2.20 Liquor Licensing and Enforcement

Introduction

The *Liquor Control Act* (the *Act*) provides authority to the Board of Directors of the Newfoundland and Labrador Liquor Corporation (the Corporation) to: control the possession, sale and delivery of liquor; appoint officials to issue licenses and permits to sell or distribute liquor; appoint or authorize inspectors; and enforce the *Act* and *Liquor Licensing Regulations* (the *Regulations*) through the cancellation or suspension of licences or through the imposition of fines. The *Regulations* provide further direction regarding the licensing of establishments and the manner in which liquor is to be sold.

In 1995, Government directed the Department of Government Services (the Department) through its Government Service Centres (GSC) to perform the functions of licensing and inspection. This transfer was completed in 1997 and a Memorandum of Understanding (MOU) between the Corporation and the Department was signed in 1998.

The Department has 3 liquor inspectors in the Province – 2 in St. John's and 1 in Corner Brook. Also, there are 5 vacant positions – 2 in St. John's, 1 in Clarenville, 1 in Grand Falls-Windsor and 1 in Corner Brook. At the time of our review, the 2 liquor inspectors in St. John's were responsible for the entire Avalon Peninsula, but also responded to concerns on the Burin and Bonavista peninsulas and in Central due to the vacancies in these areas. The Corner Brook liquor inspector was responsible for the entire west coast of the Province. The Department relies on its health inspectors located throughout the Province to perform pre-licensing and routine inspections of establishments outside of the areas covered by the liquor inspectors. Department officials indicated that they also request assistance from either the Royal Newfoundland Constabulary or the Royal Canadian Mounted Police in performing pre-licensing and routine inspections of licensed establishments in areas of the Province where the Department's resources are strained.

All licenses expire 31 March and must be renewed on an annual basis. All licenses and renewals, with the exception of Special Events licenses which cost $100 plus HST per license per day, are issued at no charge. Figure 1 outlines information for 2004 and 2003 on the number of new licenses issued each year and the total licenses in effect at the end of each year.

2.20 Liquor Licensing and Enforcement

Figure 1

Liquor Licenses
Department of Government Services
Years Ended 31 March

	2004		2003	
License Type	**New Licenses Issued**	**Total of Licenses Issued**	**New Licenses Issued**	**Total of Licenses Issued**
Brewer's Agent	146	1,173	159	1,399
Distributor	-	35	3	39
Bonded Warehouse	1	7	-	7
Club	9	378	10	374
Military Mess	-	10	2	14
Institutional	-	3	-	4
Lounge	97	715	100	702
Restaurant	42	292	41	294
Catering	6	149	11	148
Tour Boat	1	7	-	6
Transportation	-	10	-	10
Airport	-	3	1	3
Tourist Home	3	30	4	30
Hotel / Motel	8	106	5	104
Restaurant Lounge	1	12	4	13
Special Event	550	540	560	560
Recreational Facility	8	41	9	40
Totals	**872**	**3,511**	**909**	**3,747**

Source: Department of Government Services

Scope and Objectives

Our review of the liquor licensing and enforcement functions was completed in April 2004 and covered the period from April 2002 to March 2004. The objective of our review was to review the licensing and inspection functions at the Newfoundland and Labrador Liquor Corporation and the Department of Government Services.

2.20 Liquor Licensing and Enforcement

Conclusions

Although we planned to perform a review of the licensing and enforcement functions at the Newfoundland and Labrador Liquor Corporation, we were refused access to the information necessary to complete the review. On 11 March 2004, I forwarded a Special Report to the House of Assembly to explain the situation. As a result of not having access to the Corporation's officials and information, we had to rely on information that was available at the Department of Government Services. In most instances, licensing and inspections are initiated by the Department and therefore documentation supporting these activities were available there. However, the final disposition of certain licensing and inspection issues would only have been available from the Corporation.

The following conclusions, therefore, result from our review of the liquor licensing and enforcement information which was available at the Department.

Some licenses were issued even though the licensing requirements of the *Liquor Control Act* and *Regulations* were not met.

Inspection planning was inadequate. For example, there is no formal risk-based approach for inspections, no inspection frequency has been established for the various licence categories, and information is not maintained on all inspections performed.

There were weaknesses in the performance of inspections. For example, inspectors did not document all violations of the *Act* and *Regulations*, inspectors did not always have access to liquor purchase information necessary to detect contraband, and although overcrowding is a life-safety matter, head counts were not always performed.

Inspectors were not always advised of the final disposition of violations of the *Act* and *Regulations* reported to the Corporation on a timely basis in order to close files and follow-up compliance during subsequent inspections. For example, at the time of our review, details of the action taken by the Corporation on some violations had not been provided to the GSC for up to 29 months after being reported to the Corporation.

Inspectors have not received any inspection and enforcement training since 1997. Furthermore, health inspectors and police force officers who also may participate in inspection activity, have neither received training on the requirements of the *Act* and *Regulations* nor have they been provided with guidance such as a checklist to ensure that inspections cover all the required areas.

2.20 Liquor Licensing and Enforcement

Findings and Recommendations

Background

The *Liquor Control Act* provides authority to the Newfoundland and Labrador Liquor Corporation (the Corporation) to appoint officials to issue licenses and permits to sell or distribute liquor; appoint or authorize inspectors; and enforce the *Act* and *Regulations.* In 1995, an Order in Council directed that the functions of licensing and inspection under the *Act* be transferred from the Corporation to the Department of Government Services (the Department).

Liquor inspectors were transferred from the Corporation to the Department in 1997, with the transfer of duties being formalized in 1998 when a Memorandum of Understanding (MOU) was signed between the Corporation and the Department outlining the responsibilities assigned to each party in relation to liquor control.

In accordance with the MOU, the Department was authorized to issue licences where no significant issues were identified; however, if any issues were identified, the Department was required to submit the information to the Corporation for final disposition. Furthermore, when the Department performed inspections, it was required to report findings to the Corporation for final disposition. Effectively, the Corporation had ultimate authority for licensing and enforcement.

While we were performing our review at the Department, officials indicated that the terms of the MOU were resulting in what they considered to be inefficiencies. For example, the Department can't issue Summary Offence Tickets when violations are detected during inspections; instead, the violations are reported to the Corporation which results in undue delays in enforcement. Officials also indicated that not being able to make decisions about license issues resulted in inefficiencies and undue delays for applicants. Furthermore, inspectors did not always receive information from the Corporation relating to the final disposition of licence and inspection matters that would be necessary to know when conducting subsequent inspections at these establishments. In addition, there appears to be ambiguity as to who has authority for establishing policies to guide the day-to-day activities of liquor inspectors. Also, although the MOU requires monthly meetings between the Corporation and the Department, these meetings are not occurring.

There is a revised MOU currently in draft and agreed to by the Department and the Corporation. However, the primary issue that it will address relates to licensing whereby the Department will be provided with authority to administer all aspects of this function.

2.20 Liquor Licensing and Enforcement

Liquor Licensing

Applications to obtain a license to sell liquor can be obtained from any GSC location in the Province. The *Liquor Control Act* indicates that in order to obtain a license, a completed application must be forwarded to the GSC in St. John's along with such documentation as: information on shareholders and directors; applicable municipal approvals; approval from the Fire Commissioner; copies of floor plans; building accessibility approvals; as well as evidence of three public notices and three newspaper advertisements relating to the proposed application.

Staff at the GSC enters information on each applicant into a database which is accessible by the Corporation. When all required application information has been obtained, a pre-licensing inspection is performed by a GSC inspector which is documented on a prescribed inspection form.

The GSC staff will forward all original application documents to the Corporation and retain copies for their own use. In instances where the GSC identifies potential issues with the application (e.g. opposition to the license or an applicant has a criminal record) the GSC, in accordance with policy, will refer the application to the Corporation for review. If there are no unresolved issues identified by either the GSC or the Corporation, the GSC will issue the licence. During 2003-04 there were 872 (2003 – 909) new licenses issued with 3,511 (2003 – 3,747) total licenses in effect at the end of the year.

We selected 93 applicant files (34 special event, 30 brewer's agent, 16 lounge, 6 restaurant, 3 restaurant/lounge, 1 club, 1 tourist home, 1 hotel/motel and 1 recreational facility) covering the period of 1 April 2002 to 31 March 2004 to determine whether all required documentation and approvals were on file. We found that some licenses were issued even though the licensing requirements of the *Act* and *Regulations* were not met. In some cases, although information at the Corporation may have provided support for its decisions, as the Corporation refused our access to their files, we could not determine on what basis the Corporation made these decisions. In particular:

- Of the 34 special event files examined, we found that:
    - 6 had the licenses issued without the fee required by the *Regulations*. In these instances, the Corporation directed that no fee be charged. The foregone revenue for these 6 licences totalled $5,405.

- 1 had a licence issued even though it had a brewer's agent license – this is not permitted under the *Regulations*. The license was issued at the direction of the Corporation.

- 1 did not get approval from the fire authority in the community where the event was to occur; rather, approval was obtained from the fire authority in a neighbouring community. The license was issued and the fire authority in the community where the event occurred complained to the Department.

- Of the 30 brewer's agent files examined, we found that:

  - 1 supermarket that was a member of a trading group of supermarkets was issued a licence by GSC even though the *Regulations* state that a brewer's agent license may not be issued to a supermarket that is a member of a trading group of supermarkets. Officials at the GSC agreed that the licence was issued in error.

  - 4 businesses offering quick service meals (e.g. takeout) were granted a brewer's agent license even though the *Regulations* state that a brewer's agent license may not be issued to a takeout. We also found an instance where a takeout was refused a licence.

- 3 of 16 lounge files examined had a validation from a Commissioner of Oaths who was either a shareholder of the applying company or the applicant's business partner in another company. This lack of independence was not questioned by the staff at the GSC.

- 1 of the 6 restaurant files examined indicated that, although the GSC provided information which indicated that local residents did not want this license issued, the Corporation issued a licence to a restaurant located next to a church whose members voiced opposition. The GSC indicated that the *Act* did not permit the issuance of a liquor license in a location which could cause an inconvenience to churches, schools and hospitals.

- 1 recreational facility file (Mile One Stadium) indicated that a liquor licence was provided to the Stadium facility in 2001, contrary to the *Regulations*, in that not all required documentation (i.e. confirmation of fire and life safety and building accessibility) was received before the licence was issued, and the facility exceeded the allowable limits for areas where liquor could be consumed.

Contrary to the *Act* the Convention Centre facility (connected to Mile One Stadium via a ped-way) has been operating without the required liquor licence since its licence expired in 2002.

Inspection

Inspections are the mechanism for enforcement of the *Act* and *Regulations*. To determine compliance with the *Act* and *Regulations*, which outline the standards to be followed by licensees, GSC inspectors perform inspections of licensed establishments. An inspection report is completed in instances where issues are noted resulting from the inspection or investigation.

Our review of inspection activities indicated that inspection planning is inadequate and that there are weaknesses in the performance of inspections, as well as in enforcement activities. However, even with these weaknesses, inspection reports on file did identify instances of non-compliance with the *Liquor Control Act* and *Regulations*. In particular:

(a) Inspection planning

GSC officials indicated that inspectors perform routine inspections of the licensed establishments and maintain a presence in the riskier, higher populated areas and events based on the personal knowledge of the inspector. Inspections may be performed at random, at the request of the Corporation, or as a follow-up on a complaint. Any licensed premise that has had or has been suspected of an infraction is inspected more frequently. If an inspector is in a given area for an inspection, they will inspect as many other licensed premises in that area as they can at that time.

Our review indicated that the planning for inspections is not adequate as follows:

- There is no formal risk-based approach for planning inspections performed by GSC inspectors.
- There is no inspection frequency established for each of the various license categories (e.g. lounge, hotels, and clubs).

- No information is maintained on the number of inspections performed and the results of all inspections which could be used in planning subsequent inspection activity. The only information recorded in the computer system relates to issues identified during an inspection. As a result, the GSC cannot monitor inspection activity to determine the extent of inspections completed and the history of inspections completed for each licensee.

As a result, inspections are performed on an ad hoc basis without a formal risk assessment and without information relating to past inspections.

(b) Inspection Process

When inspectors arrive at a licenced premise, they identify themselves to management and staff and proceed to conduct a visual inspection of such things as the fire exits, presence of minors, overcrowding, and proper handling and serving of liquor. When infractions are noted, the inspector completes an inspection form and leaves a copy at the establishment. Subsequent to this, the inspector prepares a report and forwards it along with a copy of the inspection form to the Corporation where the information is input into the computer system. Inspectors also provide training for licensees and their staff on matters relating to the *Act* and the *Regulations*.

Our review indicated that there are weaknesses in the performance of inspections as follows:

- GSC officials indicated that they occasionally direct their inspectors to avoid certain licensees and events they consider to be controversial. In these instances the officials are of the opinion that the Corporation will not take any action even if violations of the *Act* and *Regulations* are noted.

- Inspectors do not document all violations of the *Act* and *Regulations*. Instead, they will only prepare reports for violations they consider to be of a serious nature, e.g. underage drinking, serving contraband liquor, and overcrowding. For other violations, the inspectors indicated that, because they do not have permission to issue Summary Offense Tickets and are of the opinion that the Corporation will not take any action even if the violations are reported, they do not prepare reports.

- GSC inspectors use information in the computer system to determine if all liquor in a licensee's establishment has been purchased from the Corporation (i.e. not contraband). However, the Corporation is not updating purchase information in the computer system on a timely basis. As a result, the inspectors do not have the information necessary to determine if licensees are purchasing liquor in accordance with the *Act* .

- Although GSC health inspectors and police forces may perform routine inspections of licensees, GSC officials indicated that no training on the requirements of the *Act* and *Regulations* is provided. Furthermore, there is no guidance such as a checklist to guide them in performing inspections. As a result, violations may not be detected.

- Although overcrowding is an important life safety matter and included in the *Act*, inspectors do not always perform head counts to detect overcrowding during routine inspections. Officials indicated that head counts are only performed when extra inspectors or police are available to secure the premises.

- Inspectors indicated that they have not received any inspection and enforcement training since they were transferred from the Corporation in 1997.

(c) Results of Inspections

Whenever an inspection or an investigation is completed the original copies of any reports are forwarded to the Corporation. The Corporation will review the matter and a decision is made regarding any enforcement action to be taken against the licensee. As a result of not having access to the Corporation's officials and information, the information we examined was limited to what was available at the GSC. Therefore, we were unable to determine the final disposition of certain issues that were noted during our review.

During our review of the 93 files selected for licence testing, we identified files where inspections had been performed and documented. We reviewed inspection reports in 10 files and our review indicated the following:

- There were 15 instances where GSC inspectors observed violations of the *Act* or *Regulations* such as the sale of contraband liquor, serving or consuming liquor after hours, overcrowding, and underage drinking, serving liquor in inappropriate containers, and drinking in non-designated areas. For example:

  - In one instance, a licensee had acquired an establishment from another licensee and did not have the license transferred in accordance with the *Regulations*. Documentation on file at the GSC indicated that the original licensee transferred ownership of the lounge to the new owner on 1 October 2001; however, the licence transfer was not approved until 16 November 2001. As a result, any sale of liquor by this establishment in this time period was being done without a liquor license. During the period when the license was in the process of being transferred, the new owner was found to have a minor employed at the establishment to serve alcohol; however, the GSC approved the license transfer to the new owner despite being unaware of how this violation had been unresolved.

  - In another instance, a licensee held a restaurant license while operating as a lounge. It was indicated that the owner had applied to the GSC for a restaurant license because the municipality would not provide the approval necessary to obtain a lounge license.

  Although these violations were reported to the Corporation, details of the action taken were not provided to the GSC. For example, at the time of our review, GSC was not informed of the resolution of any of the 15 violations. Some of the violations are quite old - e.g. 29 months, 26 months, 24 months, 17 months with the most recent violation reported 2 months ago. As a result, the GSC inspectors did not know the final disposition of these matters in order to close their file and follow-up during future inspections to determine compliance.

- There is inconsistent application of the enforcement provisions of the *Act* and *Regulations*. If police officers observe a violation they will often issue Summary Offences Tickets in cases where violations of the *Act* and *Regulations* are identified; however, the Corporation has not authorized GSC inspectors to issue these tickets.

Recommendations

Government should direct the Newfoundland and Labrador Liquor Corporation to provide the Auditor General with unrestricted access to the Corporation's information.

Licence applications should clearly indicate compliance with the Liquor Control Act *and* Regulations *before they are approved.*

Inspection planning should be based on a formal risk-based approach for inspections and inspection frequencies should be established for the various licence categories. Furthermore, information should be maintained on all inspections performed.

The Department should consider whether its liquor inspectors, health inspectors and police force officers have the necessary training regarding the requirements of the Liquor Control Act *and* Regulations.

Department's Response

In general, we concur with many of your observations.

The department acknowledges that inspection planning needs improvement and that there have, in the past, been weaknesses in the performance of some inspections. Unfortunately, since the 1995 decision of government to transfer responsibility for licensing and enforcement to the Department of Government Services, there has been a history of duplication of effort, inconsistent direction on enforcement from the NLC and general lack of clarity on roles and responsibilities between the department and the Newfoundland Liquor Corporation (NLC).

As you noted in your report, there is a new draft MOU under development to address such issues of duplication and overlap between Government Services and the NLC. I have written the new CEO for the corporation requesting a meeting to discuss these matters at the earliest opportunity.

Your report has noted four recommendations.

1) "Government should direct the Newfoundland and Labrador Liquor Corporation to provide the Auditor General with unrestricted access to the Corporation's information."

- *We acknowledge your March 11, 2004 report to the House of Assembly. It is noted, however, that the response on this matter is beyond the purview of this department.*

2) "Licence applications should clearly indicate compliance with the Liquor Control Act and Regulations *before they are approved."*

- *The department agrees that all applications should clearly indicate compliance with the legislation and will undertake measures to ensure that this is achieved insofar as it is within our control.*

3) "Inspection planning should be based on a formal risk-based approach for inspections and inspection frequencies should be established for the various licence categories. Furthermore, information should be maintained on all inspections performed."

- *The department agrees with this recommendation. To date, the department has been operating under policies and procedures established by the NLC which have included informal approaches to inspection planning and frequency. The issue of day-to-day operational policies will be addressed in the new MOU and will be discussed with the Corporation at the earliest opportunity. In the meantime, departmental management has instituted new guidelines for Liquor Control Inspectors to document all infractions in the form of inspection slips and record a follow-up date to ensure the violation has been corrected. Direction has also been given with regard to inspection frequency for high risk establishments.*

4) "The Department should consider whether its liquor inspectors, health inspectors and police force officers have the necessary training regarding the requirements of the Liquor Control Act and Regulations*."*

- *The Department acknowledges the need to ensure that officials, such as Environmental Health Officers, who provide occasional assistance in this area are fully aware of the requirements of the legislation and will undertake to conduct such training in the near future. In addition, we are taking measures to implement*

additional training for Liquor Control Inspectors, particularly in the area of enforcement techniques. A request has been made to the Royal Newfoundland Constabulary (RNC) for a meeting with RNC training staff regarding the possible development of an officer safety training program.

2.20 Liquor Licensing and Enforcement