making purposes, these delays in appointments temporarily hampered the board's decision making ability over a period of nearly four months.

**1.8** Government is expected to act within anticipated timelines when making decisions that significantly affect the operations of a Crown corporation. Government is responsible for creating an environment in which both the corporation and responsible ministry cooperate, within their mandated roles, to achieve the desired outcomes for all New Brunswickers.

***Appointment of a Full-Time Chair Resulted in a Perceived Conflict of Interest and Impacted WorksafeNB Independence***

**1.9** Crown boards are meant to operate at arms-length from government to, among other things, minimize political interference and allow the board to function as needed to achieve the results and outcomes necessary to meet their legislated mandates.

**1.10** We found the appointment of a senior civil servant from a governing department as a full-time board chair not only represents a perceived conflict of interest, but also infringes on this arms-length relationship.

Directors of Crown corporations have a fiduciary duty to act in the best interest of the corporation. They must also be seen to represent the interest of the corporation.

**1.11** In performing its oversight role, government is expected to facilitate board members' exercise of their fiduciary duty, by refraining from acts that put undue influence on the board's operation whether in fact or appearance. In order to strengthen its oversight over Crown corporations, government must clearly state its monitoring and reporting requirements in the annual mandate letters and then enforce them.

***Crown Corporation Boards Must Adopt Governance Best Practices***

**1.12** Although WorkSafeNB's board of directors has adopted some governance best practices, our report identified many opportunities for the board to enhance its effectiveness by further implementing more governance best practices. We believe an effective board is a determining factor in the success of New Brunswick's Crown corporations. I encourage all Crown corporation boards in our Province to continuously identify and implement governance best practices that are relevant in their circumstances.

**Addiction and Mental Health Services in Provincial Adult Correctional Institutions**

**1.13** Chapter 3 reports our findings regarding addiction and mental health services in provincial adult correctional institutions. Addiction and mental health issues are found to be more prevalent in correctional institutions than in the general population. A concerted effort by all relevant entities is urgently required to design and implement an integrated service delivery approach to provide these vital services to inmates in provincial custody.

***Unacceptable Lack of Addiction and Mental Health Services in Provincial Adult Correctional Institutions***

**1.14** In our audit of Addiction and Mental Health Services in Provincial Adult Correctional Institutions, we found the Department of Health and the Department of Justice and Public Safety do not deliver addiction and mental health services to inmates in provincial adult correctional institutions to improve health outcomes and contribute to safer communities.

**1.15** Services provided are very limited. They are reactionary and focused merely on stabilizing and easing the symptoms of some addiction and mental health issues. We believe this is important to all New Brunswickers as inmates are released back into the community without being adequately treated, in a state often worse than when they were admitted.

***Inmates’ Addiction and Mental Health Needs Have “Fallen Between the Cracks”***

**1.16** We found New Brunswick legislation and regulations are silent on which entity is ultimately responsible for providing addiction and mental health services, in provincial adult correctional institutions. Our interviews revealed confusion and misunderstanding among the entities involved, regarding their respective roles and responsibilities.

**1.17** This is a prime example of a vulnerable segment of our society whose needs have fallen between the cracks of government services. Responsibility for providing addiction and mental health services in provincial adult correctional institutions must be clearly stated in legislation. Only then, proper accountability can be established for providing these services with the aim of successful integration of inmates into the community.

***New Brunswick is Among the Least Effective in Providing Treatment to Inmates***

**1.18** A recent jurisdictional scan by the Department of Health revealed that New Brunswick is among the least effective jurisdictions in Canada in providing addiction and mental health services to Provincial inmates.

**1.19** All six jurisdictions who responded to the survey indicated they provided addiction and mental health treatment services to their incarcerated residents. For example dedicated addiction and mental health staff provide treatment services inside correctional institutions in other jurisdictions. We found such services are not provided in New Brunswick.

***Strong Leadership Required to Break the Silos and Promote Collaboration***

**1.20** I am deeply concerned that government entities continue to operate in silos on many issues that require collaboration and information sharing, like this one. Because of this, New Brunswick is missing significant opportunities to improve the mental well-being of adult inmates. A multi-departmental governance and accountability structure with strong leadership and clear expectations is required for any meaningful progress to be made in this regard.

***AG Concerns – New Brunswick Fiscal Decline Continues***

**1.21** In Chapter 4 of this Volume, I present a number of important concerns regarding the Province’s fiscal state.

- Fiscal Problems Left for Future Generations***      **1.22** Over the past ten years New Brunswick Net Debt has increased almost \$7 billion. New Brunswickers have not seen an annual provincial surplus since 2008. Successive governments have consistently spent more funds than they have collected leaving complex fiscal problems for future generations to resolve. As I have said in my previous reports, the Province’s fiscal situation is not sustainable.
- New Brunswick has Reached a Critical Fiscal Point***      **1.23** Bond rating agencies have also noticed New Brunswick’s declining fiscal situation and their comments are concerning. In my view we have reached a critical point in New Brunswick’s fiscal evolution. Action is needed to address this problem given New Brunswick’s economic and demographic challenges.
- Legislative Approval for Expenses Obtained After Overspending***      **1.24** Another area of concern is a trend over successive governments to overspend before obtaining legislative approval. In five of the last ten years, governments have overspent their budget before obtaining approval. In some years government obtained legislative approval well over a year later.
- Proper Process Needs to be Followed for Spending Public Funds***      **1.25** In my view this practice is not acceptable given the original intent and spirit of the *Financial Administration Act*. Proper process needs to be followed when spending public funds and government needs to obtain spending approval from the Legislative Assembly in advance. Chapter 4 contains recommendations to address this situation.
- Government is not effectively managing all its long-term P3 contracts***      **1.26** We also report in Chapter 4 on our work in reviewing long-term P3 contracts. On a positive note, government has taken steps to save over \$17 million by refinancing certain contracts. However, Cabinet allowed the buyout option on the Leo Hayes High School in Fredericton to expire, as there was very little time to evaluate options and arrive at a decision for this significant item not on the government’s multi-year capital infrastructure plan. We concluded government is not effectively managing all its long-term P3 contracts.

***Government Indicates Intent to Release the Province's Audited Financial Statements in Advance of Election***

**1.27** Chapter 4 reports on government's intention to release the Province's audited financial statements to New Brunswickers in advance of the September 2018 election. Such information allows people to assess how the government has managed public money and resources. My Office, in conjunction with the Office of the Comptroller, will make every effort to make sure this happens.

***AG's Independence Eroded Due to Lack of Resources***

**1.28** The role of the AG dates back to Confederation. In New Brunswick, through a series of legislative amendments to the *Financial Administration Act* and the *Auditor General Act*, the independence and authority of the Auditor General is well defined. However, as explained in Chapter 5 of this Volume, I am currently impeded from fulfilling the mandate of the Office. The chronic underfunding of my Office has reached a critical point given constant government expansions.

***Budget Funding is Not Sufficient to Adequately Perform the Office's Legislated Mandate***

**1.29** The problem lies in not having sufficient funding to adequately perform the Office's legislated mandate. In my view, my independence is eroded due to my budget constraints. I do not have complete discretion in the performance of the Office's work. Therefore, I am not able to properly hold government to account and I am very concerned the public may not be aware.

***Fundamental Aspect of the Westminster System is Being Circumvented***

**1.30** If the government chooses to constrain departmental budgets and programs within the executive arm of government, that is their prerogative. However, there comes a point where doing so to a legislative office circumvents a fundamental aspect of the Westminster system of government.

***Funding Decisions for my Office are Effectively Made by the Government we are Watching Over***

**1.31** New Brunswickers need to be aware that while there may be a public expectation that we are fulfilling the role, we are not achieving adequate audit coverage. Even though an all-party legislative committee approves my budget, government members hold the majority vote. Effectively the “watchdog” doing the “watching” is subject to funding decisions made by the government we are watching over.

***New Brunswickers Should be Concerned as no Other Office has Authority of the AG***

**1.32** New Brunswickers should be concerned because if my Office is not being funded to hold government to account, there is virtually no other entity (outside the justice system) with the same authority to compel government for evidence and explanations. New Brunswickers need to know the process that is supposed to protect their interests and hold government to account is failing them.

***Funding Process Needs True Change***

**1.33** True change is needed in this broken funding process and I would be remiss if I did not inform the public and the Legislature of how my Office’s mandate is effectively being curtailed at a time when I believe the public needs my Office the most.

***Acknowledgements***

**1.34** I want to thank staff from my Office for their hard work and dedication. The individual chapters of this report are a reflection of their level of commitment, professionalism and diligence. I would like to express my appreciation to each for their contribution and continuing dedication to fulfilling the mandate of the Auditor General of New Brunswick.



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