NEWFOUNDLAND AND LABRADOR

Office of the Auditor General

1 March 2004

Mr. Jamie M. Smith, Q.C.
Chair
Newfoundland and Labrador Liquor Corporation
P.O. Box 8750, Station "A"
90 Kenmount Road
St. John's, Newfoundland and Labrador
A1B 3V1

Dear Mr. Smith:

I acknowledge receipt of your letter dated 27 February 2004 relating to my review of the Liquor Licensing and Enforcement Program and our meeting of 26 February 2004.

While you did provide me with a legal opinion from Stewart, McKelvey, Stirling, Scales at our meeting on 26 February 2004, the document was not signed (last page enclosed) and, therefore, I am not sure if it is to be considered as a work in progress or a final opinion. I would appreciate it if you could confirm the status of the document.

During the meeting I informed you that I was not prepared to use public money to obtain a legal opinion to counter the opinion that was provided by your lawyers. My Office has obtained legal opinions in the past related to the mandate of the Office of the Auditor General and I am confident that I do have the mandate to review the Liquor Licensing and Enforcement Program. I explained that I could not provide you with copies of those opinions because of provisions in the *Auditor General Act* relating to the confidentiality of my files. In fact, the *Act* is very clear and provides that the files and records of my Office are strictly confidential and cannot be tabled before the House of Assembly or a committee of the House or before a court except in matters under the *Criminal Code*.

P.O. Box 8700, St. John's, Newfoundland and Labrador, Canada, A1B 4J6, Telephone (709) 729-2695, Facsimile (709) 729-5970

For background purposes I can tell you the *Auditor General Act* was assented to on 31 October 1991 after much review by the government of the day and a select committee of the House of Assembly. My Office was involved in the process and the direction of the Legislature was that, because the Auditor General was the independent auditor of all activities of government and an officer of the House of Assembly, the Office would be provided with unfettered access to all systems, documentation, and information relating to the operations of government, its departments and any agencies of the Crown. The mandate provided by the House of Assembly is much broader than focusing only on financial and compliance matters - a fact that is supported in law and in the work that the Office has been performing.

As outlined in the opinion letter you provided, Memorial University of Newfoundland challenged access by my Office; however, as the letter also indicates, the court ruled that my Office did have access to the records of the University.

As agreed during our meeting, my Office has forwarded copies of audits/reviews that we consider to be similar in nature to the proposed review of the Liquor Licensing and Enforcement Program. These were hand delivered to the Smith Coffey offices on Friday, 27 February 2004. They include report items, contained in recent years' Reports to the House of Assembly on Reviews of Departments and Crown Agencies, dealing with such areas as Food Premises Inspection and Licensing (2000 and 2003 Reports), Child Care Services (2003 Report), Enterprise Newfoundland and Labrador Portfolio Review (2002 Report), Workplace Health and Safety Inspections (2002 Report), and the Aquaculture Program (1998 Report). With regard to the report entitled "Deficiencies in system for monitoring licensee purchases at The Newfoundland Liquor Licensing Board" provided to you during our meeting, please be advised that the report item was included in my Office's Report to the House of Assembly for the Year Ended 31 March 1987.

A review of these report items will show that the objectives and approach proposed by my Office for the review of the Liquor Licensing and Enforcement Program are the same as those used in completing similar reviews in the past. Further details as to the basic objectives and approach for the proposed review were outlined in my letter to you dated 20 February 2004.

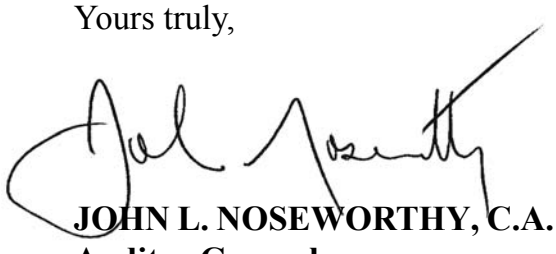
I offer the following regarding my reporting responsibilities relating to the Liquor Licensing and Enforcement Program. As you are aware, my Office has already conducted work at the Department of Government Services and Lands on the Liquor Licensing and Enforcement Program. Pursuant to Section 12(a) of the *Auditor General Act*, I am required to report to the House of Assembly on the work of the Office. Therefore, I will report my findings on issues and matters that have been identified as a result of the work that has been completed. Furthermore, if the Board decides not to provide my Office with access to the required records, pursuant to Section 12(b) of the *Auditor General Act,* I will also have to report that matter.

As an Officer of the House of Assembly and a champion of accountability, I continually encourage Government's openness and transparency and want nothing more than to complete my work and report my findings to the House of Assembly as required by the *Auditor General Act*. Restricting the Auditor General's access to information from the perspective of public accountability and the fundamental principles of sound governance will be seen as a step backward. I believe the members of the House of Assembly will not look favourably on any restrictions that are imposed.

In summary, based on the provisions of the *Auditor General Act*, legal opinions that we have regarding our mandate, the broad scope of work that my Office has conducted in the past, and the fact that we previously had unrestricted access to the Liquor Licensing Board records, it is my opinion that my Office does have the mandate to conduct this work.

In closing, I will say that I sincerely hope the Board of Directors of the Newfoundland and Labrador Liquor Corporation will agree with the position I put forward and allow the work to be completed. I cannot see how it will be in anybody's best interest to prevent my Office from completing this work now. I look forward to a favourable response on this matter.

Yours truly,



JOHN L. NOSEWORTHY, C.A.
Auditor General

Enclosure