## Appendix I

### *Auditor General Act*

1. This Act may be cited as the *Auditor General Act.*

2. (1) In this Act

(a) "agency of the Crown" means an authority, board, commission, foundation, agency, corporation, association, institute or other body of persons, whether incorporated or unincorporated, 50% or more of the members of which or 50% or more of the members of the board of management or board of directors of which,

(i) are appointed by an Act of the Legislature or by the Lieutenant-Governor in Council, or

(ii) where not so appointed, in the discharge of their duties are public officers or servants of the Crown or are responsible to the Crown for the proper discharge of their duties;

(b) "audit" means an audit or examination of accounts of public money that may be made by the auditor general under this Act;

(c) "auditor general" means the Auditor General of Newfoundland and Labrador appointed under section 4;

(d) "commission" means the Commission of Internal Economy of the House of Assembly appointed under the authority of *The Internal Economy Commission Act*;

(e) "Crown controlled corporation" means a corporation that is not an agency of the Crown and having

(i) 50% or more of its issued and outstanding shares vested in the Crown or in the name of a minister of the Crown, or

(ii) the appointment of a majority of its board of directors made or approved by the Lieutenant-Governor in Council;

(f) "office" means the Office of the Auditor General established under section 3; and

(g) "public money" means all money received, held or collected for or on behalf of the province by a minister of the Crown or other public officer in his or her official capacity or by a person authorized to receive, hold or collect that money, and includes

(i) all revenues of the province,

(ii) money borrowed by the province or received through the issue and sale of securities, and

(iii) money paid to the province for a special purpose.

(2) Words and expressions used in this Act and not defined in subsection (1) have the same meaning as in the *Financial Administration Act.*

3. There is established a department of the public service of the province called the Office of the Auditor General, over which the auditor general shall preside.

4. (1) The Lieutenant-Governor in Council shall, by commission under the Great Seal of the province, appoint a qualified auditor to be the officer called the Auditor General of Newfoundland and Labrador.

(2) The person appointed to the position of auditor general under this section must be confirmed in office as auditor general by the introduction in the House of Assembly of a resolution within 10 days after his or her appointment and if the House of Assembly is not sitting within 10 days after the commencement of the next ensuing Session of the House of Assembly or within 10 days after the House of Assembly resumes sitting following an adjournment of the House of Assembly.

(3) The auditor general is by virtue of his or her position an officer of the House of Assembly.

5. (1) The auditor general holds office for a term of 10 years but may be removed for cause by the Lieutenant-Governor in Council following the passing by the House of Assembly of a resolution requesting the Lieutenant-Governor in Council to do so.

(2) Once having served as auditor general, a person is not eligible for reappointment to that office.

6. In the event of the absence or incapacity of the auditor general or where the Office of Auditor General is vacant, the Lieutenant-Governor in Council may appoint a person temporarily to perform the duties of the auditor general.

7. The auditor general shall be paid a salary out of the Consolidated Revenue Fund at a rate set by the Lieutenant-Governor in Council and is entitled to the privileges of office of a deputy minister.

8. The auditor general shall not hold an office of profit or shall not act as trustee for profit for another person, other than his or her office as auditor general or engage in an occupation for reward outside the duties of his or her office.

9. (1) Before entering upon his or her duties, the auditor general shall

(a) take or make and sign the Oath or Affirmation of Allegiance under the *Oaths of Office Act*; and

(b) take or make and sign the following oath or affirmation of office:

"I, ....., do solemnly swear (or solemnly, sincerely and truly declare and affirm) that I will faithfully, truly, impartially, honestly, justly and to the best of my judgment, skill and ability, execute and perform the powers, duties and functions reposed in or required of me as auditor general under the *Auditor General Act* or another Act and that I will observe and comply with the laws of Canada and Newfoundland and Labrador." (Where an oath is taken add "So help me God").

(2) The oaths or affirmations referred to in subsection (1) shall be administered by the Speaker or by the Clerk of the House of Assembly.

10. The auditor general is the auditor of the financial statements and accounts of the province and shall make those examinations and inquiries that the auditor general considers necessary to enable him or her to report as required by this Act.

11. The auditor general shall examine the several financial statements required by the *Financial Administration Act* to be included in the public accounts of the province, and any other statement that is required to be audited by the auditor general under that Act or another statement that the Minister of Finance may present for audit and shall express his or her opinion as to whether the financial statements present fairly the financial position, results of operations and changes in the financial position of the province in accordance with the disclosed accounting policies of the provincial government and on a basis consistent with that of the preceding year, together with reservations the auditor general may have.

12. (1) The auditor general shall as he or she considers necessary but at least annually report to the House of Assembly on

(a) the work of the office;

(b) whether, in carrying out the work of the office, the auditor general received all the information including reports and explanations the auditor general required;

(c) the results of the auditor general's examination of the financial statements referred to in section 11; and

(d) audits, examinations and inquiries performed under this Act.

(2) A report of the auditor general under subsection (1) shall include the results of the auditor general's examination of the accounts of the province, and shall call attention to anything the auditor general considers significant, including instances where

(a) collections of public money

(i) have not been effected as required under various Acts and regulations, directives or orders under those Acts,

(ii) have not been fully accounted for, or

(iii) have not been properly reflected in the accounts;

(b) disbursements of public money

(i) have not been made in accordance with the authority of a supply vote, or relevant Act,

(ii) have not complied with regulations, directives or orders applicable to those disbursements,

(iii) have not been properly reflected in the accounts, or

(iv) have not been made for the purposes for which it was appropriated;

(c) accounts have not been faithfully and properly kept;

(d) assets acquired, administered or otherwise held are not adequately safeguarded or accounted for;

(e) accounting systems and management control systems that relate to revenue, disbursements, the safeguarding or use of assets or the determination of liabilities were not in existence, were inadequate or had not been complied with; or

(f) factors or circumstances relating to an expenditure of public money which in the opinion of the auditor general should be brought to the attention of the House of Assembly.

(3) Paragraph (2)(f) shall not be construed as entitling the auditor general to question the merits of policy objectives of the government.

13. (1) Each report of the auditor general referred to in section 12 shall be submitted to the Speaker of the House of Assembly and the Speaker shall table each report before the House of Assembly immediately after receipt of the report by him or her or, where the House of Assembly is not then in Session, on the 1st day of the commencement of the next ensuing Session of the House of Assembly or on the 1st day after the House of Assembly resumes sitting following an adjournment of the House of Assembly.

(2) The annual report of the auditor general shall be submitted on or before January 31 following the close of the fiscal year to which the report relates.

14. (1) Where an auditor has not been appointed to audit an agency of the Crown or a Crown controlled corporation, the auditor general shall be the auditor.

(2) Where the auditor of an agency of the Crown or of a Crown controlled corporation is other than the auditor general, the auditor shall

(a) deliver to the auditor general after completion of the audit a copy of the auditor's report, his or her recommendations to management and a copy of the audited financial statements of the corporation or agency;

(b) make available immediately to the auditor general, when so requested by the auditor general, all working papers, reports, schedules and other documents in respect of the audit; and

(c) provide immediately to the auditor general, when so requested by the auditor general, a full explanation of work performed, tests and examinations made and the results obtained, and other information relating to the audit within the knowledge of that auditor in respect of the agency or corporation.

(3) Where the auditor general is of the opinion that the information, explanation or document that is provided, made available or delivered to the auditor general by the auditor referred to in subsection (2) is insufficient to permit the auditor general to exercise his or her powers or duties under this Act, the auditor general may conduct or cause to be conducted an additional examination and investigation of the records and operations of the agency of the Crown or the Crown controlled corporation that the auditor general considers necessary.

15. (1) Where during the course of an audit, the auditor general becomes aware of an improper retention or misappropriation of public money or another activity that may constitute an offence under the *Criminal Code* or another Act, the auditor general shall immediately report the improper retention or misappropriation of public money or other activity to the Lieutenant-Governor in Council.

(2) In addition to reporting to the Lieutenant-Governor in Council under subsection (1), the auditor general shall attach to his or her annual report to the House of Assembly a list containing a general description of the incidents referred to in subsection (1) and the dates on which those incidents were reported to the Lieutenant-Governor in Council.

16. (1) The auditor general may, where in his or her opinion such an assignment does not interfere with the auditor general's primary responsibilities under this Act, whenever the Lieutenant-Governor in Council so requests or the House of Assembly or the Public Accounts Committee by resolution so requires, inquire into and report on a matter relating to the financial affairs of the province or to public property or inquire into and report on a person or organization that has received financial aid from the government of the province or in respect of which financial aid from the government of the province is sought.

(2) Where the auditor general makes a report in accordance with subsection (1), the auditor general shall report back to either the Lieutenant-Governor in Council, the House of Assembly or the Public Accounts Committee.

17. Except as provided by another Act that expressly refers to this section, every department of government, every agency of the Crown and every Crown controlled corporation shall furnish the auditor general with information regarding its power, duties, activities, organization, financial transactions and methods of business as the auditor general requires, and the auditor general shall be given access to all books, accounts, financial records, reports, electronic data processing records, explanations, files and all other papers, things or property belonging to or in use by the department, agency of the Crown or Crown controlled corporation and necessary to the performance of the duties of the auditor general under this Act.

18. (1) The auditor general may examine a person on oath or affirmation on a matter pertinent to an account submitted to the auditor general for audit and the oath or affirmation may be administered by the auditor general to a person whom the auditor general desires to examine.

(2) In order to compel the attendance of a person under subsection (1), the auditor general may apply to a judge of the Trial Division for an order that a subpoena be issued from the court commanding the person named in the subpoena to appear before the auditor general at the time and place mentioned in the subpoena, and then and there to testify to all matters within that person's knowledge relative to an account submitted to the auditor general.

(3) Where so required, the person named in the subpoena shall produce a document, paper or thing which he or she has possession of relative to the account.

(4) A person named in a subpoena issued under this section is entitled to reasonable expenses at the time of the service.

19. Notwithstanding sections 17 and 18, the auditor general shall not be permitted access to reports arising out of the conduct of lawful police investigations or to information in the records listed in paragraphs 9(1)(b) to (f) of the *Freedom of Information Act* except for the information in the records disclosed under subsection 9(2) of that Act.

20. The auditor general may station in the offices of a department, agency of the Crown or Crown controlled corporation, an employee of the office for the purpose of enabling the auditor general to more effectively exercise or perform his or her powers and duties under this or another Act, and the department, agency of the Crown or Crown controlled corporation shall provide the necessary office accommodation and facilities for employees so stationed.

21. The auditor general and each person employed in the office or appointed or engaged to assist the auditor general for a limited period of time or in respect of a particular matter under section 28 shall keep confidential all matters that come to his or her knowledge in the course of his or her employment or duties under this Act and shall not communicate those matters to another person, except as may be required in connection with the discharge of his or her responsibilities under this Act or under the *Criminal Code.*

22. Audit working papers of the office shall not be laid before the House of Assembly or a committee of the House of Assembly.

23. (1) Those auditors and employees that are necessary to enable the auditor general to perform his or her duties under this or another Act shall be appointed or employed in the manner authorized by law and are members of the public service of the province.

(2) The personnel management policies of the Treasury Board as they relate to the public service of the province apply to the office.

(3) The *Conflict of Interest Act* applies to the auditor general and every person employed in the office.

24. (1) Every person employed in the office, shall, before performing a duty as an employee in the office

(a) take or make and sign the Oath or Affirmation of Allegiance under the *Oaths of Office Act;* and

(b) take or make and sign the following oath or affirmation of office:

"I ....., do swear (or solemnly, sincerely and truly, declare and affirm) that I will faithfully, honestly and impartially to the best of my knowledge, skill and ability perform my duties as an employee in the Office of the Auditor General and that I will observe and comply with the laws of Canada and Newfoundland and Labrador and except as I may be legally required, I will not disclose or give to a person information or a document that comes to my knowledge or possession by reason of my being an employee in the Office of the Auditor General." (In the case where an oath is taken add "So help me God").

(2) The oaths or affirmations referred to in subsection (1) shall be administered by the auditor general or his or her designate.

(3) The auditor general may require a person or class of persons appointed to assist the auditor general for a temporary period of time or in respect of a particular matter under section 28 to take or make and subscribe the oaths or affirmations referred to in subsection (1).

(4) A copy of each oath or affirmation administered to an employee of the office under subsection (1) shall be kept in the files of the office.

(5) The refusal of an employee of the office to take or make and subscribe to the oaths or affirmations or the failure to adhere to the oaths or affirmations required by subsection (1) may be considered as cause for dismissal.

25. (1) All persons employed in the office are employees for the purposes of the *Public Service Pensions Act, 1991* and are entitled to all the benefits under that Act.

(2) Notwithstanding subsection (1), the Lieutenant-Governor in Council may by order permit the auditor general to participate in the *Public Service Pensions Act, 1991* or may by order stipulate other pension arrangements for the auditor general upon his or her appointment under this Act.

26. The auditor general may delegate in writing to an employee of the office authority to exercise a power or perform a duty of the auditor general other than reporting to the House of Assembly.

27. The auditor general may appoint an employee of the office as acting auditor general while the auditor general is absent from the province.

28. The auditor general may engage, on a fee basis, a person to act as his or her agent for the purpose of conducting an audit or examination that the auditor general is empowered to conduct or to perform a service that the auditor general considers necessary for a purpose related to the exercise or performance of the auditor general's powers and duties under this or another Act.

29. The auditor general, persons employed in the office and those persons employed or engaged by the auditor general under the authority of section 28 are not liable in a proceeding for an act done or not done or for a statement or report made by them in good faith in connection with a matter they are authorized or required to do under this Act.

## Appendix I

30. Subject to the *Public Tender Act*, the auditor general may engage within the limits of the appropriation approved by the Legislature for his or her office and without the approval of the Treasury Board the professional services, including counsel, consultants, accountants and other experts and acquire goods that the auditor general considers necessary for a purpose related to the exercise or performance of his or her powers and duties under this or another Act.

31. Where the auditor general

(a) considers it necessary to report for the information of the Lieutenant-Governor in Council; or

(b) is required to report to the Lieutenant-Governor in Council for the purposes of this Act, especially in respect of a matter relating to the office,

the report is made through the Minister of Finance.

32. (1) The Commission shall appoint a qualified auditor to audit annually the office.

(2) The auditor appointed under subsection (1), has the same powers and shall perform the same duties in relation to an audit of the office that the auditor general has or performs in relation to an audit performed under this Act.

(3) The auditor appointed under subsection (1) shall submit his or her report to the commission and send a copy to the auditor general.

(4) The Speaker of the House of Assembly shall table the report of the auditor under this section before the House of Assembly immediately after receiving the report by him or her or where the House of Assembly is not then in Session, on the 1st day of the commencement of the next ensuing Session of the House of Assembly or the 1st day after the House of Assembly resumes sitting following an adjournment of the House of Assembly.

33. (1) The auditor general shall submit annually to the commission for its approval estimates of the sums that will be required to be provided by the Legislature for the payment of the salaries, allowances and expenses of the office under this Act during the next ensuing fiscal year.

(2) The commission shall review and may alter as it considers proper the estimates submitted under subsection (1) and, upon completion of the review, the Speaker of the House of Assembly shall submit the estimates as approved by the commission to the House of Assembly for the purpose of inclusion in the estimates of the province for approval by the Legislature.

34. (1) Where the auditor general conducts examinations or audits an agency of the Crown or Crown controlled corporation, the auditor general may charge fees for professional services rendered by his or her office.

(2) The fees referred to in subsection (1) shall be established on a basis that may be approved by the Lieutenant-Governor in Council.

(3) The fees charged and collected by the auditor general under this section shall be paid into the Consolidated Revenue Fund.

35. (1) Persons in the employ of the Department of the Auditor General at the commencement of this Act are considered to have been appointed in accordance with this Act.

(2) Upon the commencement of this Act, the Department of the Auditor General is considered to be and is continued in the name of the Office of the Auditor General under this Act.

(3) A reference in another Act to the auditor general appointed under the *Financial Administration Act* or a reference in another Act to the auditor general shall be considered to be a reference to the auditor general appointed under this Act.

36. (1) Paragraph 2(a) of the *Financial Administration Act* is repealed and the following substituted:

"(a) "auditor general" means the Auditor General of Newfoundland and Labrador appointed under the *Auditor General Act* and includes all employees acting under the auditor general's direction;".

(2) Sections 58 to 71 of the Act are repealed.

(3) Subsection 83(1) of the Act is amended by striking out the words "and the Auditor General" and the words "or the Auditor General".

# Appendix I